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REVISED CODE OF WASHINGTON

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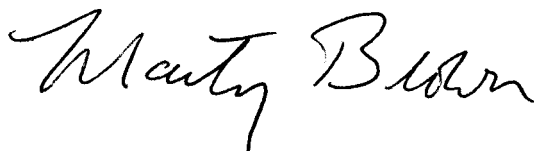
REVISED CODE OF WASHINGTON

2008 Edition

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MARTY BROWN, Chair
STATUTE LAW COMMITTEE

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PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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DEPARTMENT OF LICENSING

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46.01.011 Purpose. The legislature finds that the department of licensing administers laws relating to the licensing and regulation of professions, businesses, gambling, and other activities in addition to administering laws relating to the licensing and regulation of vehicles and vehicle operators, dealers, and manufacturers. The laws administered by the department have the common denominator of licensing and regulation and are directed toward protecting and enhancing the well-being of the residents of the state. [1994 c 92 § 500; 1979 c 158 § 113; 1977 ex.s. c 334 § 1.]

Effective date—1977 ex.s. c 334: "This 1977 amendatory act shall take effect on July 1, 1977." [1977 ex.s. c 334 § 8.]

46.01.020 Department created. A department of the government of this state to be known as the "department of licensing" is hereby created. [1979 c 158 § 114; 1977 ex.s. c 334 § 2; 1965 c 156 § 2.]

Effective date—1977 ex.s. c 334: See note following RCW 46.01.011.

46.01.030 Administration and improvement of certain motor vehicle laws. The department shall be responsible for administering and recommending the improvement of the motor vehicle laws of this state relating to:

- (1) driver examining and licensing;
- (2) driver improvement;
- (3) driver records;
- (4) financial responsibility;
- (5) certificates of ownership;
- (6) certificates of license registration and license plates;
- (7) proration and reciprocity;
- (8) liquid fuel tax collections;
- (9) licensing of dealers, motor vehicle transporters, motor vehicle wreckers, for hire vehicles, and drivers' schools;
- (10) general highway safety promotion in cooperation with the Washington state patrol and traffic safety commission;
- (11) such other activities as the legislature may provide. [1990 c 250 § 14; 1965 c 156 § 3.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.01.040 Powers, duties, and functions relating to motor vehicle laws vested in department. The department of licensing is vested with all powers, functions, and duties with respect to and including the following:

- (1) The motor vehicle fuel excise tax as provided in chapter 82.36 RCW;
- (2) The special fuel tax as provided in chapter 82.38 RCW;
- (3) The motor vehicle excise tax as provided in chapter 82.44 RCW;
- (4) The *house trailer excise tax as provided in chapter 82.50 RCW;
- (5) All general powers and duties relating to motor vehicles as provided in chapter 46.08 RCW;
- (6) Certificates of ownership and registration as provided in chapters 46.12 and 46.16 RCW;
- (7) The registration and licensing of motor vehicles as provided in chapters 46.12 and 46.16 RCW;
- (8) Dealers' licenses as provided in chapter 46.70 RCW;
- (9) The licensing of motor vehicle transporters as provided in chapter 46.76 RCW;
- (10) The licensing of **motor vehicle wreckers as provided in chapter 46.80 RCW;
- (11) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW;
- (12) The licensing of passenger vehicles for hire as provided in chapter 46.72 RCW;
- (13) Operators' licenses as provided in chapter 46.20 RCW;
- (14) Commercial driver training schools as provided in chapter 46.82 RCW;
- (15) Financial responsibility as provided in chapter 46.29 RCW;
- (16) Accident reporting as provided in chapter 46.52 RCW;
- (17) Disposition of revenues as provided in chapter 46.68 RCW; and
- (18) The administration of all other laws relating to motor vehicles vested in the director of licenses on June 30, 1965. [1983 c 3 § 117; 1979 c 158 § 115; 1965 c 156 § 4.]

Reviser's note: *(1) Redesignated the "travel trailers and campers excise tax" by 1967 ex.s. c 149 § 59.

***(2) "Motor vehicle wrecker" redesignated "vehicle wrecker" by 1995 c 256.

46.01.070 Functions performed by state patrol as agent for director of licenses transferred to department. Functions named in RCW 46.01.030 which have been performed by the state patrol as agent of the director of licenses before June 30, 1965 shall be performed by the department of licensing after June 30, 1965. [1979 c 158 § 118; 1965 c 156 § 7.]

46.01.100 Organization of department. Directors shall organize the department in such manner as they may deem necessary to segregate and conduct the work of the department. [1990 c 250 § 16; 1965 c 156 § 10.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.01.110 Rule-making authority. The director of licensing is hereby authorized to adopt and enforce such reasonable rules as may be consistent with and necessary to carry out the provisions relating to vehicle licenses, certificates of ownership and license registration and drivers' licenses not in conflict with the provisions of Title 46 RCW: PROVIDED, That the director of licensing may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. [1995 c 403 § 108; 1979 c 158 § 120; 1965 c 156 § 11; 1961 c 12 § 46.08.140. Prior: 1937 c 188 § 79; RRS § 6312-79. Formerly RCW 46.08.140.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

46.01.115 Rules to implement 1998 c 165. The department of licensing may adopt rules as necessary to implement chapter 165, Laws of 1998. [1998 c 165 § 14.]

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

46.01.130 Powers of department and director—Personnel—Appointment of county auditors as agents. The department of licensing shall have the general supervision and control of the issuing of vehicle licenses and vehicle license number plates and shall have the full power to do all things necessary and proper to carry out the provisions of the law relating to the licensing of vehicles; the director shall have the power to appoint and employ deputies, assistants and representatives, and such clerks as may be required from time to time, and to provide for their operation in different parts of the state, and the director shall have the power to appoint the county auditors of the several counties as his agents for the licensing of vehicles. [1979 c 158 § 121; 1973 c 103 § 2; 1971 ex.s. c 231 § 8; 1965 c 156 § 13; 1961 c 12 § 46.08.090. Prior: 1937 c 188 § 26; RRS § 6312-26; prior: 1921 c 96 § 3, part; 1917 c 155 § 2, part; 1915 c 142 § 3, part. Formerly RCW 46.08.090.]

Severability—1973 c 103: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 103 § 9.]

Effective date—1971 ex.s. c 231: "(1) Sections 1 through 7 of this 1971 amendatory act shall take effect on January 1, 1972.

(2) Sections 8 through 23 of this 1971 amendatory act shall take effect on January 1, 1973." [1971 ex.s. c 231 § 24.]

46.01.135 Establishment of investigation unit—Use of criminal history information. (1) There is established an investigation unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful in the programs administered by the department. The director will employ qualified supervisory, legal, and investigative personnel for the program. Program staff must be qualified by training and experience.

(2) The director and the investigation unit are authorized to receive criminal history record information that includes

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nonconviction data for any purpose associated with an investigation conducted by the investigation unit established under this section. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. [2008 c 74 § 6.]

Finding—2008 c 74: See note following RCW 51.04.024.

46.01.140 Special deputies and subagents of director—Disposition of application fees. (1) The county auditor, if appointed by the director of licensing shall carry out the provisions of this title relating to the licensing of vehicles and the issuance of vehicle license number plates under the direction and supervision of the director and may with the approval of the director appoint assistants as special deputies and recommend subagents to accept applications and collect fees for vehicle licenses and transfers and to deliver vehicle license number plates.

(2) A county auditor appointed by the director may request that the director appoint subagencies within the county.

(a) Upon authorization of the director, the auditor shall use an open competitive process including, but not limited to, a written business proposal and oral interview to determine the qualifications of all interested applicants.

(b) A subagent may recommend a successor who is either the subagent's sibling, spouse, or child, or a subagency employee, as long as the recommended successor participates in the open, competitive process used to select an applicant. In making successor recommendation and appointment determinations, the following provisions apply:

(i) If a subagency is held by a partnership or corporate entity, the nomination must be submitted on behalf of, and agreed to by, all partners or corporate officers.

(ii) No subagent may receive any direct or indirect compensation or remuneration from any party or entity in recognition of a successor nomination. A subagent may not receive any financial benefit from the transfer or termination of an appointment.

(iii) (a) and (b) of this subsection are intended to assist in the efficient transfer of appointments in order to minimize public inconvenience. They do not create a proprietary or property interest in the appointment.

(c) The auditor shall submit all proposals to the director, and shall recommend the appointment of one or more subagents who have applied through the open competitive process. The auditor shall include in his or her recommendation to the director, not only the name of the successor who is a relative or employee, if applicable and if otherwise qualified, but also the name of one other applicant who is qualified and was chosen through the open competitive process. The director has final appointment authority.

(3)(a) A county auditor who is appointed as an agent by the department shall enter into a standard contract provided by the director, developed with the advice of the title and registration advisory committee.

(b) A subagent appointed under subsection (2) of this section shall enter into a standard contract with the county auditor, developed with the advice of the title and registration advisory committee. The director shall provide the standard contract to county auditors.

(c) The contracts provided for in (a) and (b) of this subsection must contain at a minimum provisions that:

(i) Describe the responsibilities, and where applicable, the liability, of each party relating to the service expectations and levels, equipment to be supplied by the department, and equipment maintenance;

(ii) Require the specific type of insurance or bonds so that the state is protected against any loss of collected motor vehicle tax revenues or loss of equipment;

(iii) Specify the amount of training that will be provided by the state, the county auditor, or subagents;

(iv) Describe allowable costs that may be charged to vehicle licensing activities as provided for in (d) of this subsection;

(v) Describe the causes and procedures for termination of the contract, which may include mediation and binding arbitration.

(d) The department shall develop procedures that will standardize and prescribe allowable costs that may be assigned to vehicle licensing and vessel registration and title activities performed by county auditors.

(e) The contracts may include any provision that the director deems necessary to ensure acceptable service and the full collection of vehicle and vessel tax revenues.

(f) The director may waive any provisions of the contract deemed necessary in order to ensure that readily accessible service is provided to the citizens of the state.

(4)(a) At any time any application is made to the director, the county auditor, or other agent pursuant to any law dealing with licenses, registration, or the right to operate any vehicle or vessel upon the public highways or waters of this state, excluding applicants already paying such fee under RCW 46.16.070 or 46.16.085, the applicant shall pay to the director, county auditor, or other agent a fee of three dollars for each application in addition to any other fees required by law.

(b) Counties that do not cover the expenses of vehicle licensing and vessel registration and title activities may submit to the department a request for cost-coverage moneys. The request must be submitted on a form developed by the department. The department shall develop procedures to verify whether a request is reasonable. Payment shall be made on requests found to be allowable from the licensing services account.

(c) Applicants for certificates of ownership, including applicants paying fees under RCW 46.16.070 or 46.16.085, shall pay to the director, county auditor, or other agent a fee of four dollars in addition to any other fees required by law.

(d) The fees under (a) and (c) of this subsection, if paid to the county auditor as agent of the director, or if paid to a subagent of the county auditor, shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current expense fund. If the fee is paid to another agent of the director, the fee shall be used by the agent to defray his or her expenses in handling the application.

(e) Applicants required to pay the three-dollar fee established under (a) of this subsection, must pay an additional seventy-five cents, which must be collected and remitted to the state treasurer and distributed as follows:

(i) Fifty cents must be deposited into the department of licensing services account of the motor vehicle fund and must be used for agent and subagent support, which is to include but not be limited to the replacement of department-owned equipment in the possession of agents and subagents.

(ii) Twenty-five cents must be deposited into the license plate technology account created under RCW 46.16.685.

(5) A subagent shall collect a service fee of (a) ten dollars for changes in a certificate of ownership, with or without registration renewal, or verification of record and preparation of an affidavit of lost title other than at the time of the title application or transfer and (b) four dollars for registration renewal only, issuing a transit permit, or any other service under this section.

(6) If the fee is collected by the state patrol as agent for the director, the fee so collected shall be certified to the state treasurer and deposited to the credit of the state patrol highway account. If the fee is collected by the department of transportation as agent for the director, the fee shall be certified to the state treasurer and deposited to the credit of the motor vehicle fund. All such fees collected by the director or branches of his office shall be certified to the state treasurer and deposited to the credit of the highway safety fund.

(7) Any county revenues that exceed the cost of providing vehicle licensing and vessel registration and title activities in a county, calculated in accordance with the procedures in subsection (3)(d) of this section, shall be expended as determined by the county legislative authority during the process established by law for adoption of county budgets.

(8) The director may adopt rules to implement this section. [2005 c 343 § 1; 2003 c 370 § 3; 2001 c 331 § 1; 1996 c 315 § 1; 1992 c 216 § 1; 1991 c 339 § 16; 1990 c 250 § 89; 1988 c 12 § 1; 1987 c 302 § 1; 1985 c 380 § 12. Prior: 1983 c 77 § 1; 1983 c 26 § 1; 1980 c 114 § 2; 1979 c 158 § 122; 1975 1st ex.s. c 146 § 1; 1973 c 103 § 1; 1971 ex.s. c 231 § 9; 1971 ex.s. c 91 § 3; 1965 c 156 § 14; 1963 c 85 § 1; 1961 c 12 § 46.08.100; prior: 1955 c 89 § 3; 1937 c 188 § 27; RRS § 6312-27. Formerly RCW 46.08.100.]

Application—2003 c 370: "Sections 2 and 3 of this act take effect for renewals that are due or become due on or after November 1, 2003." [2003 c 370 § 6.] Section 2 of this act was vetoed by the governor.

Effective dates—1996 c 315 §§ 1, 4, 5: "(1) Section 4 of this act and the amendments to RCW 46.01.140(4) (a) and (c) by section 1 of this act become effective on vehicle fees due or to become due on January 1, 1997, and thereafter.

(2) Section 5 of this act and the amendments to RCW 46.01.140(4) (a) and (c) by section 1 of this act become effective on vessel fees due or to become due on July 1, 1997, and thereafter.

(3) The amendments to RCW 46.01.140(5) (a) and (b) by section 1 of this act become effective on July 1, 1996." [1996 c 315 § 6.]

Effective date—1991 c 339 §§ 16, 17: "Sections 16 and 17 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 339 § 34.]

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1987 c 302: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 302 § 5.]

Severability—1985 c 380: See RCW 46.87.900.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.01.150 Branch offices. The department may maintain such branch offices within the state as the director may deem necessary properly to carry out the powers and duties vested in the department. [1965 c 156 § 15.]

Office of department, maintenance at state capital: RCW 43.17.050.

46.01.160 Forms for applications, licenses, and certificates. The director shall prescribe and provide suitable forms of applications, certificates of ownership and registration, drivers' licenses and all other forms and licenses requisite or deemed necessary to carry out the provisions of Title 46 RCW and any other laws the enforcement and administration of which are vested in the department. [1965 c 156 § 16.]

Director to prescribe forms for applications, licenses, and certificates: RCW 43.24.040.

46.01.170 Seal. The department shall have an official seal with the words "Department of Licensing of Washington" engraved thereon. [1977 ex.s. c 334 § 4; 1965 c 156 § 17.]

Effective date—1977 ex.s. c 334: See note following RCW 46.01.011.

46.01.180 Oaths and acknowledgments. Officers and employees of the department designated by the director are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures and shall do so without fee. [1965 c 156 § 18.]

Oath of director: RCW 43.17.030.

46.01.190 Designation of state patrol as agent for surrender of drivers' licenses. The director of licensing may designate the Washington state patrol as an agent to secure the surrender of drivers' licenses which have been suspended, revoked, or canceled pursuant to law. [1979 c 158 § 123; 1965 c 156 § 19.]

46.01.230 Payment by check or money order—Regulations—Surrender of canceled license—Handling fee for dishonored checks—Internet payment option. (1) The department of licensing is authorized to accept checks and money orders for payment of drivers' licenses, certificates of ownership and registration, motor vehicle excise taxes, gross weight fees, and other fees and taxes collected by the department, in accordance with regulations adopted by the director. The director's regulations shall duly provide for the public's convenience consistent with sound business practice and shall encourage the annual renewal of vehicle registrations by mail to the department, authorizing checks and money orders for payment. Such regulations shall contain provisions for cancellation of any registrations, licenses, or permits paid for by checks or money orders which are not duly paid and for the necessary accounting procedures in such cases: PROVIDED, That any bona fide purchaser for value of a vehicle shall not be liable or responsible for any prior uncollected taxes and fees paid, pursuant to this section, by a check which has subsequently been dishonored: AND PROVIDED FURTHER, That no transfer of ownership of a vehicle may be denied to a bona fide purchaser for value of a vehicle if there are outstanding uncollected fees or taxes for which a predecessor paid, pursuant to this section, by check which has sub-

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sequently been dishonored nor shall the new owner be required to pay any fee for replacement vehicle license number plates that may be required pursuant to RCW 46.16.270 as now or hereafter amended.

(2) It is a traffic infraction to fail to surrender within ten days to the department or any authorized agent of the department any certificate, license, or permit after being notified that such certificate, license, or permit has been canceled pursuant to this section. Notice of cancellation may be accomplished by sending a notice by first-class mail using the last known address in department records for the holder of the certificate, license, or permit, and recording the transmittal on an affidavit of first-class mail.

(3) Whenever registrations, licenses, or permits have been paid for by checks that have been dishonored by nonacceptance or nonpayment, a reasonable handling fee may be assessed for each such instrument. Notwithstanding provisions of any other laws, county auditors, agents, and subagents, appointed or approved by the director pursuant to RCW 46.01.140, may collect restitution, and where they have collected restitution may retain the reasonable handling fee. The amount of the reasonable handling fee may be set by rule by the director.

(4) In those counties where the county auditor has been appointed an agent of the director under RCW 46.01.140, the auditor shall continue to process mail-in registration renewals until directed otherwise by legislative authority. Subagents appointed by the director under RCW 46.01.140 have the same authority to mail out registrations and replacement plates to Internet payment option customers as the agents until directed otherwise by legislative authority. The department shall provide separate statements giving notice to Internet payment option customers that: (a) A subagent service fee, as provided in RCW 46.01.140(5)(b), will be collected by a subagent office for providing mail and pick-up services; and (b) a filing fee will be collected on all transactions listed under RCW 46.01.140(4)(a). The statement must include the amount of the fee and be published on the department's Internet web site on the page that lists each department, county auditor, and subagent office, eligible to provide mail or pick-up services for registration renewals and replacement plates. The statements must be published below each office listed. [2003 c 369 § 1; 1994 c 262 § 1; 1992 c 216 § 2; 1987 c 302 § 2; 1979 ex.s. c 136 § 39; 1979 c 158 § 124; 1975 c 52 § 1; 1965 ex.s. c 170 § 44.]

Effective date—2003 c 369: "This act takes effect October 1, 2003." [2003 c 369 § 2.]

Severability—1987 c 302: See note following RCW 46.01.140.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.01.235 Payment by credit or debit card. The department may adopt necessary rules and procedures to allow use of credit and debit cards for payment of fees and excise taxes to the department and its agents or subagents related to the licensing of drivers, the issuance of identicards, and vehicle and vessel titling and registration. The department may establish a convenience fee to be paid by the credit or debit card user whenever a credit or debit card is chosen as the payment method. The fee must be sufficient to offset the charges imposed on the department and its agents and sub-

agents by credit and debit card companies. In no event may the use of credit or debit cards authorized by this section create a loss of revenue to the state.

The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution. [2004 c 249 § 9; 1999 c 271 § 1.]

46.01.250 Certified copies of records—Fee. The director shall have the power and it shall be his duty upon request and payment of the fee as provided herein to furnish under seal of the director certified copies of any records of the department, except those for confidential use only. The director shall charge and collect therefor the actual cost to the department. Any funds accruing to the director of licensing under this section shall be certified and sent to the state treasurer and by him deposited to the credit of the highway safety fund. [1979 c 158 § 125; 1967 c 32 § 3; 1961 c 12 § 46.08.110. Prior: 1937 c 188 § 80; RRS § 6312-80. Formerly RCW 46.08.110.]

46.01.260 Destruction of records by director. (1) Except as provided in subsection (2) of this section, the director, in his or her discretion, may destroy applications for vehicle licenses, copies of vehicle licenses issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, records or supporting papers on file in his or her office which have been microfilmed or photographed or are more than five years old. If the applications for vehicle licenses are renewal applications, the director may destroy such applications when the computer record thereof has been updated.

(2)(a) The director shall not destroy records of convictions or adjudications of RCW 46.61.520 and 46.61.522 or records of deferred prosecutions granted under RCW 10.05.120 and shall maintain such records permanently on file.

(b) The director shall not, within fifteen years from the date of conviction or adjudication, destroy records of the following:

(i) Convictions or adjudications of the following offenses: RCW 46.61.502 or 46.61.504; or

(ii) If the offense was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection, convictions or adjudications of the following offenses: RCW 46.61.500 or 46.61.5249 or any other violation that was originally charged as one of the offenses designated in (a) or (b)(i) of this subsection.

(c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject to this subsection shall be considered "alcohol-related" offenses. [1999 c 86 § 2; 1998 c 207 § 3; 1997 c 66 § 11; 1996 c 199 § 4; 1994 c 275 § 14; 1984 c 241 § 1; 1971 ex.s. c 22 § 1; 1965 ex.s. c 170 § 45; 1961 c 12 § 46.08.120. Prior: 1955 c 76 § 1; 1951 c 241 § 1; 1937 c 188 § 77; RRS § 6312-77. Formerly RCW 46.08.120.]

Effective date—1998 c 207: See note following RCW 46.61.5055.

Severability—1996 c 199: See note following RCW 9.94A.505.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.01.270 Destruction of records by county auditor.

The county auditor may destroy applications for vehicle licenses and any copies of vehicle licenses issued after such records have been on file in the auditor's office for a period of eighteen months, unless otherwise directed by the director. [1991 c 339 § 18; 1967 c 32 § 4; 1961 c 12 § 46.08.130. Prior: 1937 c 188 § 78; RRS § 6312-78. Formerly RCW 46.08.130.]

46.01.290 Director to make annual reports to governor. The director shall report annually to the governor on the activities of the department. [1977 c 75 § 66; 1967 c 32 § 5; 1965 c 28 § 1; 1961 ex.s. c 21 § 29. Formerly RCW 46.08.200.]

46.01.310 Immunity of licensing agents. No civil suit or action may ever be commenced or prosecuted against any county auditor, or against any other government officer or entity, or against any other person, by reason of any act done or omitted to be done in connection with the titling, licensing, or registration of vehicles or vessels while administering duties and responsibilities as an agent of the director of licensing, or as an agent of an agent of the director of licensing, pursuant to RCW 46.01.140. However, this section does not bar the state of Washington or the director of licensing from bringing any action, whether civil or criminal, against any such agent, nor shall it bar a county auditor or other agent of the director from bringing an action against his or her agent. [1987 c 302 § 3.]

Retroactive application—1987 c 302 § 3: "Section 3 of this act shall apply retroactively to all claims for which actions have not been filed before May 8, 1987." [1987 c 302 § 4.]

Severability—1987 c 302: See note following RCW 46.01.140.

46.01.320 Title and registration advisory committee.

The title and registration advisory committee is created within the department. The committee consists of the director or a designee, who shall serve as chair, the assistant director for vehicle services, the administrator of title and registration services, two members from each of the house and senate transportation committees, two county auditors nominated by the Washington association of county officials, and two representatives of subagents nominated by an association of vehicle subagents. The committee shall meet at least twice a year, and may meet as often as is necessary.

The committee's purpose is to foster communication between the legislature, the department, county auditors, and subagents. The committee shall make recommendations about revisions to fee structures, implications of fee revisions on cost sharing, and the development of standard contracts provided for in RCW 46.01.140(3). [2005 c 319 § 115; 1996 c 315 § 2; 1992 c 216 § 3.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

46.01.325 Agent and subagent fees—Analysis and evaluation. (1) The director shall prepare, with the advice of the title and registration advisory committee, an annual comprehensive analysis and evaluation of agent and subagent fees. The director shall make recommendations for agent and subagent fee revisions approved by the title and registration advisory committee to the senate and house transportation

committees by January 1st of every third year starting with 1996. Fee revision recommendations may be made more frequently when justified by the annual analysis and evaluation, and requested by the title and registration advisory committee.

(2) The annual comprehensive analysis and evaluation must consider, but is not limited to:

(a) Unique and significant financial, legislative, or other relevant developments that may impact fees;

(b) Current funding for ongoing operating and maintenance automation project costs affecting revenue collection and service delivery;

(c) Future system requirements including an appropriate sharing of costs between the department, agents, and sub-agents;

(d) Beneficial mix of customer service delivery options based on a fee structure commensurate with quality performance standards;

(e) Appropriate indices projecting state and national growth in business and economic conditions prepared by the United States department of commerce, the department of revenue, and the revenue forecast council for the state of Washington. [2005 c 319 § 116; 1996 c 315 § 3.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

46.01.330 Facilities siting coordination. The state patrol and the department of licensing shall coordinate their activities when siting facilities. This coordination shall result in the collocation of driver and vehicle licensing and vehicle inspection service facilities whenever possible.

The department and state patrol shall explore alternative state services, such as vehicle emission testing, that would be feasible to collocate in these joint facilities. The department and state patrol shall reach agreement with the department of transportation for the purposes of offering department of transportation permits at these one-stop transportation centers. All services provided at these transportation service facilities shall be provided at cost to the participating agencies.

In those instances where the community need or the agencies' needs do not warrant collocation this section shall not apply. [1993 sp.s. c 23 § 46.]

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

46.01.340 Database of fuel dealer and distributor license information. By December 31, 1996, the department of licensing shall implement a PC or server-based database of fuel dealer and distributor license application information. [1996 c 104 § 17.]

46.01.350 Fuel tax advisory group. By July 1, 1996, the department of licensing shall establish a fuel tax advisory group comprised of state agency and petroleum industry representatives to develop or recommend audit and investigation techniques, changes to fuel tax statutes and rules, information protocols that allow sharing of information with other states, and other tools that improve fuel tax administration or combat fuel tax evasion. [1996 c 104 § 18.]

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46.01.360 Fees—Study and adjustment. To ensure cost recovery for department of licensing services, the department of licensing shall submit a fee study to the transportation committees of the house of representatives and the senate by December 1, 2003, and on a biennial basis thereafter. Based on this fee study, the Washington state legislature will review and adjust fees accordingly. [2002 c 352 § 27.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

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46.04.010 Scope and construction of terms. Terms used in this title shall have the meaning given to them in this chapter except where otherwise defined, and unless where used the context thereof shall clearly indicate to the contrary.

Words and phrases used herein in the past, present or future tense shall include the past, present and future tenses; words and phrases used herein in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary. [1961 c 12 § 46.04.010. Prior: 1959 c 49 § 2; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.015 Alcohol concentration. "Alcohol concentration" means (1) grams of alcohol per two hundred ten liters of a person's breath, or (2) grams of alcohol per one hundred milliliters of a person's blood. [1995 c 332 § 17; 1994 c 275 § 1.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—1994 c 275: "This act shall be known as the "1994 Omnibus Drunk Driving Act."" [1994 c 275 § 43.]

Effective date—1994 c 275: "This act shall take effect July 1, 1994." [1994 c 275 § 46.]

46.04.020 Alley. "Alley" means a public highway not designed for general travel and used primarily as a means of access to the rear of residences and business establishments. [1961 c 12 § 46.04.020. Prior: 1959 c 49 § 3; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.030 Arterial highway. "Arterial highway" means every public highway, or portion thereof, designated as such by proper authority. [1961 c 12 § 46.04.030. Prior: 1959 c 49 § 4; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.040 Authorized emergency vehicle. "Authorized emergency vehicle" means any vehicle of any fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington state patrol, ambulance service, public or private, which need not be classified, registered or authorized by the state patrol, or any other vehicle authorized in writing by the state patrol. [1987 c 330 § 701;

1961 c 12 § 46.04.040. Prior: 1959 c 49 § 5; 1953 c 40 § 1; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.04.050 Auto stage. "Auto stage" means any motor vehicle used for the purpose of carrying passengers together with incidental baggage and freight or either, on a regular schedule of time and rates: PROVIDED, That no motor vehicle shall be considered to be an auto stage where substantially the entire route traveled by such vehicle is within the corporate limits of any city or town or the corporate limits of any adjoining cities or towns. [1961 c 12 § 46.04.050. Prior: 1959 c 49 § 6; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 1, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.060 Axle. "Axle" means structure or structures in the same or approximately the same transverse plane with a vehicle supported by wheels and on which or with which such wheels revolve. [1961 c 12 § 46.04.060. Prior: 1959 c 49 § 7; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.071 Bicycle. "Bicycle" means every device propelled solely by human power upon which a person or persons may ride, having two tandem wheels either of which is sixteen inches or more in diameter, or three wheels, any one of which is more than twenty inches in diameter. [1982 c 55 § 4; 1965 ex.s. c 155 § 86.]

46.04.080 Business district. "Business district" means the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway. [1975 c 62 § 2; 1961 c 12 § 46.04.080. Prior: 1959 c 49 § 9; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.085 Camper. "Camper" means a structure designed to be mounted upon a motor vehicle which provides facilities for human habitation or for temporary outdoor or recreational lodging and which is five feet or more in overall length and five feet or more in height from its floor to its ceiling when fully extended, but shall not include motor homes as defined in RCW 46.04.305. [1971 ex.s. c 231 § 2.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.090 Cancel. "Cancel," in all its forms, means invalidation indefinitely. [1979 c 61 § 1; 1961 c 12 § 46.04.090. Prior: 1959 c 49 § 10; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.100 Center line. "Center line" means the line, marked or unmarked, parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers. [1975 c 62 § 3; 1961 c 12 § 46.04.100. Prior: 1959 c 49 § 11; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.110 Center of intersection. "Center of intersection" means the point of intersection of the center lines of the roadway of intersecting public highways. [1961 c 12 § 46.04.110. Prior: 1959 c 49 § 12; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.115 Chauffeur. "Chauffeur" means a person authorized by the department under this title to drive a limousine, and, if operating in a port district that regulates limousines under RCW 46.72A.030(2), meets the licensing requirements of that port district. [1996 c 87 § 1.]

46.04.120 City street. "City street" means every public highway, or part thereof located within the limits of cities and towns, except alleys. [1961 c 12 § 46.04.120. Prior: 1959 c 49 § 13; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.125 Collector. "Collector" means the owner of one or more vehicles described in RCW 46.16.305(1) who collects, purchases, acquires, trades, or disposes of the vehicle or parts of it, for his or her personal use, in order to preserve, restore, and maintain the vehicle for hobby or historical purposes. [1996 c 225 § 2.]

Finding—1996 c 225: "The legislature finds and declares that constructive leisure pursuits by Washington citizens is most important. This act is intended to encourage responsible participation in the hobby of collecting, preserving, restoring, and maintaining motor vehicles of historic and special interest, which hobby contributes to the enjoyment of the citizens and the preservation of Washington's automotive memorabilia." [1996 c 225 § 1.]

46.04.127 Collegiate license plates. "Collegiate license plates" means license plates that display a depiction of the name and mascot or symbol of a state university, regional university, or state college as defined in RCW 28B.10.016. [1994 c 194 § 1.]

46.04.130 Combination of vehicles. "Combination of vehicles" means every combination of motor vehicle and motor vehicle, motor vehicle and trailer or motor vehicle and semitrailer. [1963 c 154 § 26; 1961 c 12 § 46.04.130. Prior: 1959 c 49 § 14; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.140 Commercial vehicle. "Commercial vehicle" means any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire. [1961 c 12 § 46.04.140. Prior: 1959 c 49 § 15; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.144 Cooper Jones Act license plate emblems. "Cooper Jones Act license plate emblems" means emblems on valid Washington license plates that display the symbol of bicycle safety created in RCW 46.16.333. [2002 c 264 § 2.]

Finding—2002 c 264: See note following RCW 46.16.333.

46.04.150 County road. "County road" means every public highway or part thereof, outside the limits of cities and towns and which has not been designated as a state highway. [1961 c 12 § 46.04.150. Prior: 1959 c 49 § 16; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.160 Crosswalk. "Crosswalk" means the portion of the roadway between the intersection area and a prolongation or connection of the farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk. [1961 c 12 § 46.04.160. Prior: 1959 c 49 § 17; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.162 Department. The term "department" shall mean the department of licensing unless a different department is specified. [1979 c 158 § 126; 1975 c 25 § 4. Formerly RCW 46.04.690.]

46.04.163 Director. The term "director" shall mean the director of licensing unless the director of a different department of government is specified. [1979 c 158 § 127; 1975 c 25 § 5. Formerly RCW 46.04.695.]

46.04.165 Driveaway-towaway operation. "Driveaway-towaway operation" means any operation in which any motor vehicle, trailer or semitrailer, singly or in combination, new or used, constitutes the commodity being transported when one set or more wheels of any such vehicle are on the roadway during the course of transportation, whether or not any such vehicle furnishes the motive power. [1963 c 154 § 27.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.167 Driver education. Whenever the term "driver education" is used in the code, it shall be defined to mean "traffic safety education". [1969 ex.s. c 218 § 12. Formerly RCW 46.04.700.]

46.04.168 Driving privilege withheld. "Driving privilege withheld" means that the department has revoked, suspended, or denied a person's Washington state driver's license, permit to drive, driving privilege, or nonresident driving privilege. [1999 c 6 § 2.]

Intent—1999 c 6: "(1) This act is intended to edit some of the statutes relating to driver's licenses in order to make those statutes more comprehensible to the citizenry of the state of Washington. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 46.20 RCW or other statutory provisions or rules adopted under those provisions.

(2) This act is technical in nature and does not terminate or in any way modify any rights, proceedings, or liabilities, civil or criminal, that exist on July 25, 1999." [1999 c 6 § 1.]

46.04.169 Electric-assisted bicycle. "Electric-assisted bicycle" means a bicycle with two or three wheels, a saddle, fully operative pedals for human propulsion, and an electric motor. The electric-assisted bicycle's electric motor must have a power output of no more than one thousand watts, be incapable of propelling the device at a speed of more than twenty miles per hour on level ground, and be incapable of further increasing the speed of the device when human power alone is used to propel the device beyond twenty miles per hour. [1997 c 328 § 1.]

46.04.1695 Electric personal assistive mobility device (EPAMD). "Electric personal assistive mobility device" (EPAMD) means a self-balancing device with two wheels not in tandem, designed to transport only one person by an electric propulsion system with an average power of seven hundred fifty watts (one horsepower) having a maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator weighing one hundred seventy pounds, of less than twenty miles per hour. [2002 c 247 § 1.]

Legislative review—2002 c 247: "The legislature shall review the provisions of this act and make any necessary changes by July 1, 2005." [2002 c 247 § 9.]

46.04.1697 Electronic commerce. "Electronic commerce" may include, but is not limited to, transactions conducted over the Internet or by telephone or other electronic means. [2004 c 249 § 1.]

46.04.170 Explosives. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, and which contains any oxidizing or combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion, by percussion or by detonation of any part of the compound mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb. [1961 c 12 § 46.04.170. Prior: 1959 c 49 § 18; prior: 1937 c 189 § 1, part; RRS § 6360-1, part. Cf. 1951 c 102 § 3.]

46.04.180 Farm tractor. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry. [1961 c 12 § 46.04.180. Prior: 1959 c 49 § 19; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.181 Farm vehicle. "Farm vehicle" means any vehicle other than a farm tractor or farm implement which is designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another. [1967 c 202 § 1.]

46.04.182 Farmer. "Farmer" means any person, firm, partnership or corporation engaged in farming. If a person, firm, partnership or corporation is engaged in activities in addition to that of farming, the definition shall only apply to that portion of the activity that is defined as farming in RCW 46.04.183. [1969 ex.s. c 281 § 58.]

46.04.183 Farming. "Farming" means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (except forestry or forestry operations), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices performed on a farm as an incident to or in conjunction with such farming operations. [1969 ex.s. c 281 § 59.]

46.04.187 Flammable liquid. "Flammable liquid" means any liquid which has a flash point of 70° Fahrenheit, or less, as determined by a Tagliabue or equivalent closed cup test device. [1961 c 12 § 46.04.210. Prior: 1959 c 49 § 22; prior: 1937 c 189 § 1, part; RRS § 6360-1, part. Cf. 1951 c 102 § 3. Formerly RCW 46.04.210.]

46.04.190 For hire vehicle. "For hire vehicle" means any motor vehicle used for the transportation of persons for compensation, except auto stages and ride-sharing vehicles. [1979 c 111 § 13; 1961 c 12 § 46.04.190. Prior: 1959 c 49 § 20; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1979 c 111: See note following RCW 46.74.010.

Ride sharing: Chapter 46.74 RCW.

46.04.194 Garbage truck. "Garbage truck" means a truck specially designed and used exclusively for garbage or refuse operations. [1983 c 68 § 1.]

46.04.1951 Gonzaga University alumni association license plates. "Gonzaga University alumni association license plates" means license plates issued under RCW 46.16.30916 that display a symbol or artwork recognizing the efforts of the Gonzaga University alumni association in Washington state. [2005 c 85 § 2.]

46.04.196 Helping Kids Speak license plates. "Helping Kids Speak license plates" means license plates that display a symbol of an organization that supports programs that provide free diagnostic and therapeutic services to children (2008 Ed.)

who have a severe delay in language or speech development. [2004 c 48 § 2.]

46.04.197 Highway. Highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. [1965 ex.s. c 155 § 87. Formerly RCW 46.04.431.]

46.04.200 Hours of darkness. "Hours of darkness" means the hours from one-half hour after sunset to one-half hour before sunrise, and any other time when persons or objects may not be clearly discernible at a distance of five hundred feet. [1961 c 12 § 46.04.200. Prior: 1959 c 49 § 21; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.215 Ignition interlock device. "Ignition interlock device" means breath alcohol analyzing ignition equipment or other biological or technical device certified by the state patrol and designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage. The state patrol shall by rule provide standards for the certification, installation, repair, and removal of the devices. [2005 c 200 § 1; 1997 c 229 § 9; 1994 c 275 § 23; 1987 c 247 § 3. Formerly RCW 46.20.730.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.04.217 Ignition interlock driver's license. "Ignition interlock driver's license" means a permit issued to a person by the department that allows the person to operate a non-commercial motor vehicle with an ignition interlock device while the person's regular driver's license is suspended, revoked, or denied. [2008 c 282 § 1.]

46.04.220 Intersection area. (1) "Intersection area" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(3) The junction of an alley with a street or highway shall not constitute an intersection. [1975 c 62 § 4; 1961 c 12 § 46.04.220. Prior: 1959 c 49 § 23; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.240 Intersection control area. "Intersection control area" means intersection area, together with such modification of the adjacent roadway area as results from the

arc of curb corners and together with any marked or unmarked crosswalks adjacent to the intersection. [1961 c 12 § 46.04.240. Prior: 1959 c 49 § 25; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.249 Keep Kids Safe license plates. "Keep Kids Safe license plates" means license plates issued under RCW 46.16.30913 that display artwork recognizing efforts to prevent child abuse and neglect in Washington state. [2005 c 53 § 2.]

46.04.251 Kit vehicle. "Kit vehicle" means a passenger car or light truck assembled from a manufactured kit, and is either (1) a complete kit consisting of a prefabricated body and chassis used to construct a new vehicle, or (2) a kit consisting of a prefabricated body to be mounted on an existing vehicle chassis and drive train, commonly referred to as a donor vehicle. [1996 c 225 § 5.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.04.260 Laned highway. "Laned highway" means a highway the roadway of which is divided into clearly marked lanes for vehicular traffic. [1961 c 12 § 46.04.260. Prior: 1959 c 49 § 27; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.265 Law enforcement memorial license plates. "Law enforcement memorial license plates" means license plates issued under RCW 46.16.30905 that display a symbol honoring law enforcement officers in Washington killed in the line of duty. [2004 c 221 § 2.]

46.04.270 Legal owner. "Legal owner" means a person having a security interest in a vehicle perfected in accordance with chapter 46.12 RCW or the registered owner of a vehicle unencumbered by a security interest or the lessor of a vehicle unencumbered by a security interest. [1975 c 25 § 1; 1961 c 12 § 46.04.270. Prior: 1959 c 49 § 28; prior: 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part.]

46.04.272 Lightweight stud. (1) "Lightweight stud" means a stud intended for installation and use in a vehicle tire. As used in this title, this means a stud that is recommended by the manufacturer of the tire for the type and size of the tire and that:

(a) Weighs no more than 1.5 grams if the stud conforms to Tire Stud Manufacturing Institute (TSMI) stud size 14 or less;

(b) Weighs no more than 2.3 grams if the stud conforms to TSMI stud size 15 or 16; or

(c) Weighs no more than 3.0 grams if the stud conforms to TSMI stud size 17 or larger.

(2) A lightweight stud may contain any materials necessary to achieve the lighter weight.

(3) Subsection (1) of this section does not apply to retractable studs as described in RCW 46.37.420. [2007 c 140 § 1; 1999 c 219 § 1.]

46.04.274 Limousine. "Limousine" means a category of for hire, chauffeur-driven, unmetered, unmarked luxury

motor vehicles. The director in consultation with the Washington state patrol will by rule define the categories of limousines. [2006 c 98 § 1; 1996 c 87 § 2.]

Effective date—2006 c 98: "This act takes effect November 1, 2006." [2006 c 98 § 2.]

46.04.276 Limousine carrier. "Limousine carrier" means a person engaged in the transportation of a person or group of persons, who, under a single contract, acquires, on a prearranged basis, the use of a limousine to travel to a specified destination or for a particular itinerary. The term "prearranged basis" refers to the manner in which the carrier dispatches vehicles. [1996 c 87 § 3.]

46.04.280 Local authorities. "Local authorities" includes every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state. [1961 c 12 § 46.04.280. Prior: 1959 c 49 § 29; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.290 Marked crosswalk. "Marked crosswalk" means any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof. [1961 c 12 § 46.04.290. Prior: 1959 c 49 § 30; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.295 Medium-speed electric vehicle. "Medium-speed electric vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than thirty miles per hour but not more than thirty-five miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500. [2007 c 510 § 2.]

Effective date—2007 c 510: See note following RCW 46.04.320.

46.04.300 Metal tire. "Metal tire" includes every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material. [1961 c 12 § 46.04.300. Prior: 1959 c 49 § 31; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.302 Mobile home, manufactured home. "Mobile home" or "manufactured home" means a structure, designed and constructed to be transportable in one or more sections, and is built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. Manufactured home does not include a modular home. A structure which met the definition

of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable. [1993 c 154 § 1. Prior: 1989 c 343 § 24; 1989 c 337 § 1; 1977 ex.s. c 22 § 1; 1971 ex.s. c 231 § 4.]

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

Severability—1977 ex.s. c 22: "If any section or provision of this 1977 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the section or provision to other persons or circumstances is not affected." [1977 ex.s. c 22 § 10.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.303 Modular home. "Modular home" means a factory-assembled structure designed primarily for use as a dwelling when connected to the required utilities that include plumbing, heating, and electrical systems contained therein, does not contain its own running gear, and must be mounted on a permanent foundation. A modular home does not include a mobile home or manufactured home. [1990 c 250 § 17; 1971 ex.s. c 231 § 5.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.304 Moped. "Moped" means a motorized device designed to travel with not more than three sixteen-inch or larger diameter wheels in contact with the ground, having fully operative pedals for propulsion by human power, and an electric or a liquid fuel motor with a cylinder displacement not exceeding fifty cubic centimeters which produces no more than two gross brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft) that is capable of propelling the device at not more than thirty miles per hour on level ground.

The Washington state patrol may approve of and define as a "moped" a vehicle which fails to meet these specific criteria, but which is essentially similar in performance and application to motorized devices which do meet these specific criteria. [1990 c 250 § 18; 1987 c 330 § 702; 1979 ex.s. c 213 § 1.]

Severability—1990 c 250: See note following RCW 46.16.301.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.04.305 Motor homes. "Motor homes" means motor vehicles originally designed, reconstructed, or permanently altered to provide facilities for human habitation, which include lodging and cooking or sewage disposal, and is enclosed within a solid body shell with the vehicle, but excludes a camper or like unit constructed separately and affixed to a motor vehicle. [1990 c 250 § 19; 1971 ex.s. c 231 § 3.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.04.310 Motor truck. "Motor truck" means any motor vehicle designed or used for the transportation of commodities, merchandise, produce, freight, or animals. [1961 c 12 § 46.04.310. Prior: 1959 c 49 § 32; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1,

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part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.320 Motor vehicle. "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW 46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. [2007 c 510 § 1. Prior: 2003 c 353 § 1; 2003 c 141 § 2; 2002 c 247 § 2; 1961 c 12 § 46.04.320; prior: 1959 c 49 § 33; 1955 c 384 § 10; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Effective date—2007 c 510: "This act takes effect August 1, 2007." [2007 c 510 § 6.]

Effective date—2003 c 353: "This act takes effect August 1, 2003." [2003 c 353 § 12.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

46.04.330 Motorcycle. "Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding a farm tractor, a power wheelchair, an electric personal assistive mobility device, and a moped.

The Washington state patrol may approve of and define as a "motorcycle" a motor vehicle that fails to meet these specific criteria, but that is essentially similar in performance and application to motor vehicles that do meet these specific criteria. [2003 c 141 § 3; 2002 c 247 § 3; 1990 c 250 § 20; 1979 ex.s. c 213 § 2; 1961 c 12 § 46.04.330. Prior: 1959 c 49 § 34; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; 1915 c 142 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Severability—1990 c 250: See note following RCW 46.16.301.

46.04.332 Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor that produces not to exceed five brake horsepower (developed by a prime mover, as measured by a brake applied to the driving shaft). A motor-driven cycle does not include a moped, a power wheelchair, a motorized foot scooter, or an electric personal assistive mobility device. [2003 c 353 § 7; 2003 c 141 § 4; 2002 c 247 § 4; 1979 ex.s. c 213 § 3; 1963 c 154 § 28.]

Reviser's note: This section was amended by 2003 c 141 § 4 and by 2003 c 353 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.336 Motorized foot scooter. "Motorized foot scooter" means a device with no more than two ten-inch or smaller diameter wheels that has handlebars, is designed to be stood or sat upon by the operator, and is powered by an internal combustion engine or electric motor that is capable of propelling the device with or without human propulsion.

For purposes of this section, a motor-driven cycle, a moped, an electric-assisted bicycle, or a motorcycle is not a motorized foot scooter. [2003 c 353 § 6.]

Effective date—2003 c 353: See note following RCW 46.04.320.

46.04.340 Muffler. "Muffler" means a device consisting of a series of chambers, or other mechanical designs for the purpose of receiving exhaust gas from an internal combustion engine and effective in reducing noise resulting therefrom. [1961 c 12 § 46.04.340. Prior: 1959 c 49 § 35; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.350 Multiple lane highway. "Multiple lane highway" means any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width and whether or not such lanes are marked. [1975 c 62 § 5; 1961 c 12 § 46.04.350. Prior: 1959 c 49 § 36; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.355 Municipal transit vehicle. Municipal transit vehicle includes every motor vehicle, streetcar, train, trolley vehicle, and any other device, which (1) is capable of being moved within, upon, above, or below a public highway, (2) is owned or operated by a city, county, county transportation authority, public transportation benefit area, regional transit authority, or metropolitan municipal corporation within the state, and (3) is used for the purpose of carrying passengers together with incidental baggage and freight on a regular schedule. [2004 c 118 § 2; 1984 c 167 § 2; 1974 ex.s. c 76 § 4.]

Unlawful bus conduct: RCW 9.91.025.

46.04.357 Neighborhood electric vehicle. "Neighborhood electric vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour and conforms to federal regulations under Title 49 C.F.R. Part 571.500. [2003 c 353 § 2.]

Effective date—2003 c 353: See note following RCW 46.04.320.

46.04.360 Nonresident. "Nonresident" means any person whose residence is outside this state and who is temporarily sojourning within this state. [1961 c 12 § 46.04.360. Prior: 1959 c 49 § 37; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

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46.04.370 Operator or driver. "Operator or driver" means every person who drives or is in actual physical control of a vehicle. [1975 c 62 § 6; 1967 c 32 § 1; 1961 c 12 § 46.04.370. Prior: 1959 c 49 § 38; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.380 Owner. "Owner" means a person who has a lawful right of possession of a vehicle by reason of obtaining it by purchase, exchange, gift, lease, inheritance or legal action whether or not the vehicle is subject to a security interest and means registered owner where the reference to owner may be construed as either to registered or legal owner. [1975 c 25 § 2; 1961 c 12 § 46.04.380. Prior: 1959 c 49 § 39; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.381 Park or parking. "Park or parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers. [1975 c 62 § 9.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.3815 Parts car. "Parts car" means a motor vehicle that is owned by a collector to furnish parts for restoration or maintenance of a vehicle described in RCW 46.16.305(1), thus enabling a collector to preserve, restore, and maintain such a vehicle. [1996 c 225 § 3.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.04.382 Passenger car. "Passenger car" means every motor vehicle except motorcycles and motor-driven cycles, designed for carrying ten passengers or less and used for the transportation of persons. [1963 c 154 § 29.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.391 Police officer. Police officer means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. [1965 ex.s. c 155 § 89.]

46.04.400 Pedestrian. "Pedestrian" means any person who is afoot or who is using a wheelchair, a power wheelchair, or a means of conveyance propelled by human power other than a bicycle. [2003 c 141 § 5; 1990 c 241 § 1; 1961 c 12 § 46.04.400. Prior: 1959 c 49 § 41; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.405 Person. "Person" includes every natural person, firm, copartnership, corporation, association, or organization. [1961 c 12 § 46.04.405. Prior: 1959 c 49 § 42; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.408 Photograph, picture, negative. "Photograph," along with the terms "picture" and "negative," means a pictorial representation, whether produced through photographic or other means, including, but not limited to, digital data imaging. [1990 c 250 § 21.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.04.410 Pneumatic tires. "Pneumatic tires" includes every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon. [1961 c 12 § 46.04.410. Prior: 1959 c 49 § 43; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.414 Pole trailer. "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, logs or structural members capable, generally, of sustaining themselves as beams between the supporting connections. [1961 c 12 § 46.04.414. Prior: 1959 c 49 § 44; prior: 1951 c 56 § 1.]

46.04.415 Power wheelchair. "Power wheelchair" means any self-propelled vehicle capable of traveling no more than fifteen miles per hour, usable indoors, designed as a mobility aid for individuals with mobility impairments, and operated by such an individual. [2003 c 141 § 1.]

Wheelchair conveyance: RCW 46.04.710.

46.04.416 Private carrier bus. "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (having a seating capacity for eleven or more persons) used regularly to transport persons in furtherance of any organized agricultural, religious or charitable purpose. Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission. [1970 ex.s. c 100 § 3.]

46.04.420 Private road or driveway. "Private road or driveway" includes every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons. [1961 c 12 § 46.04.420. Prior: 1959 c 49 § 45; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.429 Professional firefighters and paramedics license plates. "Professional firefighters and paramedics license plates" means license plates issued under RCW 46.16.30901 that display a symbol denoting professional firefighters and paramedics. [2004 c 35 § 2.]

46.04.435 Public scale. "Public scale" means every scale under public or private ownership which is certified as to its accuracy and which is available for public weighing. [1961 c 12 § 46.04.435. Prior: 1959 c 49 § 47.]

(2008 Ed.)

46.04.440 Railroad. "Railroad" means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside cities and towns. [1961 c 12 § 46.04.440. Prior: 1959 c 49 § 48; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.450 Railroad sign or signal. "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. [1961 c 12 § 46.04.450. Prior: 1959 c 49 § 49; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.455 Reasonable grounds. "Reasonable grounds," when used in the context of a law enforcement officer's decision to make an arrest, means probable cause. [1995 c 332 § 19.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.04.460 Registered owner. "Registered owner" means the person whose lawful right of possession of a vehicle has most recently been recorded with the department. [1975 c 25 § 3; 1961 c 12 § 46.04.460. Prior: 1959 c 49 § 50; prior: 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part.]

46.04.465 Rental car. (1) "Rental car" means a passenger car, as defined in RCW 46.04.382, that is used solely by a rental car business for rental to others, without a driver provided by the rental car business, for periods of not more than thirty consecutive days.

(2) "Rental car" does not include:

(a) Vehicles rented or loaned to customers by automotive repair businesses while the customer's vehicle is under repair;

(b) Vehicles licensed and operated as taxicabs. [1992 c 194 § 1.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

46.04.466 Rental car business. "Rental car business" means a person engaging within this state in the business of renting rental cars, as determined under rules of the department of licensing. [1992 c 194 § 5.]

Effective dates—1992 c 194: "(1) Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992.

(2) Sections 4 through 13 of this act shall take effect January 1, 1993." [1992 c 194 § 14.]

Registration of rental car businesses: RCW 46.87.023.

46.04.470 Residence district. "Residence district" means the territory contiguous to and including a public highway not comprising a business district, when the property on such public highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business. [1961 c 12 § 46.04.470. Prior: 1959 c 49 § 51;

prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.480 Revoke. "Revoke," in all its forms, means the invalidation for a period of one calendar year and thereafter until reissue. However, under the provisions of RCW 46.20.285, 46.20.311, 46.20.265, or 46.61.5055, and chapters 46.32 and 46.65 RCW, the invalidation may last for a period other than one calendar year. [2007 c 419 § 4; 1995 c 332 § 10; 1994 c 275 § 38; 1988 c 148 § 8; 1985 c 407 § 1; 1983 c 165 § 14; 1983 c 165 § 13; 1979 c 62 § 7; 1961 c 12 § 46.04.480. Prior: 1959 c 49 § 52; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: "Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985. The remainder of the act shall take effect January 1, 1986." [1985 c 407 § 8.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Severability—1979 c 62: See note following RCW 46.65.020.

46.04.490 Road tractor. "Road tractor" includes every motor vehicle designed and used primarily as a road building vehicle in drawing road building machinery and devices. [1961 c 12 § 46.04.490. Prior: 1959 c 49 § 53; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.500 Roadway. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder even though such sidewalk or shoulder is used by persons riding bicycles. In the event a highway includes two or more separated roadways, the term "roadway" shall refer to any such roadway separately but shall not refer to all such roadways collectively. [1977 c 24 § 1; 1961 c 12 § 46.04.500. Prior: 1959 c 49 § 54; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.510 Safety zone. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise, so as to be plainly discernible. [1961 c 12 § 46.04.510. Prior: 1959 c 49 § 55; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.521 School bus. School bus means every motor vehicle used regularly to transport children to and from school or in connection with school activities, which is sub-

ject to the requirements set forth in the most recent edition of "Specifications for School Buses" published by the state superintendent of public instruction, but does not include buses operated by common carriers in urban transportation of school children or private carrier buses operated as school buses in the transportation of children to and from private schools or school activities. [1995 c 141 § 1; 1965 ex.s. c 155 § 90.]

46.04.530 Semitrailer. "Semitrailer" includes every vehicle without motive power designed to be drawn by a vehicle, motor vehicle, or truck tractor and so constructed that an appreciable part of its weight and that of its load rests upon and is carried by such other vehicle, motor vehicle, or truck tractor. [1979 ex.s. c 149 § 1; 1961 c 12 § 46.04.530. Prior: 1959 c 49 § 57; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.540 Sidewalk. "Sidewalk" means that property between the curb lines or the lateral lines of a roadway and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a public highway and dedicated to use by pedestrians. [1961 c 12 § 46.04.540. Prior: 1959 c 49 § 58; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.550 Solid tire. "Solid tire" includes every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon. [1961 c 12 § 46.04.550. Prior: 1959 c 49 § 59; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.552 Special mobile equipment. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to: Ditch digging apparatus, well boring apparatus and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck-tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth moving carry-alls and scrapers, power shovels and draglines, and self-propelled cranes and earth moving equipment. The term does not include house trailers, dump trucks, truck mounted transit mixers, cranes or shovels or other vehicles designed for the transportation of persons or property to which machinery has been attached. [1973 1st ex.s. c 17 § 1; 1972 ex.s. c 5 § 1; 1963 c 154 § 30.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.04.555 Stand or standing. "Stand or standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers. [1975 c 62 § 10.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.560 State highway. "State highway" includes every highway or part thereof, which has been designated as a state highway or branch thereof, by legislative enactment. [1975 c 62 § 7; 1961 c 12 § 46.04.560. Prior: 1959 c 49 § 60; prior: 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.565 Stop. "Stop" when required means complete cessation from movement. [1975 c 62 § 11.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.566 Stop or stopping. "Stop or stopping" when prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal. [1975 c 62 § 12.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.570 Streetcar. "Streetcar" means a vehicle other than a train for transporting persons or property and operated upon stationary rails principally within cities and towns. [1961 c 12 § 46.04.570. Prior: 1959 c 49 § 61; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.571 Street rod vehicle. "Street rod vehicle" is a motor vehicle, other than a motorcycle, that meets the following conditions:

(1)(a) The vehicle was manufactured before 1949, (b) the vehicle has been assembled or reconstructed using major component parts of a motor vehicle manufactured before 1949, or (c) the vehicle was assembled or manufactured after 1949, to resemble a vehicle manufactured before 1949; and

(2)(a) The vehicle has been modified in its body style or design through the use of nonoriginal or reproduction components, such as frame, engine, drive train, suspension, or brakes in a manner that does not adversely affect its safe performance as a motor vehicle or render it unlawful for highway use, or (b) the body has been constructed from nonoriginal materials or has been altered dimensionally or in shape and appearance from the original manufactured body. [1999 c 58 § 1; 1996 c 225 § 4.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.04.580 Suspend. "Suspend," in all its forms and unless a different period is specified, means invalidation for any period less than one calendar year and thereafter until reinstatement. [1994 c 275 § 28; 1990 c 250 § 22; 1961 c 12 § 46.04.580. Prior: 1959 c 49 § 62; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Severability—1990 c 250: See note following RCW 46.16.301.

46.04.582 Tandem axle. "Tandem axle" means any two or more consecutive axles whose centers are less than seven feet apart. [1988 c 6 § 1; 1979 ex.s. c 149 § 2.]

46.04.585 Temporarily sojourning. "Temporarily sojourning," as the term is used in chapter 46.04 RCW, shall be construed to include any nonresident who is within this state for a period of not to exceed six months in any one year. [1961 c 12 § 46.04.585. Prior: 1959 c 49 § 63; prior: 1955 c 89 § 6.]

46.04.590 Traffic. "Traffic" includes pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together, while using any public highways for purposes of travel. [1961 c 12 § 46.04.590. Prior: 1959 c 49 § 64; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.600 Traffic control signal. "Traffic control signal" means any traffic device, whether manually, electrically, or mechanically operated, by which traffic alternately is directed to stop or proceed or otherwise controlled. [1961 c 12 § 46.04.600. Prior: 1959 c 49 § 65; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.611 Traffic-control devices. Official traffic-control devices means all signs, signals, markings and devices not inconsistent with Title 46 RCW placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic. [1965 ex.s. c 155 § 88.]

46.04.620 Trailer. "Trailer" includes every vehicle without motive power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests upon or is carried by such motor vehicle, but does not include a municipal transit vehicle, or any portion thereof. [1974 ex.s. c 76 § 3; 1961 c 12 § 46.04.620. Prior: 1959 c 49 § 67; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part; 1923 c 181 § 1, part; 1921 c 96 § 2, part; 1919 c 59 § 1, part; 1917 c 155 § 1, part; RRS § 6313, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

46.04.622 Park trailer. "Park trailer" or "park model trailer" means a travel trailer designed to be used with temporary connections to utilities necessary for operation of installed fixtures and appliances. The trailer's gross area shall not exceed four hundred square feet when in the setup mode. "Park trailer" excludes a mobile home. [1989 c 337 § 2.]

46.04.62240 Share the Road license plates. "Share the Road license plates" means license plates that commemorate the life of Cooper Jones and display a symbol of an organization that promote[s] bicycle safety and awareness education in communities throughout Washington. [2005 c 426 § 2.]

46.04.62250 Signal preemption device. "Signal preemption device" means a device that is capable of altering the normal operation of a traffic control signal. Any such device manufactured by a vehicle manufacturer is not a signal preemption device for purposes of this section if the primary purpose of the device is any purpose other than the preemption of traffic signals and the device's ability to alter traffic signals is unintended and incidental to the device's primary purpose. [2005 c 183 § 1.]

46.04.62260 Ski & Ride Washington license plates. "Ski & Ride Washington license plates" means license plates issued under RCW 46.16.30922 that display a symbol or artwork recognizing the efforts of the Washington snowsports industry in this state. [2005 c 220 § 2.]

46.04.623 Travel trailer. "Travel trailer" means a trailer built on a single chassis transportable upon the public streets and highways that is designed to be used as a temporary dwelling without a permanent foundation and may be used without being connected to utilities. [1989 c 337 § 3.]

46.04.630 Train. "Train" means a vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except streetcars. [1961 c 12 § 46.04.630. Prior: 1959 c 49 § 68; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.640 Trolley vehicle. "Trolley vehicle" means a vehicle the motive power for which is supplied by means of a trolley line and which may or may not be confined in its operation to a certain portion of the roadway in order to maintain trolley line contact. [1961 c 12 § 46.04.640. Prior: 1959 c 49 § 69; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.650 Tractor. "Tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn. [1986 c 18 § 1; 1975 c 62 § 8; 1961 c 12 § 46.04.650. Prior: 1959 c 49 § 70; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.653 Truck. "Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property. [1986 c 18 § 2.]

46.04.655 Truck tractor. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles but so constructed as to permit carrying a load in addition to part of the weight of the vehicle and load so drawn. [1986 c 18 § 3.]

46.04.660 Used vehicle. "Used vehicle" means a vehicle which has been sold, bargained, exchanged, given away,

or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof. [1961 c 12 § 46.04.660. Prior: 1959 c 49 § 71; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

46.04.670 Vehicle. "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. The term does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds shall not be considered vehicles or motor vehicles for the purposes of chapter 46.70 RCW. Bicycles shall not be considered vehicles for the purposes of chapter 46.12, 46.16, or 46.70 RCW. Electric personal assistive mobility devices are not considered vehicles or motor vehicles for the purposes of chapter 46.12, 46.16, 46.29, 46.37, or 46.70 RCW. [2003 c 141 § 6; 2002 c 247 § 5; 1994 c 262 § 2; 1991 c 214 § 2; 1979 ex.s. c 213 § 4; 1961 c 12 § 46.04.670. Prior: 1959 c 49 § 72; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Mopeds

helmet required: RCW 46.37.530, 46.37.535.

motorcycle endorsement, exemption: RCW 46.20.500.

operation and safety standards: RCW 46.61.710, 46.61.720.

registration: RCW 46.16.630.

46.04.672 Vehicle or pedestrian right-of-way. "Vehicle or pedestrian right-of-way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other. [1975 c 62 § 13.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.04.691 Washington Lighthouses license plates. "Washington Lighthouses license plates" means license plates issued under RCW 46.16.30911 that display a symbol or artwork recognizing the efforts of lighthouse environmental programs in Washington state. [2005 c 48 § 2.]

46.04.692 Washington's National Park Fund license plates. "Washington's National Park Fund license plates" means license plates issued under RCW 46.16.30918 that display a symbol or artwork recognizing the efforts of Washington's National Park Fund in preserving Washington's national parks for future generations in Washington state. [2005 c 177 § 2.]

46.04.705 We love our pets license plates. "We love our pets license plates" means license plates issued under RCW 46.16.30914 that display a symbol or artwork recog-

nizing the efforts of the Washington state federation of animal care and control agencies in Washington state that assists local member agencies of the federation to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation. [2005 c 71 § 2.]

46.04.710 Wheelchair conveyance. "Wheelchair conveyance" means any vehicle specially manufactured or designed for the transportation of a physically or medically impaired wheelchair-bound person. The vehicle may be a separate vehicle used in lieu of a wheelchair or a separate vehicle used for transporting the impaired person while occupying a wheelchair. The vehicle shall be equipped with a propulsion device capable of propelling the vehicle within a speed range established by the state patrol. The state patrol may approve and define as a wheelchair conveyance, a vehicle that fails to meet these specific criteria but is essentially similar in performance and application to vehicles that do meet these specific criteria. [1987 c 330 § 703; 1983 c 200 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 200: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 200 § 7.]

Power wheelchairs: RCW 46.04.415.

Wheelchair conveyances

licensing: RCW 46.16.640.

operator's license: RCW 46.20.109.

public roadways, operating on: RCW 46.61.730.

safety standards: RCW 46.37.610.

**Chapter 46.08 RCW
GENERAL PROVISIONS**

Sections

- 46.08.010 State preempts licensing field.
- 46.08.020 Precedence over local vehicle and traffic regulations.
- 46.08.030 Uniformity of application.
- 46.08.065 Publicly owned vehicles to be marked—Exceptions.
- 46.08.066 Publicly owned vehicles—Confidential license plates—Issuance, rules governing.
- 46.08.067 Publicly owned vehicles—Violations concerning marking and confidential license plates.
- 46.08.068 Publicly owned vehicles—Remarking not required, when.
- 46.08.070 Nonresidents, application to.
- 46.08.150 Control of traffic on capitol grounds.
- 46.08.160 Control of traffic on capitol grounds—Enforcing officer.
- 46.08.170 Control of traffic on capitol grounds—Violations, traffic infractions, misdemeanors—Jurisdiction.
- 46.08.172 Parking rental fees—Establishment.
- 46.08.190 Jurisdiction of judges of district, municipal, and superior court.

Extension of licensing period authorized—Rules and regulations, manner and content: RCW 43.24.140.

46.08.010 State preempts licensing field. The provisions of this title relating to the certificate of ownership, certificate of license registration, vehicle license, vehicle license plates and vehicle operator's license shall be exclusive and no political subdivision of the state of Washington shall require or issue any licenses or certificates for the same or a similar purpose except as provided in *RCW 82.80.020, nor shall any city or town in this state impose a tax, license, or other fee upon vehicles operating exclusively between points outside of such city or town limits, and to points therein.

[1990 c 42 § 207; 1961 c 12 § 46.08.010. Prior: 1937 c 188 § 75; RRS § 6312-75.]

***Reviser's note:** RCW 82.80.020 was repealed by 2003 c 1 § 5, (Initiative Measure No. 776, approved November 5, 2002).

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

46.08.020 Precedence over local vehicle and traffic regulations. The provisions of this title relating to vehicles shall be applicable and uniform throughout this state and in all incorporated cities and towns and all political subdivisions therein and no local authority shall enact or enforce any law, ordinance, rule or regulation in conflict with the provisions of this title except and unless expressly authorized by law to do so and any laws, ordinances, rules or regulations in conflict with the provisions of this title are hereby declared to be invalid and of no effect. Local authorities may, however, adopt additional vehicle and traffic regulations which are not in conflict with the provisions of this title. [1961 c 12 § 46.08.020. Prior: 1937 c 189 § 2; RRS § 6360-2.]

46.08.030 Uniformity of application. The provisions of this title relating to the operation of vehicles shall be applicable and uniform upon all persons operating vehicles upon the public highways of this state, except as otherwise specifically provided. [1961 c 12 § 46.08.030. Prior: 1937 c 189 § 3; RRS § 6360-3.]

46.08.065 Publicly owned vehicles to be marked—Exceptions. (1) It is unlawful for any public officer having charge of any vehicle owned or controlled by any county, city, town, or public body in this state other than the state of Washington and used in public business to operate the same upon the public highways of this state unless and until there shall be displayed upon such automobile or other motor vehicle in letters of contrasting color not less than one and one-quarter inches in height in a conspicuous place on the right and left sides thereof, the name of such county, city, town, or other public body, together with the name of the department or office upon the business of which the said vehicle is used. This section shall not apply to vehicles of a sheriff's office, local police department, or any vehicles used by local peace officers under public authority for special undercover or confidential investigative purposes. This subsection shall not apply to: (a) Any municipal transit vehicle operated for purposes of providing public mass transportation; (b) any vehicle governed by the requirements of subsection (4) of this section; nor to (c) any motor vehicle on loan to a school district for driver training purposes. It shall be lawful and constitute compliance with the provisions of this section, however, for the governing body of the appropriate county, city, town, or public body other than the state of Washington or its agencies to adopt and use a distinctive insignia which shall be not less than six inches in diameter across its smallest dimension and which shall be displayed conspicuously on the right and left sides of the vehicle. Such insignia shall be in a color or colors contrasting with the vehicle to which applied for maximum visibility. The name of the public body owning or operating the vehicle shall also be included as part of or displayed above such approved insignia in colors contrasting with the vehicle in letters not less than one and one-quarter

inches in height. Immediately below the lettering identifying the public entity and agency operating the vehicle or below an approved insignia shall appear the words "for official use only" in letters at least one inch high in a color contrasting with the color of the vehicle. The appropriate governing body may provide by rule or ordinance for marking of passenger motor vehicles as prescribed in subsection (2) of this section or for exceptions to the marking requirements for local governmental agencies for the same purposes and under the same circumstances as permitted for state agencies under subsection (3) of this section.

(2) Except as provided by subsections (3) and (4) of this section, passenger motor vehicles owned or controlled by the state of Washington, and purchased after July 1, 1989, must be plainly and conspicuously marked on the lower left-hand corner of the rear window with the name of the operating agency or institution or the words "state motor pool," as appropriate, the words "state of Washington — for official use only," and the seal of the state of Washington or the appropriate agency or institution insignia, approved by the department of general administration. Markings must be on a transparent adhesive material and conform to the standards established by the department of general administration. For the purposes of this section, "passenger motor vehicles" means sedans, station wagons, vans, light trucks, or other motor vehicles under ten thousand pounds gross vehicle weight.

(3) Subsection (2) of this section shall not apply to vehicles used by the Washington state patrol for general undercover or confidential investigative purposes. Traffic control vehicles of the Washington state patrol may be exempted from the requirements of subsection (2) of this section at the discretion of the chief of the Washington state patrol. The department of general administration shall adopt general rules permitting other exceptions to the requirements of subsection (2) of this section for other vehicles used for law enforcement, confidential public health work, and public assistance fraud or support investigative purposes, for vehicles leased or rented by the state on a casual basis for a period of less than ninety days, and those provided for in RCW 46.08.066(3). The exceptions in this subsection, subsection (4) of this section, and those provided for in RCW 46.08.066(3) shall be the only exceptions permitted to the requirements of subsection (2) of this section.

(4) Any motorcycle, vehicle over 10,000 pounds gross vehicle weight, or other vehicle that for structural reasons cannot be marked as required by subsection (1) or (2) of this section that is owned or controlled by the state of Washington or by any county, city, town, or other public body in this state and used for public purposes on the public highways of this state shall be conspicuously marked in letters of a contrasting color with the words "State of Washington" or the name of such county, city, town, or other public body, together with the name of the department or office that owns or controls the vehicle.

(5) All motor vehicle markings required under the terms of this chapter shall be maintained in a legible condition at all times. [1998 c 111 § 4; 1989 c 57 § 9; 1975 1st ex.s. c 169 § 1; 1961 c 12 § 46.08.065. Prior: 1937 c 189 § 46; RRS § 6360-46. Formerly RCW 46.36.140.]

Effective date—1989 c 57: See note following RCW 43.19.620.

46.08.066 Publicly owned vehicles—Confidential license plates—Issuance, rules governing. (1) Except as provided in subsection (3) of this section, the department of licensing is authorized to issue confidential motor vehicle license plates to units of local government and to agencies of the federal government for law enforcement purposes only.

(2) Except as provided in subsections (3) and (4) of this section the use of confidential plates on vehicles owned or operated by the state of Washington by any officer or employee thereof, shall be limited to confidential, investigative, or undercover work of state law enforcement agencies, confidential public health work, and confidential public assistance fraud or support investigations.

(3) Any state official elected on a statewide basis shall be provided on request with one set of confidential plates for use on official business. When necessary for the personal security of any other public officer, or public employee, the chief of the Washington state patrol may recommend that the director issue confidential plates for use on an unmarked publicly owned or controlled vehicle of the appropriate governmental unit for the conduct of official business for the period of time that the personal security of such state official, public officer, or other public employee may require. The office of the state treasurer may use an unmarked state owned or controlled vehicle with confidential plates where required for the safe transportation of either state funds or negotiable securities to or from the office of the state treasurer.

(4) The director of licensing may issue rules and regulations governing applications for, and the use of, such plates by law enforcement and other public agencies. [1986 c 158 § 20; 1982 c 163 § 14; 1979 c 158 § 128; 1975 1st ex.s. c 169 § 2.]

Severability—Effective date—1982 c 163: See notes following RCW 2.10.052.

46.08.067 Publicly owned vehicles—Violations concerning marking and confidential license plates. A violation of any provision of RCW 46.08.065 as now or hereafter amended or of RCW 46.08.066 shall subject the public officer or employee committing such violation to disciplinary action by the appropriate appointing authority or employing agency. Such disciplinary action may include, but shall not be limited to, suspension without pay or termination of employment in the case of repeated or continuing noncompliance. [1975 1st ex.s. c 169 § 3.]

46.08.068 Publicly owned vehicles—Remarking not required, when. Any vehicle properly marked pursuant to statutory requirements in effect prior to September 8, 1975, need not be remarked to conform to the requirements of RCW 46.08.065 through 46.08.067 until July 1, 1977. [1975 1st ex.s. c 169 § 4.]

46.08.070 Nonresidents, application to. Subject to a compliance with the motor vehicle laws of the state and acceptance of the provisions of this title, nonresident owners and operators of vehicles hereby are granted the privilege of using the public highways of this state, and use of such public highways shall be deemed and construed to be an acceptance by such nonresident owners and operators of the provisions

of this title. [1961 c 12 § 46.08.070. Prior: 1937 c 189 § 128; RRS § 6360-128.]

46.08.150 Control of traffic on capitol grounds. The director of general administration shall have power to devise and promulgate rules and regulations for the control of vehicular and pedestrian traffic and the parking of motor vehicles on the state capitol grounds. However, the monetary penalty for parking a motor vehicle without a valid special license plate or placard in a parking place reserved for physically disabled persons shall be the same as provided in RCW 46.16.381. Such rules and regulations shall be promulgated by publication in one issue of a newspaper published at the state capitol and shall be given such further publicity as the director may deem proper. [1995 c 384 § 2; 1961 c 12 § 46.08.150. Prior: 1955 c 285 § 21; 1947 c 11 § 1; Rem. Supp. 1947 § 7921-20.]

46.08.160 Control of traffic on capitol grounds—Enforcing officer. The chief of the Washington state patrol shall be the chief enforcing officer to assure the proper enforcement of such rules and regulations. [1961 c 12 § 46.08.160. Prior: 1947 c 11 § 2; Rem. Supp. 1947 § 7921-21.]

46.08.170 Control of traffic on capitol grounds—Violations, traffic infractions, misdemeanors—Jurisdiction. (1) Except as provided in subsection (2) of this section, any violation of a rule or regulation prescribed under RCW 46.08.150 is a traffic infraction, and the district courts of Thurston county shall have jurisdiction over such offenses: PROVIDED, That violation of a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(2) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 232; 1987 c 202 § 213; 1979 ex.s. c 136 § 40; 1963 c 158 § 2; 1961 c 12 § 46.08.170. Prior: 1947 c 11 § 3; Rem. Supp. 1947 § 7921-22.]

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

Intent—1987 c 202: See note following RCW 2.04.190.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.08.172 Parking rental fees—Establishment. The director of the department of general administration shall establish equitable and consistent parking rental fees for the capitol campus and may, if requested by agencies, establish equitable and consistent parking rental fees for agencies off the capitol campus, to be charged to employees, visitors, clients, service providers, and others, that reflect the legislature's intent to reduce state subsidization of parking or to meet the commute trip reduction goals established in RCW 70.94.527. All fees shall take into account the market rate of comparable privately owned rental parking, as determined by the director. However, parking rental fees are not to exceed the local market rate of comparable privately owned rental parking.

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The director may delegate the responsibility for the collection of parking fees to other agencies of state government when cost-effective. [1995 c 215 § 4; 1993 c 394 § 4. Prior: 1991 sp.s. c 31 § 12; 1991 sp.s. c 13 § 41; 1988 ex.s. c 2 § 901; 1985 c 57 § 59; 1984 c 258 § 323; 1963 c 158 § 1.]

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

Severability—1991 sp.s. c 31: See RCW 43.991.900.

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

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

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

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

Fee deposition: RCW 43.01.225.

46.08.190 Jurisdiction of judges of district, municipal, and superior court. Every district and municipal court judge shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title, except the trial of felony charges on the merits, and may impose any punishment provided therefor. [1995 c 136 § 1; 1984 c 258 § 136; 1961 c 12 § 46.08.190. Prior: 1955 c 393 § 4.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Chapter 46.09 RCW

OFF-ROAD AND NONHIGHWAY VEHICLES

Sections

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46.09.010 Application of chapter—Permission necessary to enter upon private lands. The provisions of this

chapter shall apply to all lands in this state. Nothing in this chapter, RCW 79A.35.040, 79A.35.070, 79A.35.090, 79A.35.110, and 79A.35.120 shall be deemed to grant to any person the right or authority to enter upon private property without permission of the property owner. [2005 c 213 § 2; 1972 ex.s. c 153 § 2; 1971 ex.s. c 47 § 6.]

Findings—Construction—2005 c 213: "The legislature finds that off-road recreational vehicles (ORVs) provide opportunities for a wide variety of outdoor recreation activities. The legislature further finds that the limited amount of ORV recreation areas presents a challenge for ORV recreational users, natural resource land managers, and private landowners. The legislature further finds that many nonhighway roads provide opportunities for ORV use and that these opportunities may reduce conflicts between users and facilitate responsible ORV recreation. However, restrictions intended for motor vehicles may prevent ORV use on certain roads, including forest service roads. Therefore, the legislature finds that local, state, and federal jurisdictions should be given the flexibility to allow ORV use on nonhighway roads they own and manage or for which they are authorized to allow public ORV use under an easement granted by the owner. Nothing in this act authorizes trespass on private property." [2005 c 213 § 1.]

Effective date—2005 c 213: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 213 § 9.]

Purpose—1972 ex.s. c 153: See RCW 67.32.080.

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

(1) "Advisory committee" means the nonhighway and off-road vehicle activities advisory committee established in RCW 46.09.280.

(2) "Board" means the recreation and conservation funding board established in RCW 79A.25.110.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.

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

(5) "Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city with funding from the motor vehicle fund. A highway is generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles.

(6) "Motorized vehicle" means a vehicle that derives motive power from an internal combustion engine.

(7) "Nonhighway road" means any road owned or managed by a public agency or any private road for which the owner has granted an easement for public use for which appropriations from the motor vehicle fund were not used for (a) original construction or reconstruction in the last twenty-five years; or (b) maintenance in the last four years.

(8) "Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.

(9) "Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering berries, firewood, mushrooms, and other natural products.

(10) "Nonhighway vehicle" means any motorized vehicle including an ORV when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain.

Nonhighway vehicle does not include:

(a) Any vehicle designed primarily for travel on, over, or in the water;

(b) Snowmobiles or any military vehicles; or

(c) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

(11) "Nonmotorized recreational facilities" means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.

(12) "Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes including, but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.

(13) "Off-road vehicle" or "ORV" means any nonstreet licensed vehicle when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain. Such vehicles include, but are not limited to, all-terrain vehicles, motorcycles, four-wheel drive vehicles, and dune buggies.

(14) "Operator" means each person who operates, or is in physical control of, any nonhighway vehicle.

(15) "Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.

(16) "ORV recreation facilities" include, but are not limited to, ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use areas, designated for ORV use by the managing authority that are intended primarily for ORV recreational users.

(17) "ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or dune buggy.

(18) "ORV sports park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or noncompetitive in nature.

(19) "ORV trail" means a multiple-use corridor designated by the managing authority and maintained for recreational use by motorized vehicles.

(20) "ORV use permit" means a permit issued for operation of an off-road vehicle under this chapter.

(21) "Owner" means the person other than the lienholder, having an interest in or title to a nonhighway vehicle, and entitled to the use or possession thereof.

(22) "Person" means any individual, firm, partnership, association, or corporation. [2007 c 241 § 13; 2004 c 105 § 1; 1986 c 206 § 1; 1979 c 158 § 129; 1977 ex.s. c 220 § 1; 1972 ex.s. c 153 § 3; 1971 ex.s. c 47 § 7.]

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

Effective date—1986 c 206: "This act shall take effect on June 30, 1986." [1986 c 206 § 17.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.030 Use permits—Issuance—Fees. The department shall provide for the issuance of use permits for off-road vehicles and may appoint agents for collecting fees and issuing permits. The department shall charge each applicant for registration the actual cost of the decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals. The provisions of RCW 46.01.130 and 46.01.140 apply to the issuance of use permits for off-road vehicles as they do to the issuance of vehicle licenses, the appointment of agents and the collection of application fees. [1990 c 250 § 23; 1986 c 206 § 2; 1977 ex.s. c 220 § 2; 1972 ex.s. c 153 § 4; 1971 ex.s. c 47 § 8.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.040 Use permit prerequisite to operation. Except as provided in this chapter, no person shall operate any off-road vehicle within this state after January 1, 1978, unless the off-road vehicle has been assigned an ORV use permit and displays a current ORV tag in accordance with the provisions of this chapter: PROVIDED, That registration and display of an unexpired ATV use permit shall be deemed to have complied with this section. [1977 ex.s. c 220 § 3; 1972 ex.s. c 153 § 5; 1971 ex.s. c 47 § 9.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.050 Vehicles exempted from ORV use permits and tags. ORV use permits and ORV tags shall be required under the provisions of this chapter except for the following:

(1) Off-road vehicles owned and operated by the United States, another state, or a political subdivision thereof.

(2) Off-road vehicles owned and operated by this state, or by any municipality or political subdivision thereof.

(3) Off-road vehicles operated on agricultural lands owned or leased by the ORV owner or operator.

(4) Off-road vehicles owned by a resident of another state that have a valid ORV permit or vehicle license issued in accordance with the laws of the other state. This exemption shall apply only to the extent that a similar exemption or privilege is granted under the laws of that state.

(5) Off-road vehicles while being used for search and rescue purposes under the authority or direction of an appropriate search and rescue or law enforcement agency.

(6) Vehicles which are licensed pursuant to chapter 46.16 RCW or in the case of nonresidents, vehicles which are validly licensed for operation over public highways in the jurisdiction of the owner's residence. [2004 c 105 § 9; 1986 c 206 § 3; 1977 ex.s. c 220 § 4; 1972 ex.s. c 153 § 6; 1971 ex.s. c 47 § 10.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.070 Application for ORV use permit. (1) Application for annual or temporary ORV use permits shall be made to the department or its authorized agent in such manner and upon such forms as the department shall prescribe and shall state the name and address of each owner of the off-road vehicle.

(2) An application for an annual permit shall be signed by at least one owner, and shall be accompanied by a fee of eighteen dollars. Upon receipt of the annual permit application and the application fee, the off-road vehicle shall be assigned a use permit number tag or decal, which shall be affixed to the off-road vehicle in a manner prescribed by the department. The annual permit is valid for a period of one year and is renewable each year in such manner as the department may prescribe for an additional period of one year upon payment of a renewal fee of eighteen dollars.

Any person acquiring an off-road vehicle for which an annual permit has been issued who desires to continue to use the permit must, within fifteen days of the acquisition of the off-road vehicle, make application to the department or its authorized agent for transfer of the permit, and the application shall be accompanied by a transfer fee of five dollars.

(3) A temporary use permit is valid for sixty days. Application for a temporary permit shall be accompanied by a fee of seven dollars. The permit shall be carried on the vehicle at all times during its operation in the state.

(4) Except as provided in RCW 46.09.050, any out-of-state operator of an off-road vehicle shall, when operating in this state, comply with this chapter, and if an ORV use permit is required under this chapter, the operator shall obtain an annual or temporary permit and tag. [2004 c 106 § 1; 2002 c 352 § 1; 1997 c 241 § 1; 1986 c 206 § 4; 1977 ex.s. c 220 § 6; 1972 ex.s. c 153 § 8; 1971 ex.s. c 47 § 12.]

Effective date—2004 c 106 § 1: "Section 1 of this act takes effect with registrations that are due or become due November 1, 2004, or later." [2004 c 106 § 2.]

Effective dates—2002 c 352: "Sections 7, 9, and 28 of this act are effective with registrations that are due or will become due September 1, 2002, and thereafter. Section 26 of this act takes effect October 1, 2002. The remainder of this act takes effect July 1, 2002." [2002 c 352 § 30.]

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.080 ORV dealers—Permits—Fees—Number plates—Title application—Violations. (1) Each dealer of off-road vehicles in this state who does not have a current "dealer's plate" for vehicle use pursuant to chapter 46.70 RCW shall obtain an ORV dealer permit from the department in such manner and upon such forms as the department shall prescribe. Upon receipt of an application for an ORV dealer permit and the fee under subsection (2) of this section, the dealer shall be registered and an ORV dealer permit number assigned.

(2) The fee for ORV dealer permits shall be twenty-five dollars per year, which covers all of the off-road vehicles owned by a dealer and not rented. Off-road vehicles rented on a regular, commercial basis by a dealer shall have separate use permits.

(3) Upon the issuance of an ORV dealer permit each dealer may purchase, at a cost to be determined by the department, ORV dealer number plates of a size and color to be

determined by the department, that contain the dealer ORV permit number assigned to the dealer. Each off-road vehicle operated by a dealer, dealer representative, or prospective customer for the purposes of testing or demonstration shall display such number plates assigned pursuant to the dealer permit provisions in chapter 46.70 RCW or this section, in a manner prescribed by the department.

(4) No dealer, dealer representative, or prospective customer shall use such number plates for any purpose other than the purpose prescribed in subsection (3) of this section.

(5) ORV dealer permit numbers shall be nontransferable.

(6) It is unlawful for any dealer to sell any off-road vehicle at wholesale or retail or to test or demonstrate any off-road vehicle within the state unless he has a motor vehicle dealers' license pursuant to chapter 46.70 RCW or an ORV dealer permit number in accordance with this section.

(7) When an ORV is sold by a dealer, the dealer shall apply for title in the purchaser's name within fifteen days following the sale. [1990 c 250 § 24; 1986 c 206 § 5; 1977 ex.s. c 220 § 7; 1972 ex.s. c 153 § 9; 1971 ex.s. c 47 § 13.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1986 c 206: See note following RCW 46.09.020.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.085 Selling ORV without use permit. Except as provided in RCW 46.09.050, it is unlawful for any dealer to sell at retail an off-road vehicle without an ORV use permit required in RCW 46.09.040. [2004 c 105 § 10.]

46.09.110 Disposition of ORV moneys. The moneys collected by the department under this chapter shall be distributed from time to time but at least once a year in the following manner:

The department shall retain enough money to cover expenses incurred in the administration of this chapter: PROVIDED, That such retention shall never exceed eighteen percent of fees collected.

The remaining moneys shall be distributed for ORV recreation facilities by the board in accordance with RCW 46.09.170(2)(d)(ii)(A). [2007 c 241 § 14; 2004 c 105 § 2; 1986 c 206 § 6; 1985 c 57 § 60; 1977 ex.s. c 220 § 9; 1972 ex.s. c 153 § 11; 1971 ex.s. c 47 § 16.]

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

Effective date—1986 c 206: See note following RCW 46.09.020.

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

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.115 Authorized and prohibited uses. (1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon:

(a) A nonhighway road and in parking areas serving designated off-road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles; and

(b) A street, road, or highway as authorized under RCW 46.09.180.

(2) Operations of an off-road vehicle on a nonhighway road, or on a street, road, or highway as authorized under RCW 46.09.180, under this section is exempt from licensing

requirements of RCW 46.16.010 and vehicle lighting and equipment requirements of chapter 46.37 RCW.

(3) It is unlawful to operate an off-road vehicle upon a private nonhighway road if the road owner has not authorized the use of off-road vehicles.

(4) Nothing in this section authorizes trespass on private property.

(5) The provisions of RCW 4.24.210(5) shall apply to public landowners who allow members of the public to use public facilities accessed by a highway, street, or nonhighway road for recreational off-road vehicle use. [2006 c 212 § 2; 2005 c 213 § 4.]

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.010.

46.09.117 Operation by persons under thirteen. (1) Except as specified in subsection (2) of this section, no person under thirteen years of age may operate an off-road vehicle on or across a highway or nonhighway road in this state.

(2) Persons under thirteen years of age may operate an off-road vehicle on a nonhighway road designated for off-road vehicle use under the direct supervision of a person eighteen years of age or older possessing a valid license to operate a motor vehicle under chapter 46.20 RCW. [2005 c 213 § 5.]

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.010.

46.09.120 Operating violations—Exceptions. (1) Except as provided in subsection (4) of this section, it is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty per-

cent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW 46.09.115(3).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer.

(4) It is not a traffic infraction to operate an off-road vehicle on a street, road, or highway as authorized under RCW 46.09.180. [2006 c 212 § 3; 2005 c 213 § 3; 2003 c 377 § 1; 1979 ex.s. c 136 § 41; 1977 ex.s. c 220 § 10; 1972 ex.s. c 153 § 12; 1971 ex.s. c 47 § 17.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.010.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.130 Additional violations—Penalty. (1) No person may operate a nonhighway vehicle in such a way as to endanger human life.

(2) No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to

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carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

(3) For the purposes of this section, "hunt" means any effort to kill, injure, capture, or purposely disturb a wild animal or bird.

(4) Violation of this section is a gross misdemeanor. [2004 c 105 § 4; (2004 c 105 § 3 expired July 1, 2004); 2003 c 53 § 233; 1994 c 264 § 35; 1989 c 297 § 3; 1986 c 206 § 7; 1977 ex.s. c 220 § 11; 1971 ex.s. c 47 § 18.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Expiration dates—Effective dates—2004 c 105 §§ 3-6: "(1) Section 3 of this act expires July 1, 2004.

(2) Section 4 of this act takes effect July 1, 2004.

(3) Section 5 of this act expires June 30, 2005.

(4) Section 6 of this act takes effect June 30, 2005." [2004 c 105 § 11.]

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

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.140 Accident reports. The operator of any nonhighway vehicle involved in any accident resulting in injury to or death of any person, or property damage to another to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with chapter 46.52 RCW, or a person acting for the operator shall submit such reports as are required under chapter 46.52 RCW, and the provisions of chapter 46.52 RCW applies to the reports when submitted. [1990 c 250 § 25; 1977 ex.s. c 220 § 12; 1971 ex.s. c 47 § 19.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.09.150 Motor vehicle fuel excise taxes on fuel for nonhighway vehicles not refundable. Motor vehicle fuel excise taxes paid on fuel used and purchased for providing the motive power for nonhighway vehicles shall not be refundable in accordance with the provisions of RCW 82.36.280 as it now exists or is hereafter amended. [1977 ex.s. c 220 § 13; 1974 ex.s. c 144 § 1; 1972 ex.s. c 153 § 13; 1971 ex.s. c 47 § 20.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.165 Nonhighway and off-road vehicle activities program account. The nonhighway and off-road vehicle activities program account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The recreation and conservation funding board shall administer the account for purposes specified in this chapter and shall hold it separate and apart from all other money, funds, and accounts of the board. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and any moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account. [2007 c 241 § 15; 1995 c 166 § 11.]

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

46.09.170 Refunds from motor vehicle fund—Distribution—Use (as amended by 2007 c 241). (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent

of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

(a) Thirty-six percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the ~~((committee))~~ board for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the ~~((committee))~~ board receives under RCW 46.09.110, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The ~~((committee))~~ board may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the ~~((committee's))~~ board's project evaluation. Funds remaining after such a waiver must be allocated in accordance with ~~((committee))~~ board policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to the ~~((interagency committee for outdoor recreation))~~ board, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection (2) of this section. [2007 c 241 § 16; 2004 c 105 § 6; (2004 c 105 § 5 expired June 30, 2005). Prior: (2003 1st sp.s. c 26 § 920 expired June 30, 2005); 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

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

46.09.170 Refunds from motor vehicle fund—Distribution—Use (as amended by 2007 c 522). (1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30,

2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

(a) Thirty-six percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the committee receives under RCW 46.09.110, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The committee may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the committee's project evaluation. Funds remaining after such a waiver must be allocated in accordance with committee policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the ~~((2003-05))~~ 2007-09 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to ~~((the interagency committee for outdoor recreation))~~ the department of natural resources ~~((, the department of fish and wildlife, and the state parks and recreation commission))~~ for planning and designing consistent off-road vehicle signage at department-managed recreation sites, and for planning recreation opportunities on department-managed lands in the Reiter block and Ahtanum state forest. This appropriation is not required to follow the specific distribution specified in subsection (2) of this section. [2007 c 522 § 953; 2004 c 105 § 6; (2004 c 105 § 5 expired June 30, 2005). Prior: (2003 1st sp.s. c 26 § 920 expired June 30, 2005); 2003 1st sp.s. c 25 § 922; 2003 c 361 § 407; 1995 c 166 § 9; 1994 c 264 § 36; 1990 c 42 § 115; 1988 c 36 § 25; 1986 c 206 § 8; 1979 c 158 § 130; 1977 ex.s. c 220 § 14; 1975 1st ex.s. c 34 § 1; 1974 ex.s. c 144 § 3; 1972 ex.s. c 153 § 15; 1971 ex.s. c 47 § 22.]

Reviser's note: RCW 46.09.170 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective date—2007 c 522: See notes following RCW 15.64.050.

Expiration dates—Effective dates—2004 c 105 §§ 3-6: See note following RCW 46.09.130.

Expiration date—Severability—Effective dates—2003 1st sp.s. c 26: See notes following RCW 43.135.045.

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

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 206: See note following RCW 46.09.020.

Effective date—1975 1st ex.s. c 34: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 34 § 4.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.180 Regulation by local political subdivisions or state agencies. Notwithstanding any of the provisions of this chapter, any city, county, or other political subdivision of this state, or any state agency, may regulate the operation of nonhighway vehicles on public lands, waters, and other properties under its jurisdiction, and on streets, roads, or highways within its boundaries by adopting regulations or ordinances of its governing body, provided such regulations are not less stringent than the provisions of this chapter. However, the legislative body of a city with a population of less than three thousand persons may, by ordinance, designate a street or highway within its boundaries to be suitable for use by off-road vehicles. The legislative body of a county may, by ordinance, designate a road or highway within its boundaries to be suitable for use by off-road vehicles if the road or highway is a direct connection between a city with a population of less than three thousand persons and an off-road vehicle recreation facility. [2006 c 212 § 4; 1977 ex.s. c 220 § 15; 1971 ex.s. c 47 § 23.]

46.09.190 General penalty—Civil liability. (1) Except as provided in RCW 46.09.120(2) and 46.09.130 as now or hereafter amended, violation of the provisions of this chapter is a traffic infraction for which a penalty of not less than twenty-five dollars may be imposed.

(2) In addition to the penalties provided in subsection (1) of this section, the owner and/or the operator of any nonhighway vehicle shall be liable for any damage to property including damage to trees, shrubs, or growing crops injured as the result of travel by the nonhighway vehicle. The owner of such property may recover from the person responsible three times the amount of damage. [1979 ex.s. c 136 § 42; 1977 ex.s. c 220 § 16; 1972 ex.s. c 153 § 16; 1971 ex.s. c 47 § 24.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.09.200 Enforcement. The provisions of this chapter shall be enforced by all persons having the authority to enforce any of the laws of this state, including, without limitation, officers of the state patrol, county sheriffs and their deputies, all municipal law enforcement officers within their respective jurisdictions, fish and wildlife officers, state park rangers, and those employees of the department of natural resources designated by the commissioner of public lands under RCW *43.30.310, 76.04.035, and 76.04.045. [2001 c 253 § 3; 1986 c 100 § 52; 1971 ex.s. c 47 § 25.]

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***Reviser's note:** RCW 43.30.310 was recodified as RCW 43.12.065 pursuant to 2003 c 334 § 127.

46.09.240 Administration and distribution of ORV moneys. (1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the board shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, nonprofit ORV organizations, and Indian tribes. Funds distributed under this section to nonprofit ORV organizations may be spent only on projects or activities that benefit ORV recreation on lands once publicly owned that come into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

(2) The board shall adopt rules governing applications for funds administered by the recreation and conservation office under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(3) The board shall require each applicant for acquisition or development funds under this section to comply with the requirements of either the state environmental policy act, chapter 43.21C RCW, or the national environmental policy act (42 U.S.C. Sec. 4321 et seq.). [2007 c 241 § 17; 2004 c 105 § 7; 1998 c 144 § 1; 1991 c 363 § 122; 1986 c 206 § 9; 1977 ex.s. c 220 § 17.]

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

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.250 Statewide plan. The board shall maintain a statewide plan which shall be updated at least once every third biennium and shall be used by all participating agencies to guide distribution and expenditure of funds under this chapter. [2007 c 241 § 18; 1986 c 206 § 11; 1977 ex.s. c 220 § 18.]

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

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.280 Nonhighway and off-road vehicle activities advisory committee. (1) The board shall establish the nonhighway and off-road vehicle activities advisory committee to provide advice regarding the administration of this chapter. The committee consists of governmental representatives, land managers, and a proportional representation of persons with recreational experience in areas identified in the most recent fuel use study, including but not limited to people with ORV, hiking, equestrian, mountain biking, hunting, fishing, and wildlife viewing experience.

(2) After the advisory committee has made recommendations regarding the expenditure of the fuel tax revenue portion of the nonhighway and off-road vehicle account moneys,

the advisory committee's ORV and mountain biking recreationists, governmental representatives, and land managers will make recommendations regarding the expenditure of funds received under RCW 46.09.110.

(3) At least once a year, the board, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission shall report to the non-highway and off-road vehicle activities advisory committee on the expenditures of funds received under RCW 46.09.110 and 46.09.170 and must proactively seek the advisory committee's advice regarding proposed expenditures.

(4) The advisory committee shall advise these agencies regarding the allocation of funds received under RCW 46.09.170 to ensure that overall expenditures reflect consideration of the results of the most recent fuel use study. [2007 c 241 § 19; 2004 c 105 § 8; 2003 c 185 § 1; 1986 c 206 § 13.]

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

Effective date—1986 c 206: See note following RCW 46.09.020.

46.09.900 Severability—1971 ex.s. c 47. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1971 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 47 § 26.]

Chapter 46.10 RCW SNOWMOBILES

Sections

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46.10.910	Short title.

Rules of court: Monetary penalty schedule—IRLJ 6.2.

Emergency medical services fee: RCW 46.12.042.

46.10.010 Definitions. As used in this chapter the words and phrases in this section shall have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicated.

(1) "Person" shall mean any individual, firm, partnership, association, or corporation.

(2) "Snowmobile" shall mean any self-propelled vehicle capable of traveling over snow or ice, which utilizes as its means of propulsion an endless belt tread, or cleats, or any combination of these or other similar means of contact with the surface upon which it is operated, and which is steered wholly or in part by skis or sled type runners, and which is not otherwise registered as, or subject to the motor vehicle excise tax in the state of Washington.

(3) "Vintage snowmobile" means a snowmobile manufactured at least thirty years ago.

(4) "All terrain vehicle" shall mean any self-propelled vehicle other than a snowmobile, capable of cross-country travel on or immediately over land, water, snow, ice, marsh, swampland, and other natural terrain, including, but not limited to, four-wheel vehicles, amphibious vehicles, ground effect or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind; except any vehicle designed primarily for travel on, over, or in the water, farm vehicles, or any military or law enforcement vehicles.

(5) "Owner" shall mean the person, other than a lienholder, having the property in or title to a snowmobile or all terrain vehicle, and entitled to the use or possession thereof.

(6) "Operator" means each person who operates, or is in physical control of, any snowmobile or all terrain vehicle.

(7) "Public roadway" shall mean the entire width of the right-of-way of any road or street designed and ordinarily used for travel or parking of motor vehicles, which is controlled by a public authority other than the Washington state department of transportation, and which is open as a matter of right to the general public for ordinary vehicular traffic.

(8) "Highways" shall mean the entire width of the right-of-way of all primary and secondary state highways, including all portions of the interstate highway system.

(9) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling snowmobiles or all terrain vehicles at wholesale or retail in this state.

(10) "Department" shall mean the department of licensing.

(11) "Director" shall mean the director of the department of licensing.

(12) "Commission" shall mean the Washington state parks and recreation commission.

(13) "Hunt" shall mean any effort to kill, injure, capture, or disturb a wild animal or wild bird.

(14) "Committee" means the Washington state parks and recreation commission snowmobile advisory committee. [2005 c 235 § 1; 1979 ex.s. c 182 § 1; 1979 c 158 § 131; 1971 ex.s. c 29 § 1.]

Application—2005 c 235: "This act applies to registrations due or to become due on October 1, 2005, and thereafter." [2005 c 235 § 4.]

46.10.020 Operation of snowmobile without registration prohibited. (1) Except as provided in this chapter, a person may not operate any snowmobile within this state

unless such snowmobile has been registered in accordance with the provisions of this chapter.

(2) A registration number shall be assigned, without payment of a fee, to snowmobiles owned by the state of Washington or its political subdivisions, and the assigned registration number shall be displayed upon each snowmobile in such manner as provided by rules adopted by the department. [2008 c 52 § 1; 2005 c 235 § 2; 1982 c 17 § 1; 1979 ex.s. c 182 § 3; 1971 ex.s. c 29 § 2.]

Application—2005 c 235: See note following RCW 46.10.010.

46.10.030 Ownership or operation of snowmobile without registration prohibited—Exceptions. No registration shall be required under the provisions of this chapter for the following described snowmobiles:

(1) Snowmobiles owned and operated by the United States, another state, or a political subdivision thereof.

(2) A snowmobile owned by a resident of another state or Canadian province if that snowmobile is registered in accordance with the laws of the state or province in which its owner resides, but only to the extent that a similar exemption or privilege is granted under the laws of that state or province for snowmobiles registered in this state: PROVIDED, That any snowmobile which is validly registered in another state or province and which is physically located in this state for a period of more than fifteen consecutive days shall be subject to registration under the provisions of this chapter. [1986 c 16 § 1; 1979 ex.s. c 182 § 4; 1975 1st ex.s. c 181 § 1; 1971 ex.s. c 29 § 3.]

46.10.040 Application for registration—Annual fees—Registration number—Term—Renewal—Transfer—Nonresident permit—Decals. (1) Application for registration shall be made to the department in the manner and upon forms the department prescribes, and shall state the name and address of each owner of the snowmobile to be registered, and shall be signed by at least one such owner, and shall be accompanied by an annual registration fee as described in (a) of this subsection.

(a) The annual registration fee for snowmobiles manufactured less than thirty years is thirty dollars. The annual registration fee for vintage snowmobiles is twelve dollars. The department shall design, in cooperation with the commission, a distinct registration decal which shall be issued to vintage snowmobiles upon payment of the annual registration fee.

(b) Upon receipt of the application and the application fee, the snowmobile shall be registered and a registration number assigned, which shall be affixed to the snowmobile in a manner provided in RCW 46.10.070.

(2) The registration provided in this section shall be valid for a period of one year. At the end of the period of registration, every owner of a snowmobile in this state shall renew his or her registration in the manner the department prescribes, for an additional period of one year, upon payment of the annual registration fee.

(3) Any person acquiring a snowmobile already validly registered under the provisions of this chapter must, within ten days of the acquisition or purchase of the snowmobile, make application to the department for transfer of the regis-

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tration, and the application shall be accompanied by a transfer fee of five dollars.

(4) A snowmobile owned by a resident of another state or Canadian province where registration is not required by law may be issued a nonresident registration permit valid for not more than sixty days. Application for the permit shall state the name and address of each owner of the snowmobile to be registered and shall be signed by at least one owner and shall be accompanied by a registration fee of five dollars. The registration permit shall be carried on the vehicle at all times during its operation in this state.

(5) The registration fees provided in this section shall be in lieu of any personal property or excise tax heretofore imposed on snowmobiles by this state or any political subdivision thereof, and no city, county, or other municipality, and no state agency shall hereafter impose any other registration or license fee on any snowmobile in this state.

(6) The department shall make available a pair of uniform decals consistent with the provisions of RCW 46.10.070. In addition to the registration fee provided in this section the department shall charge each applicant for registration the actual cost of the decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals. [2008 c 52 § 2; 2005 c 235 § 3; 2002 c 352 § 2; 2001 2nd sp.s. c 7 § 918; 1997 c 241 § 2; 1996 c 164 § 1; 1986 c 16 § 2; 1982 c 17 § 2; 1979 ex.s. c 182 § 5; 1973 1st ex.s. c 128 § 1; 1972 ex.s. c 153 § 20; 1971 ex.s. c 29 § 4.]

Application—2005 c 235: See note following RCW 46.10.010.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Purpose—Policy statement as to certain state lands—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.043 Registration or transfer of registration pursuant to sale by dealer—Temporary registration. Each snowmobile dealer registered pursuant to the provisions of RCW 46.10.050 shall register the snowmobile or, in the event the snowmobile is currently registered, transfer the registration to the new owner prior to delivering the snowmobile to that new owner subsequent to the sale thereof by the dealer. Applications for registration and transfer of registration of snowmobiles shall be made to agents of the department authorized as such in accordance with RCW 46.01.140 and 46.01.150 as now or hereafter amended.

All registrations for snowmobiles must be valid for the current registration period prior to the transfer of any registration, including assignment to a dealer. Upon the sale of a snowmobile by a dealer, the dealer may issue a temporary registration as provided by rules adopted by the department. [1982 c 17 § 3; 1979 ex.s. c 182 § 6; 1975 1st ex.s. c 181 § 4.]

46.10.050 Snowmobile dealers' registration—Fee—Dealer number plates, use—Sale or demonstration unlawful without registration. (1) Each dealer of snowmobiles in this state shall register with the department in such manner and upon such forms as the department shall prescribe. Upon receipt of a dealer's application for registration and the registration fee provided for in subsection (2) of this

section, such dealer shall be registered and a registration number assigned.

(2) The registration fee for dealers shall be twenty-five dollars per year, and such fee shall cover all of the snowmobiles offered by a dealer for sale and not rented on a regular, commercial basis: PROVIDED, That snowmobiles rented on a regular commercial basis by a dealer shall be registered separately under the provisions of RCW 46.10.020, 46.10.040, 46.10.060, and 46.10.070.

(3) Upon registration each dealer may purchase, at a cost to be determined by the department, dealer number plates of a size and color to be determined by the department, which shall contain the registration number assigned to that dealer. Each snowmobile operated by a dealer, dealer representative, or prospective customer for the purposes of demonstration or testing shall display such number plates in a clearly visible manner.

(4) No person other than a dealer, dealer representative, or prospective customer shall display a dealer number plate, and no dealer, dealer representative, or prospective customer shall use a dealer's number plate for any purpose other than the purposes described in subsection (3) of this section.

(5) Dealer registration numbers are nontransferable.

(6) It is unlawful for any dealer to sell any snowmobile at wholesale or retail, or to test or demonstrate any snowmobile, within the state, unless registered in accordance with the provisions of this section. [1990 c 250 § 26; 1982 c 17 § 5; 1971 ex.s. c 29 § 5.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.10.055 Denial, suspension, or revocation of dealer registration or assessment of monetary civil penalty, when. The director may by order deny, suspend, or revoke the registration of any snowmobile dealer or, in lieu thereof or in addition thereto, may by order assess monetary civil penalties not to exceed five hundred dollars per violation, if the director finds that the order is in the public interest and that the applicant or registrant, or any partner, officer, director, or owner of ten percent of the assets of the firm, or any employee or agent:

(1) Has failed to comply with the applicable provisions of this chapter or any rules adopted under this chapter; or

(2) Has failed to pay any monetary civil penalty assessed by the director under this section within ten days after the assessment becomes final. [1982 c 17 § 4.]

46.10.060 Registration number permanent—Certificate of registration, date tags. The registration number assigned to a snowmobile in this state at the time of its original registration shall remain with that snowmobile until the vehicle is destroyed, abandoned, or permanently removed from this state, or until changed or terminated by the department. The department shall, upon assignment of such registration number, issue and deliver to the owner a certificate of registration, in such form as the department shall prescribe. The certificate of registration shall not be valid unless signed by the person who signed the application for registration.

At the time of the original registration, and at the time of each subsequent renewal thereof, the department shall issue to the registrant a date tag or tags indicating the validity of the

current registration and the expiration date thereof, which validating date, tag, or tags shall be affixed to the snowmobile in such manner as the department may prescribe. Notwithstanding the fact that a snowmobile has been assigned a registration number, it shall not be considered as validly registered within the meaning of this section unless a validating date tag and current registration certificate has been issued. [1971 ex.s. c 29 § 6.]

46.10.070 Affixing and displaying registration number. The registration number assigned to each snowmobile shall be permanently affixed to and displayed upon each snowmobile in such manner as provided by rules adopted by the department, and shall be maintained in a legible condition; except dealer number plates as provided for in RCW 46.10.050 may be temporarily affixed. [1973 1st ex.s. c 128 § 2; 1972 ex.s. c 153 § 21; 1971 ex.s. c 29 § 7.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.075 Snowmobile account—Deposits—Appropriations, use. There is created a snowmobile account within the state treasury. Snowmobile registration fees, monetary civil penalties from snowmobile dealers, and snowmobile fuel tax moneys collected under this chapter and in excess of the amounts fixed for the administration of the registration and fuel tax provisions of this chapter shall be deposited in the snowmobile account and shall be appropriated only to the state parks and recreation commission for the administration and coordination of this chapter. [1991 sp.s. c 13 § 9; 1985 c 57 § 61; 1982 c 17 § 6; 1979 ex.s. c 182 § 7.]

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

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

46.10.080 Distribution of snowmobile registration fees, civil penalties, and fuel tax moneys. The moneys collected by the department as snowmobile registration fees, monetary civil penalties from snowmobile dealers, and fuel tax moneys placed in the snowmobile account shall be distributed in the following manner:

(1) Actual expenses not to exceed three percent for each year shall be retained by the department to cover expenses incurred in the administration of the registration and fuel tax provisions of this chapter.

(2) The remainder of such funds each year shall be remitted to the state treasurer to be deposited in the snowmobile account of the general fund and shall be appropriated only to the commission to be expended for snowmobile purposes. Such purposes may include but not necessarily be limited to the administration, acquisition, development, operation, and maintenance of snowmobile facilities and development and implementation of snowmobile safety, enforcement, and education programs.

(3) Nothing in this section is intended to discourage any public agency in this state from developing and implementing snowmobile programs. The commission is authorized to make grants to public agencies and to contract with any public or private agency or person for the purpose of developing and implementing snowmobile programs, provided that the programs are not inconsistent with the rules adopted by the

commission. [1982 c 17 § 7; 1979 ex.s. c 182 § 8; 1975 1st ex.s. c 181 § 2; 1973 1st ex.s. c 128 § 3; 1972 ex.s. c 153 § 22; 1971 ex.s. c 29 § 8.]

Purpose—Including policy statement as to certain state lands—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.090 Operating violations. (1) It is a traffic infraction for any person to operate any snowmobile:

(a) At a rate of speed greater than reasonable and prudent under the existing conditions.

(b) In a manner so as to endanger the property of another.

(c) Without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others.

(d) Without an adequate braking device which may be operated either by hand or foot.

(e) Without an adequate and operating muffling device which shall effectively blend the exhaust and motor noise in such a manner so as to preclude excessive or unusual noise, and, (i) on snowmobiles manufactured on or before January 4, 1973, which shall effectively limit such noise at a level of eighty-six decibels, or below, on the "A" scale at fifty feet, and (ii) on snowmobiles manufactured after January 4, 1973, which shall effectively limit such noise at a level of eighty-two decibels, or below, on the "A" scale at fifty feet, and (iii) on snowmobiles manufactured after January 1, 1975, which shall effectively limit such noise at a level of seventy-eight decibels, or below, as measured on the "A" scale at a distance of fifty feet, under testing procedures as established by the department of ecology; except snowmobiles used in organized racing events in an area designated for that purpose may use a bypass or cutout device. This section shall not affect the power of the department of ecology to adopt noise performance standards for snowmobiles. Noise performance standards adopted or to be adopted by the department of ecology shall be in addition to the standards contained in this section, but the department's standards shall supersede this section to the extent of any inconsistency.

(f) Upon the paved portion or upon the shoulder or inside bank or slope of any public roadway or highway, or upon the median of any divided highway, except as provided in RCW 46.10.100 and 46.10.110.

(g) In any area or in such a manner so as to expose the underlying soil or vegetation, or to injure, damage, or destroy trees or growing crops.

(h) Without a current registration decal affixed thereon, if not exempted under RCW 46.10.030 as now or hereafter amended.

(2) It is a misdemeanor for any person to operate any snowmobile so as to endanger the person of another or while under the influence of intoxicating liquor or narcotics or habit-forming drugs. [1980 c 148 § 1. Prior: 1979 ex.s. c 182 § 10; 1979 ex.s. c 136 § 43; 1975 1st ex.s. c 181 § 5; 1971 ex.s. c 29 § 9.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—1980 c 148: "Sections 1 through 7 of this 1980 act shall take effect January 1, 1981. Section 8 of this 1980 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately." [1980 c 148 § 9.]

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Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.10.100 Crossing public roadways and highways lawful, when. It shall be lawful to drive or operate a snowmobile across public roadways and highways other than limited access highways when:

The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

The snowmobile is brought to a complete stop before entering the public roadway or highway; and

The operator of the snowmobile yields the right-of-way to motor vehicles using the public roadway or highway; and

The crossing is made at a place which is greater than one hundred feet from any public roadway or highway intersection. [1971 ex.s. c 29 § 10.]

46.10.110 Operating upon public road or highway lawful, when. Notwithstanding the provisions of RCW 46.10.100, it shall be lawful to operate a snowmobile upon a public roadway or highway:

Where such roadway or highway is completely covered with snow or ice and has been closed by the responsible governing body to motor vehicle traffic during the winter months; or

When the responsible governing body gives notice that such roadway or highway is open to snowmobiles or all-terrain vehicle use; or

In an emergency during the period of time when and at locations where snow upon the roadway or highway renders such impassible to travel by automobile; or

When traveling along a designated snowmobile trail. [1972 ex.s. c 153 § 23; 1971 ex.s. c 29 § 11.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.120 Restrictions on age of operators—Qualifications. No person under twelve years of age shall operate a snowmobile on or across a public roadway or highway in this state, and no person between the ages of twelve and sixteen years of age shall operate a snowmobile on or across a public road or highway in this state unless he has taken a snowmobile safety education course and been certified as qualified to operate a snowmobile by an instructor designated by the commission as qualified to conduct such a course and issue such a certificate, and he has on his person at the time he is operating a snowmobile evidence of such certification: PROVIDED, That persons under sixteen years of age who have not been certified as qualified snowmobile operators may operate a snowmobile under the direct supervision of a qualified snowmobile operator. [1972 ex.s. c 153 § 24; 1971 ex.s. c 29 § 12.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.130 Additional violations—Penalty. (1) No person shall operate a snowmobile in such a way as to endanger human life.

(2) No person shall operate a snowmobile in such a way as to run down or harass deer, elk, or any wildlife, or any domestic animal, nor shall any person carry any loaded weapon upon, nor hunt from, any snowmobile except by per-

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mit issued by the director of fish and wildlife under RCW 77.32.237.

(3) Any person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 234; 1994 c 264 § 37; 1989 c 297 § 4; 1979 ex.s. c 182 § 11; 1971 ex.s. c 29 § 13.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

46.10.140 Accident reports. The operator of any snowmobile involved in any accident resulting in injury to or death of any person, or property damage to an apparent extent equal to or greater than the minimum amount established by rule adopted by the Washington state patrol in accordance with chapter 46.52 RCW, or a person acting for the operator, or the owner of the snowmobile having knowledge of the accident, if the operator of the snowmobile is unknown, shall submit such reports as are required under chapter 46.52 RCW, and the provisions of chapter 46.52 RCW applies to the reports when submitted. [1990 c 250 § 27; 1971 ex.s. c 29 § 14.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.10.150 Refund of snowmobile fuel tax to snowmobile account. From time to time, but at least once each biennium, the director shall request the state treasurer to refund from the motor vehicle fund amounts which have been determined to be a tax on snowmobile fuel, and the treasurer shall refund such amounts determined under RCW 46.10.170, and place them in the snowmobile account in the general fund. [1994 c 262 § 3; 1979 ex.s. c 182 § 12; 1975 1st ex.s. c 181 § 3; 1973 1st ex.s. c 128 § 4; 1971 ex.s. c 29 § 15.]

46.10.160 Snowmobile fuel excise tax nonrefundable. Motor vehicle fuel used and purchased for providing the motive power for snowmobiles shall be considered a non-highway use of fuel, but persons so purchasing and using motor vehicle fuel shall not be entitled to a refund of the motor vehicle fuel excise tax paid in accordance with the provisions of RCW 82.36.280 as it now exists or is hereafter amended. [1971 ex.s. c 29 § 16.]

46.10.170 Amount of snowmobile fuel tax paid as motor vehicle fuel tax. From time to time, but at least once each four years, the department shall determine the amount of moneys paid to it as motor vehicle fuel tax that is tax on snowmobile fuel. Such determination shall use one hundred thirty-five gallons as the average yearly fuel usage per snowmobile, the number of registered snowmobiles during the calendar year under determination, and a fuel tax rate of: (1) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (2) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (3) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (4) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (5) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter. [2003 c 361 § 408; 1994 c 262 § 4; 1993 c 54 § 7; 1990 c 42 § 117; 1979 ex.s. c 182 § 13; 1971 ex.s. c 29 § 17.]

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Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

46.10.180 Regulation by political subdivisions, state agencies. Notwithstanding any of the provisions of this chapter, any city, county, or other political subdivision of this state, or any state agency, may regulate the operation of snowmobiles on public lands, waters, and other properties under its jurisdiction, and on streets or highways within its boundaries by adopting regulations or ordinances of its governing body, provided such regulations are not inconsistent with the provisions of this chapter; and provided further that no such city, county, or other political subdivision of this state, nor any state agency, may adopt a regulation or ordinance which imposes a special fee for the use of public lands or waters by snowmobiles, or for the use of any access thereto which is owned by or under the jurisdiction of either the United States, this state, or any such city, county, or other political subdivision. [1971 ex.s. c 29 § 18.]

46.10.185 Local authorities may provide for safety and convenience. Notwithstanding any other provisions of this chapter, the local governing body may provide for the safety and convenience of snowmobiles and snowmobile operators. Such provisions may include, but shall not necessarily be limited to, the clearing of areas for parking automobiles, the construction and maintenance of rest areas, and the designation and development of given areas for snowmobile use. [1972 ex.s. c 153 § 25.]

Purpose—1972 ex.s. c 153: See RCW 79A.35.070.

46.10.190 Violations as traffic infractions—Exceptions—Civil liability. (1) Except as provided in RCW 46.10.090(2), 46.10.055, and 46.10.130, any violation of the provisions of this chapter is a traffic infraction: PROVIDED, That the penalty for failing to display a valid registration decal under RCW 46.10.090 as now or hereafter amended shall be a fine of forty dollars and such fine shall be remitted to the general fund of the governmental unit, which personnel issued the citation, for expenditure solely for snowmobile law enforcement.

(2) In addition to the penalties provided in RCW 46.10.090 and subsection (1) of this section, the operator and/or the owner of any snowmobile used with the permission of the owner shall be liable for three times the amount of any damage to trees, shrubs, growing crops, or other property injured as the result of travel by such snowmobile over the property involved. [1982 c 17 § 8; 1980 c 148 § 2. Prior: 1979 ex.s. c 182 § 14; 1979 ex.s. c 136 § 44; 1975 1st ex.s. c 181 § 6; 1971 ex.s. c 29 § 19.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.10.200 Enforcement. The provisions of this chapter shall be enforced by all persons having the authority to enforce any of the laws of this state, including, without limi-

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tation, officers of the state patrol, county sheriffs and their deputies, all municipal law enforcement officers within their respective jurisdictions, fish and wildlife officers, state park rangers, and those employees of the department of natural resources designated by the commissioner of public lands under *RCW 43.30.310, as having police powers to enforce the laws of this state. [2001 c 253 § 4; 1980 c 78 § 131; 1971 ex.s. c 29 § 20.]

*Reviser's note: RCW 43.30.310 was recodified as RCW 43.12.065 pursuant to 2003 c 334 § 127.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

46.10.210 Administration. With the exception of the registration and licensing provisions, this chapter shall be administered by the Washington state parks and recreation commission. The department shall consult with the commission prior to adopting rules to carry out its duties under this chapter. After consultation with the committee, the commission shall adopt such rules as may be necessary to carry out its duties under this chapter. Nothing in this chapter is intended to discourage experimental or pilot programs which could enhance snowmobile safety or recreational snowmobiling. [1979 ex.s. c 182 § 15; 1973 1st ex.s. c 128 § 5.]

46.10.220 Snowmobile advisory committee. (1) There is created in the Washington state parks and recreation commission a snowmobile advisory committee to advise the commission regarding the administration of this chapter.

(2) The purpose of the committee is to assist and advise the commission in the planned development of snowmobile facilities and programs.

(3) The committee shall consist of:

(a) Six interested snowmobilers, appointed by the commission; each such member shall be a resident of one of the six geographical areas throughout this state where snowmobile activity occurs, as defined by the commission;

(b) Three representatives of the nonsnowmobiling public, appointed by the commission; and

(c) One representative of the department of natural resources, one representative of the department of fish and wildlife, and one representative of the Washington state association of counties; each of whom shall be appointed by the director of such department or association.

(4) Terms of the members appointed under subsection (3)(a) and (b) of this section shall commence on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term: PROVIDED, That the first such members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(5) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Expenditures under this subsection shall be from the snowmobile account created by RCW 46.10.075.

(6) The committee may meet at times and places fixed by the committee. The committee shall meet not less than twice each year and additionally as required by the committee

chairman or by majority vote of the committee. One of the meetings shall be coincident with a meeting of the commission at which the committee shall provide a report to the commission. The chairman of the committee shall be chosen under procedures adopted by the committee from those members appointed under subsection (3)(a) and (b) of this section.

(7) The Washington state parks and recreation commission shall serve as recording secretary to the committee. A representative of the department of licensing shall serve as an ex officio member of the committee and shall be notified of all meetings of the committee. The recording secretary and the ex officio member shall be nonvoting members.

(8) The committee shall adopt procedures to govern its proceedings. [1994 c 264 § 38; 1989 c 175 § 110; 1988 c 36 § 26; 1987 c 330 § 1201. Prior: 1986 c 270 § 9; 1986 c 16 § 3; 1983 c 139 § 1; 1979 ex.s. c 182 § 2.]

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

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.10.900 Severability—1971 ex.s. c 29. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 29 § 21.]

46.10.910 Short title. This chapter may be known and cited as the "Snowmobile act". [1971 ex.s. c 29 § 22.]

Chapter 46.12 RCW

CERTIFICATES OF OWNERSHIP AND REGISTRATION

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Classification of manufactured homes: Chapter 65.20 RCW.

Hulk haulers and scrap processors: Chapter 46.79 RCW.

46.12.005 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) The words "delivery," "notice," "send," and "security interest" have the same meaning as these terms are defined in RCW 62A.1-201; the word "secured party" has the same meaning as this term is defined in RCW 62A.9A-102.

(2) "Salvage vehicle" means a vehicle whose certificate of ownership has been surrendered to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss or for which there is documentation indicating that the vehicle has been declared salvage or has been damaged to the extent that the owner, an insurer, or other person acting on behalf of the owner, has determined that the cost of parts and labor plus the salvage value has made it uneconomical to repair the vehicle. The term does not include a motor vehicle having a model year designation of a calendar year that is at least six years before the calendar year in which the vehicle was wrecked, destroyed, or damaged, unless, after June 13, 2002, and immediately before the vehicle was wrecked, destroyed, or damaged, the vehicle had a retail fair market value of at least the then market value threshold amount and has a model year designation of a calendar year not more than twenty years before the calendar year in which the vehicle was wrecked, destroyed, or damaged. "Market value threshold amount" means six thousand five hundred dollars or such greater amount as is then in effect by rule of the department in accordance with this section. If, for any year beginning with 2002, the Consumer Price Index for All Urban Consumers, compiled by the Bureau of Labor Statistics, United States Department of

Labor, or its successor, for the West Region, in the expenditure category "used cars and trucks," shows an increase in the annual average for that year compared to that of the year immediately prior, the department shall, by rule, increase the then market value threshold amount by the same percentage as the percentage increase of the annual average, with the increase of the market value threshold amount to be effective on July 1st of the year immediately after the year with the increase of the annual average. However, the market value threshold amount may not be increased if the amount of the increase would be less than fifty dollars, and each increase of the market value threshold amount will be rounded to the nearest ten dollars. If an increase in the market value threshold amount is not made because the increase would be less than fifty dollars, the unmade increase will be carried forward and added to later year calculations of increase until the unmade increase is included in an increase made to the market value threshold amount. [2002 c 245 § 1; 1996 c 26 § 1; 1967 c 140 § 5.]

Effective date—1967 c 140: See note following RCW 46.12.010.

46.12.010 Certificates required to operate and sell vehicles—Manufacturers or dealers, security interest, how perfected. It shall be unlawful for any person to operate any vehicle in this state under a certificate of license registration of this state without securing and having in full force and effect a certificate of ownership therefor that contains the name of the registered owner exactly as it appears on the certificate of license registration and it shall further be unlawful for any person to sell or transfer any vehicle without complying with all the provisions of this chapter relating to certificates of ownership and license registration of vehicles: PROVIDED, No certificate of title need be obtained for a vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing and demonstration, or a vehicle used by a manufacturer solely for testing: PROVIDED, That a security interest in a vehicle held as inventory by a manufacturer or dealer shall be perfected in accordance with *RCW 62A.9-302(1) and no endorsement on the certificate of title shall be necessary for perfection: AND PROVIDED FURTHER, That nothing in this title shall be construed to prevent any person entitled thereto from securing a certificate of ownership upon a vehicle without securing a certificate of license registration and vehicle license plates, when, in the judgment of the director of licensing, it is proper to do so. [1997 c 241 § 3; 1979 c 158 § 132; 1975 c 25 § 6; 1967 c 140 § 1; 1967 c 32 § 6; 1961 c 12 § 46.12.010. Prior: 1937 c 188 § 2; RRS § 6312-2.]

***Reviser's note:** Article 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see Article 62A.9A RCW.

Effective date—1967 c 140: "This act shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date." [1967 c 140 § 11.]

Definitions: RCW 46.12.005.

46.12.020 Prerequisite to issuance of vehicle license and plates. No vehicle license number plates or certificate of license registration, whether original issues or duplicates, may be issued or furnished by the department unless the

applicant, at the same time, makes satisfactory application for a certificate of ownership or presents satisfactory evidence that such a certificate of ownership covering the vehicle has been previously issued. [1989 c 337 § 22. Prior: 1987 c 388 § 9; 1987 c 244 § 1; 1985 c 424 § 1; 1975 c 25 § 7; 1967 c 32 § 7; 1961 c 12 § 46.12.020; prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-2, part.]

Effective date—1989 c 337 § 22: "Section 22 of this act shall take effect January 1, 1990." [1989 c 337 § 23.]

Effective date—1987 c 388 § 9: "Section 9 of this act shall take effect January 1, 1990." [1987 c 388 § 14.]

Severability—1987 c 388: See note following RCW 46.20.342.

Effective dates—1987 c 244: "Section 1 of this act shall take effect on January 1, 1990. Sections 9, 10, and 15 through 58 of this act shall take effect on January 1, 1988." [1987 c 244 § 59.]

Effective date—1985 c 424: "This act shall take effect on January 1, 1990." [1986 c 174 § 1; 1985 c 424 § 2.]

Allowing unauthorized person to drive, penalty: RCW 46.16.011.

Notice of liability insurance requirement: RCW 46.16.212.

46.12.030 Certificate of ownership—Application—Contents—Examination of vehicle. (1) The application for a certificate of ownership shall be upon a form furnished or approved by the department and shall contain:

(a) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

(b) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

(c) Such other information as the department may require.

(2) The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either.

(3)(a) A physical examination of the vehicle is mandatory if (i) it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss and (ii) it is not retained by the registered owner at the time of the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the title and registration certificate. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

(b)(i) A physical examination of the vehicle is mandatory if the vehicle was declared totaled or salvage under the laws of this state, or the vehicle is presented with documents from another state showing the vehicle was totaled or salvage and has not been reissued a valid registration from that state after the declaration of total loss or salvage.

(ii) The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the original documents supporting the vehicle purchase or ownership.

(iii) A Washington state patrol VIN specialist must ensure that all major component parts used for the reconstruction of a salvage or rebuildable vehicle were obtained

legally. Original invoices for new and used parts must be from a vendor that is registered with the department of revenue for the collection of retail sales or use taxes or comparable agency in the jurisdiction where the major component parts were purchased. The invoices must include the name and address of the business, a description of the part or parts sold, the date of sale, and the amount of sale to include all taxes paid unless exempted by the department of revenue or comparable agency in the jurisdiction where the major component parts were purchased. Original invoices for used parts must be from a vehicle wrecker licensed under chapter 46.80 RCW or a comparable business in the jurisdiction outside Washington state where the major component part was purchased. If the parts or components were purchased from a private individual, the private individual must have title to the vehicle the parts were taken from, except as provided by RCW 46.04.3815, and the bill of sale for the parts must be notarized. The bills of sale must include the names and addresses of the sellers and purchasers, a description of the vehicle, the part or parts being sold, including the make, model, year, and identification or serial number, that date of sale, and the purchase price of the vehicle or part or parts. If the presenter is unable to provide an acceptable release of interest or proof of ownership for a vehicle or major component part as described above, an inspection must be completed for ownership-in-doubt purposes as prescribed by WAC 308-56A-210.

(iv) A vehicle presented for inspection must have all damaged major component parts replaced or repaired to meet RCW and WAC requirements before inspection of the salvage vehicle by the Washington state patrol.

(4) To the extent that the Washington state patrol has a backlog of vehicle inspections that it is to perform under this section, chapter 420, Laws of 2007 shall not be construed to reduce the vehicle inspection workload of the Washington state patrol.

(5) Rebuilt or salvage vehicles licensed in Washington must meet the requirements found under chapter 46.37 RCW to be driven upon public roadways.

(6) The application shall be subscribed by the person applying to be the registered owner and be sworn to by that applicant in the manner described by RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form. [2007 c 420 § 1; 2005 c 173 § 1; 2004 c 188 § 1; 2001 c 125 § 1. Prior: 1995 c 274 § 1; 1995 c 256 § 23; 1990 c 238 § 1; 1975 c 25 § 8; 1974 ex.s. c 128 § 1; 1972 ex.s. c 99 § 2; 1967 c 32 § 8; 1961 c 12 § 46.12.030; prior: 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-2, part.]

Effective date—2001 c 125: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 125 § 5.]

Effective date, implementation—1990 c 238: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1990. The director of licensing shall immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1990 c 238 § 9.]

Effective date—1974 ex.s. c 128: "This 1974 amendatory act shall take effect July 1, 1974." [1974 ex.s. c 128 § 3.]

Notice of liability insurance requirement: RCW 46.16.212.

46.12.040 Certificate of ownership—Fees. (1) The application for an original certificate of ownership accompanied by a draft, money order, certified bank check, or cash for five dollars, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

(2) The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

(3) In addition to the application fee and any other fee for the license registration of a vehicle, the department shall collect from the applicant a fee of fifteen dollars for vehicles previously registered in any other state or country. The proceeds from the fee shall be deposited in accordance with RCW 46.68.020. For vehicles requiring a physical examination, the inspection fee shall be sixty-five dollars, fifteen dollars of which shall be deposited into the state patrol highway account created under RCW 46.68.030, and the remainder of which shall be deposited in accordance with RCW 46.68.020. [2007 c 420 § 2; 2004 c 200 § 1; 2002 c 352 § 3; 2001 c 125 § 2; 1990 c 238 § 2; 1989 c 110 § 1; 1975 1st ex.s. c 138 § 1; 1974 ex.s. c 128 § 2; 1961 c 12 § 46.12.040. Prior: 1951 c 269 § 1; 1947 c 164 § 1, part; 1937 c 188 § 3, part; Rem. Supp. 1947 § 6312-3, part.]

Effective date—2004 c 200: "This act takes effect July 1, 2004." [2004 c 200 § 4.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—2001 c 125: See note following RCW 46.12.030.

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1974 ex.s. c 128: See note following RCW 46.12.030.

46.12.042 Emergency medical services fee. (1) Upon the retail sale or lease of any new or used motor vehicle by a vehicle dealer, the dealer shall collect from the consumer an emergency medical services fee of six dollars and fifty cents, two dollars and fifty cents of which shall be an administrative fee to be retained by the vehicle dealer. The remainder of the fee shall be forwarded with the required title application and all other fees to the department of licensing, or any of its authorized agents. The four-dollar fee collected in this section shall be deposited in the emergency medical services and trauma care system trust account created in RCW 70.168.040. The administrative fee charged by a dealer shall not be considered a violation of RCW 46.70.180(2).

(2) If a fee is not imposed under subsection (1) of this section, there is hereby imposed a fee of six dollars and fifty cents at the time of application for (a) an original title or transfer of title issued on any motor vehicle pursuant to this chapter or chapter 46.09 RCW, or (b) an original transaction or transfer of ownership transaction of a vehicle under chapter 46.10 RCW. The department of licensing or any of its authorized agents shall collect the fee when processing these transactions. The fee shall be transmitted to the emergency medical services and trauma care system trust account created in RCW 70.168.040.

(3) This section does not apply to a motor vehicle that has been declared a total loss by an insurer or self-insurer unless an application for certificate of ownership or license

registration is made to the department of licensing after the declaration of total loss. [1997 c 331 § 5.]

Effective date—1997 c 331: See note following RCW 70.168.135.

46.12.045 Off-road vehicles, certificate of ownership for title purposes only. The department shall issue a certificate of ownership valid for title purposes only to the owner of an off-road vehicle as defined in RCW 46.09.020. The owner shall pay the fees established by RCW 46.12.040. Issuance of such certificate does not qualify the vehicle for licensing under chapter 46.16 RCW. [1986 c 186 § 4.]

46.12.047 Stolen vehicle check. The department shall institute software and systems modifications to enable a WACIC/NCIC stolen vehicle search of out-of-state vehicles as part of the title transaction. During the stolen vehicle search, if the information obtained indicates the vehicle is stolen, that information shall be immediately reported to the state patrol and the applicant shall not be issued a certificate of ownership for the vehicle. Vehicles for which the stolen vehicle check is negative shall be issued a certificate of ownership if the department is satisfied that all other requirements have been met. [2002 c 246 § 1; 2001 c 125 § 3.]

Effective date—2001 c 125: See note following RCW 46.12.030.

46.12.050 Issuance of certificates—Contents. The department, if satisfied from the statements upon the application that the applicant is the legal owner of the vehicle or otherwise entitled to have a certificate of ownership thereof in the applicant's name, shall issue an appropriate electronic record of ownership or a written certificate of ownership, over the director's signature, authenticated by seal, and if required, a new written certificate of license registration if certificate of license registration is required.

The certificates of ownership and the certificates of license registration shall contain upon the face thereof, the date of application, the registration number assigned to the registered owner and to the vehicle, the name and address of the registered owner and legal owner, the vehicle identification number, and such other description of the vehicle and facts as the department shall require, and in addition thereto, if the vehicle described in such certificates shall have ever been licensed and operated as an exempt vehicle or a taxicab, or if it has been rebuilt after becoming a salvage vehicle, such fact shall be clearly shown thereon.

All certificates of ownership of motor vehicles issued after April 30, 1990, shall reflect the odometer reading as provided by the odometer disclosure statement submitted with the title application involving a transfer of ownership.

A blank space shall be provided on the face of the certificate of license registration for the signature of the registered owner.

Upon issuance of the certificate of license registration and certificate of ownership and upon any reissue thereof, the department shall deliver the certificate of license registration to the registered owner and the certificate of ownership to the legal owner, or both to the person who is both the registered owner and legal owner. [1996 c 26 § 2; 1993 c 307 § 1; 1990 c 238 § 3; 1975 c 25 § 9; 1967 c 32 § 9; 1961 c 12 §

46.12.050. Prior: 1959 c 166 § 1; 1947 c 164 § 2; 1937 c 188 § 4; Rem. Supp. 1947 § 6312-4.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

46.12.055 Certificate of ownership—Manufactured homes. The certificate of ownership for a manufactured home may be eliminated or not issued when the manufactured home is registered pursuant to chapter 65.20 RCW. When the certificate of ownership is eliminated or not issued the application for license shall be recorded in the county property records of the county where the real property to which the home is affixed is located. All license fees and taxes applicable to mobile homes under this chapter are due and shall be collected prior to recording the ownership with the county auditor. [1989 c 343 § 19.]

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

46.12.060 Procedure when identification number altered or obliterated. Before the department shall issue a certificate of ownership, or reissue such a certificate, covering any vehicle, the identification number of which has been altered, removed, obliterated, defaced, omitted, or is otherwise absent, the registered owner of the vehicle shall file an application with the department, accompanied by a fee of five dollars, upon a form provided, and containing such facts and information as shall be required by the department for the assignment of a special number for such vehicle. Upon receipt of such application, the department, if satisfied the applicant is entitled to the assignment of an identification number, shall designate a special identification number for such vehicle, which shall be noted upon the application therefor, and likewise upon a suitable record of the authorization of the use thereof, to be kept by the department. This assigned identification number shall be placed or stamped in a conspicuous position upon the vehicle in such manner and form as may be prescribed by the department. Upon receipt by the department of an application for a certificate of ownership or application for reissue of such certificate and the required fee therefor, the department shall use such number as the numerical or alpha-numerical identification marks for the vehicle in any certificate of license registration or certificate of ownership that may thereafter be issued therefor. [2001 c 125 § 4; 1975 c 25 § 10; 1974 ex.s. c 36 § 1; 1961 c 12 § 46.12.060. Prior: 1959 c 166 § 3; prior: 1951 c 269 § 2; 1947 c 164 § 3(a); 1939 c 182 § 1(a); 1937 c 188 § 5(a); Rem. Supp. 1947 § 6312-5(a).]

Effective date—2001 c 125: See note following RCW 46.12.030.

Effective date—1974 ex.s. c 36: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 36 § 2.]

46.12.070 Destruction of vehicle—Surrender of certificates, penalty—Notice of settlement by insurance company. (1) Upon the destruction of any vehicle issued a certificate of ownership under this chapter or a license registration under chapter 46.16 RCW, the registered owner and the legal owner shall forthwith and within fifteen days thereafter forward and surrender the certificate to the department, together with a statement of the reason for the surrender and the date and place of destruction. Failure to notify the department or

the possession by any person of any such certificate for a vehicle so destroyed, after fifteen days following its destruction, is prima facie evidence of violation of the provisions of this chapter and constitutes a gross misdemeanor.

(2) Any insurance company settling an insurance claim on a vehicle that has been issued a certificate of ownership under this chapter or a certificate of license registration under chapter 46.16 RCW as a total loss, less salvage value, shall notify the department thereof within fifteen days after the settlement of the claim. Notification shall be provided regardless of where or in what jurisdiction the total loss occurred.

(3) For a motor vehicle having a model year designation at least six years before the calendar year of destruction, the notification to the department must include a statement of whether the retail fair market value of the motor vehicle immediately before the destruction was at least the then market value threshold amount as defined in RCW 46.12.005. [2003 c 53 § 235; 2002 c 245 § 2; 1990 c 250 § 28; 1961 c 12 § 46.12.070. Prior: 1959 c 166 § 4; prior: 1947 c 164 § 3(b); 1939 c 182 § 1(b); 1937 c 188 § 5(b); Rem. Supp. 1947 § 6312-5(b).]

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

Severability—1990 c 250: See note following RCW 46.16.301.

46.12.075 Rebuilt vehicles. (1) Effective January 1, 1997, the department shall issue a unique certificate of ownership and certificate of license registration, as required by chapter 46.16 RCW, for vehicles that are rebuilt after becoming a salvage vehicle. Each certificate shall conspicuously display across its front, a word indicating that the vehicle was rebuilt.

(2) Beginning January 1, 1997, upon inspection of a salvage vehicle that has been rebuilt under RCW 46.12.030, the state patrol shall securely affix or inscribe a marking at the driver's door latch pillar indicating that the vehicle has previously been destroyed or declared a total loss.

(3) It is a class C felony for a person to remove the marking prescribed in subsection (2) of this section.

(4) The department may adopt rules as necessary to implement this section. [1996 c 26 § 3; 1995 c 256 § 24.]

46.12.080 Procedure on installation of different motor—Penalty. Any person holding the certificate of ownership for a motorcycle or any vehicle registered by its motor number in which there has been installed a new or different motor than that with which it was issued certificates of ownership and license registration shall forthwith and within five days after such installation forward and surrender such certificates to the department, together with an application for issue of corrected certificates of ownership and license registration and a fee of five dollars, and a statement of the disposition of the former motor. The possession by any person of any such certificates for such vehicle in which a new or different motor has been installed, after five days following such installation, shall be prima facie evidence of a violation of the provisions of this chapter and shall constitute a misdemeanor. [2002 c 352 § 4; 1997 c 241 § 4; 1979 ex.s. c 113 § 1; 1961 c 12 § 46.12.080. Prior: 1959 c 166 § 5; prior: 1951 c 269 § 3; 1947 c 164 § 3(c); 1939 c 182 § 1(c); 1937 c 188 § 5(c); Rem. Supp. 1947 § 6312-5(c).]

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.12.095 Requirements for perfecting security interest. A security interest in a vehicle other than one held as inventory by a manufacturer or a dealer and for which a certificate of ownership is required is perfected only by compliance with the requirements of RCW 46.12.103 under the circumstances provided for therein or by compliance with the requirements of this section:

(1) A security interest is perfected by the department's receipt of: (a) The existing certificate, if any, and (b) an application for a certificate of ownership containing the name and address of the secured party, and (c) tender of the required fee.

(2) A security interest is perfected as of the time of its creation if the secured party's name and address appear on the outstanding certificate of ownership; otherwise, as of the date on which the department has received the papers and fee required in subsection (1) of this section.

(3) If a vehicle is subject to a security interest when brought into this state, perfection of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest was attached, subject to the following:

(a) If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, the following rules apply:

(b) If the name of the secured party is shown on the existing certificate of ownership issued by that jurisdiction, the security interest continues perfected in this state. The name of the secured party shall be shown on the certificate of ownership issued for the vehicle by this state. The security interest continues perfected in this state upon the issuance of such ownership certificate.

(c) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest was attached, it may be perfected in this state; in that case, perfection dates from the time of perfection in this state. [2000 c 250 § 9A-822; 1998 c 203 § 10; 1969 ex.s. c 170 § 16; 1967 c 140 § 6.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Finding—1998 c 203: See note following RCW 46.55.105.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.101 Transfer of ownership—Requirements—Penalty, exceptions. A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1)(a) If an owner transfers his or her interest in a vehicle, other than by the creation, deletion, or change of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment to the transferee and provide an odometer disclosure statement under RCW 46.12.124 on the certificate of ownership or as the department otherwise prescribes, and cause the certificate and assignment to be transmitted to the transferee. The owner shall notify the department or its agents or subagents, in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, the trans-

ferree's driver's license number if available, and such description of the vehicle, including the vehicle identification number, as may be required in the appropriate form provided or approved for that purpose by the department. The report of sale will be deemed properly filed if all information required in this section is provided on the form and includes a department-authorized notation that the document was received by the department, its agents, or subagents on or before the fifth day after the sale of the vehicle, excluding Saturdays, Sundays, and state and federal holidays. Agents and subagents shall immediately electronically transmit the seller's report of sale to the department. Reports of sale processed and recorded by the department's agents or subagents may be subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b). By January 1, 2003, the department shall create a system enabling the seller of a vehicle to transmit the report of sale electronically. The system created by the department must immediately indicate on the department's vehicle record that a seller's report of sale has been filed.

(b) By January 1, 2008, the department shall provide instructions on release of interest forms that allow the seller of a vehicle to release his or her interest in a vehicle at the same time a financial institution, as defined in RCW 30.22.040, releases its lien on the vehicle.

(2) The requirements of subsection (1) of this section to provide an odometer disclosure statement apply to the transfer of vehicles held for lease when transferred to a lessee and then to the lessor at the end of the leasehold and to vehicles held in a fleet when transferred to a purchaser.

(3) Except as provided in RCW 46.70.122 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department accompanied by a fee of five dollars in addition to any other fees required.

(4) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a new certificate, the existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(5) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(6) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not

assessing the penalty may be established for but not limited to delays caused by:

- (a) The department requesting additional supporting documents;
- (b) Extended hospitalization or illness of the purchaser;
- (c) Failure of a legal owner to release his or her interest;
- (d) Failure, negligence, or nonperformance of the department, auditor, or subagent;
- (e) The transferee had no knowledge of the filing of the vehicle report of sale and signs an affidavit to the fact.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor and a continuing offense for each day during which the purchaser or transferee does not make application to transfer the certificate of ownership and license registration. Despite the continuing nature of this offense, it shall be considered a single offense, regardless of the number of days that have elapsed following the forty-five day time period.

(7) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer.

(8) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place. [2008 c 316 § 1; 2007 c 96 § 1; 2006 c 291 § 2. Prior: 2004 c 223 § 1; 2004 c 200 § 2; 2003 c 264 § 7; 2002 c 279 § 1; 1998 c 203 § 11; 1991 c 339 § 19; 1990 c 238 § 4; 1987 c 127 § 1; 1984 c 39 § 1; 1972 ex.s. c 99 § 1; 1969 ex.s. c 281 § 38; 1969 ex.s. c 42 § 1; 1967 c 140 § 7.]

Effective date—2004 c 200: See note following RCW 46.12.040.

Finding—1998 c 203: See note following RCW 46.55.105.

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.102 Release of owner from liability—Requirements. (1) An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of it to a purchaser shall not by reason of any of the provisions of this title be deemed the owner of the vehicle so as to be subject to civil liability or criminal liability for the operation of the vehicle thereafter by another person when the owner has also fulfilled both of the following requirements:

- (a) When the owner has made proper endorsement and delivery of the certificate of ownership and has delivered the certificate of registration as provided in this chapter;
- (b) When the owner has delivered to the department either a properly filed report of sale that includes all of the information required in RCW 46.12.101(1) and is delivered to the department within five days of the sale of the vehicle excluding Saturdays, Sundays, and state and federal holidays,

or appropriate documents for registration of the vehicle pursuant to the sale or transfer.

(2) An owner who has made a bona fide sale or transfer of a vehicle, has delivered possession of it to a purchaser, and has fulfilled the requirements of subsection (1)(a) and (b) of this section is relieved of liability and liability is transferred to the purchaser of the vehicle, for any traffic violation under this title, whether designated as a traffic infraction or classified as a criminal offense, that occurs after the date of the sale or transfer that is based on the vehicle's identification, including, but not limited to, parking infractions, high occupancy toll lane violations, and violations recorded by automated traffic safety cameras.

(3) When a registered tow truck operator submits an abandoned vehicle report to the department for a vehicle sold at an abandoned vehicle auction, any previous owner is relieved of civil or criminal liability for the operation of the vehicle from the date of sale thereafter, and liability is transferred to the purchaser of the vehicle as listed on the abandoned vehicle report.

(4) When a transferee had no knowledge of the filing of the vehicle report of sale, he or she is relieved of civil or criminal liability for the operation of the vehicle, and liability is transferred to the seller shown on the report of sale. [2006 c 291 § 3; 2005 c 331 § 1; 2002 c 279 § 2; 1984 c 39 § 2.]

46.12.103 Transitional ownership record. (1) The purpose of a transitional ownership record is to enable a security interest in a motor vehicle to be perfected in a timely manner when the certificate of ownership is not available at the time the security interest is created, and to provide for timely notification to security interest holders under chapter 46.55 RCW.

(2) A transitional ownership record is only acceptable as an ownership record for vehicles currently stored on the department's computer system and if the certificate of ownership or other authorized proof of ownership for the motor vehicle is not in the possession of the selling vehicle dealer or new security interest holder at the time the transitional ownership record is submitted to the department.

(3) A person shall submit the transitional ownership record to the department or to any of its agents or subagents. Agents and subagents shall immediately electronically transmit the transitional ownership records to the department. A transitional ownership document processed and recorded by an agent or subagent may be subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b).

(4) "Transitional ownership record" means a record containing all of the following information:

- (a) The date of sale;
- (b) The name and address of each owner of the vehicle;
- (c) The name and address of each security interest holder;
- (d) If there are multiple security interest holders, the priorities of interest if the security interest holders do not jointly hold a single security interest;
- (e) The vehicle identification number, the license plate number, if any, the year, make, and model of the vehicle;
- (f) The name of the selling dealer or security interest holder who is submitting the transitional ownership record; and

(g) The transferee's driver's license number, if available.

(5) The report of sale form prescribed or approved by the department under RCW 46.12.101 may be used by a vehicle dealer as the transitional ownership record.

(6) Compliance with the requirements of this section shall result in perfection of a security interest in the vehicle as of the date the department receives the transitional ownership record and any fee required under subsection (3) of this section. Within ten days of receipt of the certificate of ownership for the vehicle, or of written confirmation that only an electronic record of ownership exists or that the certificate of ownership has been lost or destroyed, the selling dealer or new security interest holder shall promptly submit the same to the department together with an application for a new certificate of ownership containing the name and address of the secured party and tender the required fee as provided in RCW 46.12.095(1). In the event a secured party fails to submit an application within the ten-day time period provided in this subsection (6), its security interest shall become unperfected, unless the security interest is perfected otherwise. [2000 c 250 § 9A-823; 1998 c 203 § 12.]

Effective date—2000 c 250: See RCW 62A.9A-701.

Finding—1998 c 203: See note following RCW 46.55.105.

46.12.105 Transfer of ownership of mobile home, county assessor notified—Evidence of taxes paid. When the ownership of a mobile home is transferred and the new owner thereof applies for a new certificate of ownership for such mobile home, the department of licensing or its agents, including county auditors, shall notify the county assessor of the county where such mobile home is located of the change in ownership including the name and address of the new owner and the name of the former owner. A certificate of ownership for a mobile home shall not be transferred or issued until the department has verified that any taxes due on the sale of the mobile home under *chapter 82.45 RCW and any other taxes due under chapter 84.52 RCW have been paid.

A copy of the real estate excise tax affidavit which has been stamped by the county treasurer shall be deemed sufficient evidence that the taxes due upon the sale of a used mobile home have been paid.

A copy of a treasurer certificate, which is prepared by the treasurer of the county in which the used mobile home is located and which states that all property taxes due upon the used mobile home being sold have been satisfied, shall be deemed sufficient evidence that the property taxes due have been paid. [1979 ex.s. c 266 § 5; 1979 c 158 § 133; 1971 ex.s. c 231 § 13.]

***Reviser's note:** This reference has been changed from chapter 28A.45 RCW to chapter 82.45 RCW in accordance with 1981 c 148 § 13 and 1981 c 93 § 2. See note following RCW 82.45.010.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.12.124 Odometer disclosure statement. (1) The department shall require an odometer disclosure statement to accompany every application for a certificate of ownership, unless specifically exempted. If the certificate of ownership was issued after April 30, 1990, a secure odometer statement is required, unless specifically exempted. The statements shall include, at a minimum, the following:

(a) The miles shown on the odometer at the time of transfer of ownership;

(b) The date of transfer of ownership;

(c) One of the following statements:

(i) The mileage reflected is actual to the best of transferor's knowledge;

(ii) The odometer reading exceeds the mechanical limits of the odometer to the best of the transferor's knowledge; or

(iii) The odometer reading is not the actual mileage;

If the odometer reading is under one hundred thousand miles, the only options that can be certified are "actual to the best of the transferor's knowledge" or "not the actual mileage." If the odometer reading is one hundred thousand miles or more, the options "actual to the best of the transferor's knowledge" or "not the actual mileage" cannot be used unless the odometer has six digit capability;

(d) A complete description of the vehicle, including the:

(i) Model year;

(ii) Make;

(iii) Series and body type (model);

(iv) Vehicle identification number;

(v) License plate number and state (optional);

(e) The name, address, and signature of the transferor, in accordance with the following conditions:

(i) Only one registered owner is required to complete the odometer disclosure statement;

(ii) When the registered owner is a business, both the business name and a company representative's name must be shown on the odometer disclosure statement;

(f) The name and address of the transferee and the transferee's signature to acknowledge the transferor's information. If the transferee represents a company, both the company name and the agent's name must be shown on the odometer disclosure statement;

(g) A statement that the notice is required by the federal Truth in Mileage Act of 1986; and

(h) A statement that failure to complete the odometer disclosure statement or providing false information may result in fines or imprisonment or both.

(2) The transferee shall return a signed copy of the odometer disclosure statement to the transferor at the time of transfer of ownership.

(3) The following vehicles are not subject to the odometer disclosure requirement at the time of ownership transfer:

(a) A vehicle having a declared gross vehicle weight of more than sixteen thousand pounds;

(b) A vehicle that is not self-propelled;

(c) A vehicle that is ten years old or older;

(d) A vehicle sold directly by a manufacturer to a federal agency in conformity with contract specifications; or

(e) A new vehicle before its first retail sale. [1990 c 238 § 6.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

46.12.130 Assigned certificate of ownership to be filed by department—Transfer of interest in vehicle. Certificates of ownership when assigned and returned to the department, together with subsequently assigned reissues thereof, shall be retained by the department and appropriately

filed and indexed so that at all times it will be possible to trace ownership to the vehicle designated therein:

(1) If the interest of an owner in a vehicle passes to another, other than by voluntary transfer, the transferee shall, except as provided in subsection (3) of this section, promptly mail or deliver to the department the last certificate of ownership if available, proof of transfer, and his application for a new certificate in the form the department prescribes.

(2) If the interest of the owner is terminated or the vehicle is sold under a security agreement by a secured party named in the certificate of ownership, the transferee shall promptly mail or deliver to the department the last certificate of ownership, his application for a new certificate in the form the department prescribes, and an affidavit made by or on the behalf of the secured party that the vehicle was repossessed and that the interest of the owner was lawfully terminated or sold pursuant to the terms of the security agreement.

(3) If the secured party succeeds to the interest of the owner and holds the vehicle for resale, he need not secure a new certificate of ownership but, upon transfer to another person, shall promptly mail or deliver to the transferee or to the department the certificate, affidavit and other documents (and articles) required to be sent to the department by the transferee. [1967 c 140 § 3; 1961 c 12 § 46.12.130. Prior: 1959 c 166 § 11; prior: 1947 c 164 § 4(d); 1937 c 188 § 6(d); Rem. Supp. 1947 § 6312-6(d).]

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.151 Procedure when department unsatisfied as to ownership and security interests. If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department may register the vehicle but shall either:

(1) Withhold issuance of a certificate of ownership for a period of three years or until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or

(2) As a condition of issuing a certificate of ownership, require the applicant to file with the department a bond for a period of three years in the form prescribed by the department and executed by the applicant. The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss or damage, including reasonable attorney's fees, by reason of the issuance of the certificate of ownership of the vehicle or on account of any defect in or undisclosed security interest upon the right, title and interest of the applicant in and to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. At the end of three years or prior thereto if the vehicle is no longer registered in this state or when satisfactory evidence of ownership is surrendered to the department, the owner may apply to the department for a replacement certificate of ownership

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without reference to the bond. [1990 c 250 § 30; 1967 c 140 § 9.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.160 Refusal or cancellation of certificate—Notice—Penalty for subsequent operation. If the department determines at any time that an applicant for certificate of ownership or for a certificate of license registration for a vehicle is not entitled thereto, the department may refuse to issue such certificate or to license the vehicle and may, for like reason, after notice, and in the exercise of discretion, cancel license registration already acquired or any outstanding certificate of ownership. Notice of cancellation may be accomplished by sending a notice by first-class mail using the last known address in department records for the registered or legal vehicle owner or owners, and recording the transmittal on an affidavit of first-class mail. It shall then be unlawful for any person to remove, drive, or operate the vehicle until a proper certificate of ownership or license registration has been issued, and any person removing, driving, or operating such vehicle after the refusal of the department to issue certificates or the revocation thereof shall be guilty of a gross misdemeanor. [1994 c 262 § 5; 1975 c 25 § 12; 1961 c 12 § 46.12.160. Prior: 1959 c 166 § 14; prior: 1947 c 164 § 4(g); 1937 c 188 § 6(g); Rem. Supp. 1947 § 6312-6(g).]

46.12.170 Procedure when security interest is granted on vehicle. (1) If, after a certificate of ownership is issued, a security interest is granted on the vehicle described therein, the registered owner or secured party shall, within ten days thereafter, present an application to the department, to which shall be attached the certificate of ownership last issued covering the vehicle, or such other documentation as may be required by the department, which application shall be upon a form approved by the department and shall be accompanied by a fee of five dollars in addition to all other fees. The department, if satisfied that there should be a reissue of the certificate, shall note such change upon the vehicle records and issue to the secured party a new certificate of ownership.

(2) Whenever there is no outstanding secured obligation and no commitment to make advances and incur obligations or otherwise give value, the secured party must either:

(a) Assign the certificate of ownership to the debtor or the debtor's assignee or transferee, and transmit the certificate to the department with an accompanying fee of five dollars in addition to all other fees; or

(b) Assign the certificate of ownership to the debtor's assignee or transferee together with the debtor's or debtor's assignee's release of interest.

(3) Upon receipt of the certificate of ownership and the debtor's release of interest and required fees as provided in subsection (2)(a) of this section, the department shall issue a new certificate of ownership and transmit it to the registered owner.

(4) If the affected secured party fails to either assign the certificate of ownership to the debtor or the debtor's assignee or transferee or transmit the certificate of ownership to the

department within ten days after proper demand, that secured party shall be liable to the debtor or the debtor's assignee or transferee for one hundred dollars, and in addition for any loss caused to the debtor or the debtor's assignee or transferee by such failure. [2007 c 96 § 2; 2002 c 352 § 5. Prior: 1997 c 432 § 5; 1997 c 241 § 5; 1994 c 262 § 6; 1979 ex.s. c 113 § 2; 1975 c 25 § 13; 1967 c 140 § 4; 1961 c 12 § 46.12.170; prior: 1951 c 269 § 4; 1947 c 164 § 5; 1939 c 182 § 2; 1937 c 188 § 7; Rem. Supp. 1947 § 6312-7.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.181 Duplicate for lost, stolen, mutilated, etc., certificates. If a certificate of ownership is lost, stolen, mutilated, or destroyed or becomes illegible, the first priority secured party or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon tender of five dollars in addition to all other fees and upon furnishing information satisfactory to the department. The duplicate certificate of ownership shall contain the legend, "duplicate." It shall be provided to the first priority secured party named in it or, if none, to the owner.

A person recovering an original certificate of ownership for which a duplicate has been issued shall promptly surrender the original certificate to the department. [2002 c 352 § 6; 1997 c 241 § 7; 1994 c 262 § 7; 1990 c 250 § 31; 1969 ex.s. c 170 § 1; 1967 c 140 § 8.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.12.190 Legal owner not liable for acts of registered owner. The person, firm, copartnership, association or corporation to whom a certificate of ownership shall have been issued shall not thereby incur liability or be responsible for damage, or otherwise, resulting from any act or contract made by the registered owner or by any other person acting for, or by or under the authority of such registered owner. [1961 c 12 § 46.12.190. Prior: 1937 c 188 § 10, part; RRS § 6312-10, part.]

46.12.200 State or director not liable for acts in administering chapter. No suit or action shall ever be commenced or prosecuted against the director of licensing or the state of Washington by reason of any act done or omitted to be done in the administration of the duties and responsibilities imposed upon the director under this chapter. [1979 c 158 § 134; 1967 c 32 § 11; 1961 c 12 § 46.12.200. Prior: 1937 c 188 § 10, part; RRS § 6312-10, part.]

46.12.210 Penalty for false statements or illegal transfers. Any person who knowingly makes any false statement of a material fact, either in his or her application for the certificate of ownership or in any assignment thereof, or who with intent to procure or pass ownership to a vehicle which he or she knows or has reason to believe has been stolen, receives or transfers possession of the same from or to

another or who has in his or her possession any vehicle which he or she knows or has reason to believe has been stolen, and who is not an officer of the law engaged at the time in the performance of his or her duty as such officer, is guilty of a class B felony and upon conviction shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than ten years, or both such fine and imprisonment. This provision shall not exclude any other offenses or penalties prescribed by any existing or future law for the larceny or unauthorized taking of a motor vehicle. [2003 c 53 § 236; 1961 c 12 § 46.12.210. Prior: 1937 c 188 § 12; RRS § 6312-12.]

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

46.12.215 Unlawful sale of certificate of ownership. It is a class C felony for a person to sell or convey a vehicle certificate of ownership except in conjunction with the sale or transfer of the vehicle for which the certificate was originally issued. [1995 c 256 § 1.]

46.12.220 Alteration or forgery—Penalty. Any person who alters or forges or causes to be altered or forged any certificate issued by the director pursuant to the provisions of this chapter, or any assignment thereof, or any release or notice of release of any encumbrance referred to therein, or who shall hold or use any such certificate or assignment, or release or notice of release, knowing the same to have been altered or forged, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 237; 1967 c 32 § 12; 1961 c 12 § 46.12.220. Prior: 1937 c 188 § 13; RRS § 6312-13.]

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

46.12.230 Permit to licensed wrecker to junk vehicle—Fee. Any licensed wrecker in possession of a motor vehicle ten years old or older, and ownership of which or whose owner's residence is unknown, may apply to the department for a permit to junk or wreck such motor vehicle, or any part thereof. Upon such application, a permit may be issued by the department, upon receipt of a fee of one dollar, in a form to be prescribed by the department to authorize such wrecker to wreck or junk such vehicle, or any part thereof. [1975 c 25 § 14; 1967 c 32 § 13; 1961 c 12 § 46.12.230. Prior: 1957 c 273 § 12.]

46.12.240 Appeals to superior court from suspension, revocation, cancellation, or refusal of license or certificate. (1) The suspension, revocation, cancellation, or refusal by the director of any license or certificate provided for in chapters 46.12 and 46.16 RCW is conclusive unless the person whose license or certificate is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county, or at his option to the superior court of the county of his residence, for the purpose of having the suspension, revocation, cancellation, or refusal of the license or certificate set aside. Notice of appeal must be filed within ten days after receipt of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the notice of appeal the court shall issue an order to the director to show cause why the

license should not be granted or reinstated, which order shall be returnable not less than ten days after the date of service thereof upon the director. Service shall be in the manner prescribed for service of summons and complaint in other civil actions. Upon the hearing on the order to show cause, the court shall hear evidence concerning matters with reference to the suspension, revocation, cancellation, or refusal of the license or certificate and shall enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal.

(2) This section does not apply to vehicle registration cancellations under *RCW 46.16.710 through 46.16.760. [1987 c 388 § 8; 1965 ex.s. c 121 § 42; 1961 c 12 § 46.20.340. Prior: 1953 c 23 § 2; 1937 c 188 § 74; RRS § 6312-74. Formerly RCW 46.20.340.]

*Reviser's note: RCW 46.16.710 through 46.16.760 expired July 1, 1993.

Effective date—Severability—1987 c 388: See notes following RCW 46.20.342.

46.12.250 Ownership of motor vehicle by person under eighteen prohibited—Exceptions. It shall be unlawful for any person under the age of eighteen to be the registered or legal owner of any motor vehicle: PROVIDED, That RCW 46.12.250 through 46.12.270 shall not apply to any person who is on active duty in the United States armed forces nor to any minor who is in effect emancipated: PROVIDED further, That RCW 46.12.250 through 46.12.270 shall not apply to any person who is the registered owner of a motor vehicle prior to August 11, 1969 or who became the registered or legal owner of a motor vehicle while a nonresident of this state. [1969 ex.s. c 125 § 1.]

46.12.260 Sale or transfer of motor vehicle ownership to person under eighteen prohibited. It shall be unlawful for any person to convey, sell or transfer the ownership of any motor vehicle to any person under the age of eighteen: PROVIDED, That this section shall not apply to a vendor if the minor provides the vendor with a certified copy of an original birth registration showing the minor to be over eighteen years of age. Such certified copy shall be transmitted to the department of licensing by the vendor with the application for title to said motor vehicle. [1979 c 158 § 135; 1969 ex.s. c 125 § 2.]

46.12.270 Penalty for violation of RCW 46.12.250 or 46.12.260. Any person violating RCW 46.12.250 or 46.12.260 or who transfers, sells, or encumbers an interest in a vehicle in violation of RCW 46.61.5058, with actual notice of the prohibition, is guilty of a misdemeanor and shall be punished by a fine of not more than two hundred fifty dollars or by imprisonment in a county jail for not more than ninety days. [1994 c 139 § 2; 1993 c 487 § 6; 1969 ex.s. c 125 § 3.]

46.12.280 Campers—Application to—Rules and regulations. The provisions of chapter 46.12 RCW concerning the registration and titling of vehicles, and the perfection of security interests therein shall apply to campers, as defined in RCW 46.04.085. In addition, the director of licensing shall have the power to adopt such rules and regulations he deems necessary to implement the registration and titling of campers

and the perfection of security interests therein. [1979 c 158 § 136; 1971 ex.s. c 231 § 6.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.12.290 Mobile or manufactured homes, application of chapter to—Rules. (1) The provisions of chapter 46.12 RCW insofar as they are not inconsistent with the provisions of chapter 231, Laws of 1971 ex. sess. or chapter 65.20 RCW apply to mobile or manufactured homes: PROVIDED, That RCW 46.12.080 and 46.12.250 through 46.12.270 shall not apply to mobile or manufactured homes.

(2) In order to transfer ownership of a mobile home, all registered owners of record must sign the title certificate releasing their ownership. If the mobile home was manufactured before June 15, 1976, the registered owner must sign an affidavit in the form prescribed by the department of licensing that notice was provided to the purchaser of the mobile home that failure of the mobile home to meet federal housing and urban development standards or failure of the mobile home to meet a fire and safety inspection by the department of labor and industries may result in denial by a local jurisdiction of a permit to site the mobile home.

(3) The director of licensing shall have the power to adopt such rules as necessary to implement the provisions of this chapter relating to mobile homes. [2005 c 399 § 4; 1993 c 154 § 2. Prior: 1989 c 343 § 20; 1989 c 337 § 4; 1981 c 304 § 2; 1979 c 158 § 137; 1971 ex.s. c 231 § 14.]

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

Severability—1981 c 304: See note following RCW 26.16.030.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.12.295 Mobile homes—Titling functions transferred to department of community, trade, and economic development. The department of licensing shall transfer all titling functions pertaining to mobile homes to the housing division of the department of community, trade, and economic development by July 1, 1991. The department of licensing shall transfer all books, records, files, and documents pertaining to mobile home titling to the department of community, trade, and economic development. The directors of the departments may immediately take such steps as are necessary to ensure that chapter 176, Laws of 1990 is implemented on June 7, 1990. [1995 c 399 § 117; 1990 c 176 § 3.]

46.12.300 Serial numbers on vehicles, watercraft, campers, or parts—Buying, selling, etc., with numbers removed, altered, etc.—Penalty. Whoever knowingly buys, sells, receives, disposes of, conceals, or has knowingly in his possession any vehicle, watercraft, camper, or component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed for the purpose of concealment or misrepresenting the identity of the said vehicle, watercraft, camper, or component part thereof shall be guilty of a gross misdemeanor. [1975-'76 2nd ex.s. c 91 § 1.]

Severability—1975-'76 2nd ex.s. c 91: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 91 § 10.]

Effective date—1975-'76 2nd ex.s. c 91: "This act shall take effect on July 1, 1976." [1975-'76 2nd ex.s. c 91 § 11.]

46.12.310 Serial numbers—Seizure and impoundment of vehicles, etc.—Notice to interested persons—Release to owner, etc. (1) Any vehicle, watercraft, camper, or any component part thereof, from which the manufacturer's serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered, obliterated, or destroyed, may be impounded and held by the seizing law enforcement agency for the purpose of conducting an investigation to determine the identity of the article or articles, and to determine whether it had been reported stolen.

(2) Within five days of the impounding of any vehicle, watercraft, camper, or component part thereof, the law enforcement agency seizing the article or articles shall send written notice of such impoundment by certified mail to all persons known to the agency as claiming an interest in the article or articles. The seizing agency shall exercise reasonable diligence in ascertaining the names and addresses of those persons claiming an interest in the article or articles. Such notice shall advise the person of the fact of seizure, the possible disposition of the article or articles, the requirement of filing a written claim requesting notification of potential disposition, and the right of the person to request a hearing to establish a claim of ownership. Within five days of receiving notice of other persons claiming an interest in the article or articles, the seizing agency shall send a like notice to each such person.

(3) If reported as stolen, the seizing law enforcement agency shall promptly release such vehicle, watercraft, camper, or parts thereof as have been stolen, to the person who is the lawful owner or the lawful successor in interest, upon receiving proof that such person presently owns or has a lawful right to the possession of the article or articles. [1995 c 256 § 2; 1975-'76 2nd ex.s. c 91 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.320 Serial numbers—Disposition of vehicles, etc., authorized, when. Unless a claim of ownership to the article or articles is established pursuant to RCW 46.12.330, the law enforcement agency seizing the vehicle, watercraft, camper, or component part thereof may dispose of them by destruction, by selling at public auction to the highest bidder, or by holding the article or articles for the official use of the agency, when:

(1) The true identity of the article or articles cannot be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks or by any other means;

(2) After the true identity of the article or articles has been established, the seizing law enforcement agency cannot locate the person who is the lawful owner or if such lawful owner or his successor in interest fails to claim the article or articles within forty-five days after receiving notice from the seizing law enforcement agency that the article or articles is in its possession.

No disposition of the article or articles pursuant to this section shall be undertaken until at least sixty days have

elapsed from the date of seizure and written notice of the right to a hearing to establish a claim of ownership pursuant to RCW 46.12.330 and of the potential disposition of the article or articles shall have first been served upon the person who held possession or custody of the article when it was impounded and upon any other person who, prior to the final disposition of the article, has notified the seizing law enforcement agency in writing of a claim to ownership or lawful right to possession thereof. [1975-'76 2nd ex.s. c 91 § 3.]

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.330 Serial numbers—Hearing—Appeal—Removal to court—Release. (1) Any person may submit a written request for a hearing to establish a claim of ownership or right to lawful possession of the vehicle, watercraft, camper, or component part thereof seized pursuant to this section.

(2) Upon receipt of a request for hearing, one shall be held before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW.

(3) Such hearing shall be held within a reasonable time after receipt of a request therefor. Reasonable investigative activities, including efforts to establish the identity of the article or articles and the identity of the person entitled to the lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time within which a hearing must be held.

(4) The hearing and any appeal therefrom shall be conducted in accordance with Title 34 RCW.

(5) The burden of producing evidence shall be upon the person claiming to be the lawful owner or to have the lawful right of possession to the article or articles.

(6) Any person claiming ownership or right to possession of an article or articles subject to disposition under RCW 46.12.310 through 46.12.340 may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is two hundred dollars or more. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to judgment for costs and reasonable attorney's fees. For purposes of this section the seizing law enforcement agency shall not be considered a claimant.

(7) The seizing law enforcement agency shall promptly release the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof. [1981 c 67 § 27; 1975-'76 2nd ex.s. c 91 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.340 Serial numbers—Release of vehicle, etc. The seizing law enforcement agency may release the article or articles impounded pursuant to this section to the person claiming ownership without a hearing pursuant to RCW 46.12.330 when such law enforcement agency is satisfied after an appropriate investigation as to the claimant's right to

lawful possession. If no hearing is contemplated as provided for in RCW 46.12.330 such release shall be within a reasonable time following seizure. Reasonable investigative activity, including efforts to establish the identity of the article or articles and the identity of the person entitled to lawful possession or custody of the article or articles shall be considered in determining the reasonableness of the time in which release must be made. [1975-'76 2nd ex.s. c 91 § 5.]

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.350 Assignment of new serial number. An identification number shall be assigned to any article impounded pursuant to RCW 46.12.310 in accordance with the rules promulgated by the department of licensing prior to:

- (1) The release of the article from the custody of the seizing agency; or
- (2) The use of the article by the seizing agency. [1979 c 158 § 138; 1975-'76 2nd ex.s. c 91 § 6.]

Severability—Effective date—1975-'76 2nd ex.s. c 91: See notes following RCW 46.12.300.

46.12.370 Lists of registered and legal owners of vehicles—Furnished for certain purposes—Penalty for unauthorized use. In addition to any other authority which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1) The manufacturers of motor vehicles, or their authorized agents, to be used to enable those manufacturers to carry out the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(3) A commercial parking company requiring the names and addresses of registered owners to notify them of outstanding parking violations. Subject to the disclosure agreement provisions of RCW 46.12.380 and the requirements of Executive Order 97-01, the department may provide only the parts of the list that are required for completion of the work required of the company;

(4) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle excise tax, licensing, title, and registration information to motor vehicle dealers;

(5) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing; or

(6) A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority

requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators.

Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

If a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer, governmental agency, commercial parking company, authorized agent, contractor, financial institution, toll facility operator, or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing. [2005 c 340 § 1; 2004 c 230 § 1. Prior: 1997 c 432 § 6; 1997 c 33 § 1; 1982 c 215 § 1.]

46.12.380 Disclosure of names and addresses of individual vehicle owners. (1) Notwithstanding the provisions of chapter 42.56 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

(3) The disclosing entity shall retain the request for disclosure for three years.

(4) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. The notice also shall contain the name and address of the requesting party.

(5) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(6) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(7) This section shall not apply to title history information under RCW 19.118.170. [2005 c 340 § 2; 2005 c 274 § 304; 1995 c 254 § 10; 1990 c 232 § 2; 1987 c 299 § 1; 1984 c 241 § 2.]

Reviser's note: This section was amended by 2005 c 274 § 304 and by 2005 c 340 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

Legislative finding and purpose—1990 c 232: "The legislature recognizes the extraordinary value of the vehicle title and registration records for law enforcement and commerce within the state. The legislature also recognizes that indiscriminate release of the vehicle owner information to be an infringement upon the rights of the owner and can subject owners to intrusions on their privacy. The purpose of this act is to limit the release of vehicle owners' names and addresses while maintaining the availability of the vehicle records for the purposes of law enforcement and commerce." [1990 c 232 § 1.]

46.12.390 Disclosure violations, penalties. (1) The department may review the activities of a person who receives vehicle record information to ensure compliance with the limitations imposed on the use of the information. The department shall suspend or revoke for up to five years the privilege of obtaining vehicle record information of a person found to be in violation of chapter 42.56 RCW, this chapter, or a disclosure agreement executed with the department.

(2) In addition to the penalty in subsection (1) of this section:

(a) The unauthorized disclosure of information from a department vehicle record; or

(b) The use of a false representation to obtain information from the department's vehicle records; or

(c) The use of information obtained from the department vehicle records for a purpose other than what is stated in the request for information or in the disclosure agreement executed with the department; or

(d) The sale or other distribution of any vehicle owner name or address to another person not disclosed in the request or disclosure agreement

is a gross misdemeanor punishable by a fine not to exceed ten thousand dollars, or by imprisonment in a county jail not to exceed one year, or by both such fine and imprisonment for each violation. [2005 c 274 § 305; 1990 c 232 § 3.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Legislative finding and purpose—1990 c 232: See note following RCW 46.12.380.

46.12.420 Street rod vehicles. The state patrol shall inspect a street rod vehicle and assign a vehicle identification number in accordance with this chapter.

A street rod vehicle shall be titled as the make and year of the vehicle as originally manufactured. The title shall be branded with the designation "street rod." [1996 c 225 § 6.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.12.430 Parts cars. The owner of a parts car must possess proof of ownership for each such vehicle. [1996 c 225 § 7.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.12.440 Kit vehicles—Application for certificate of ownership. The following procedures must be followed when applying for a certificate of ownership for a kit vehicle:

(1) The vehicle identification number (VIN) of a new vehicle kit and of a body kit will be taken from the manufacturer's certificate of origin belonging to that vehicle. If the VIN is not available, the Washington state patrol shall assign a VIN at the time of inspection.

(2) The model year of a manufactured new vehicle kit and manufactured body kit is the year reflected on the manufacturer's certificate of origin.

(3) The make shall be listed as "KITV," and the series and body designation must describe what the vehicle looks like, i.e. Bradley GT, 57 MG, and must include the word "replica."

(4) Except for kit vehicles licensed under RCW 46.16.680(5), kit vehicles must comply with chapter 204-90 WAC.

(5) The application for the certificate of ownership must be accompanied by the following documents:

(a) For a manufactured new vehicle kit, the manufacturer's certificate of origin or equivalent document;

(b)(i) For a manufactured body kit, the manufacturer's certificate of origin or equivalent document; (ii) for the frame, the title or a certified copy or equivalent document;

(c) Bills of sale or invoices for all major components used in the construction of the vehicle. The bills of sale must be notarized unless the vendor is registered with the department of revenue for the collection of retail sales or use tax. The bills of sale must include the names and addresses of the seller and purchaser, a description of the vehicle or part being sold, including the make, model, and identification or serial number, the date of sale, and the purchase price of the vehicle or part;

(d) A statement as defined in WAC 308-56A-150 by an authorized inspector of the Washington state patrol or other person authorized by the department of licensing verifying the vehicle identification number, and year and make when applicable;

(e) A completed declaration of value form (TD 420-737) to determine the value for excise tax if the purchase cost and year is unknown or incomplete.

(6) A Washington state patrol VIN inspector must ensure that all parts are documented by titles, notarized bills of sale, or business receipts such as obtained from a wrecking yard purchase. The bills of sale must contain the VIN of the vehicle the parts came from, or the yard number if from a wrecking yard. [1996 c 225 § 8.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.12.450 Kit vehicles—Issuance of certificate of ownership or registration. The following documents are required for issuance of a certificate of ownership or registration for a kit vehicle:

(1) For a new vehicle kit or a manufactured body kit, the owner shall supply a manufacturer's certificate of origin or a factory invoice.

(2) For a manufactured body kit, proof of ownership for all major parts used in the construction of the vehicle is required.

(a) Major parts include:

(i) Frame;

(ii) Engine;

(iii) Axles;

(iv) Transmission;

(v) Any other parts that carry vehicle identification numbers.

(b) If the frame from a donor vehicle is used and the remainder of the donor vehicle is to be sold or destroyed, the title is required as an ownership document to the buyer. The agent or subagent may make a certified copy of the title for documentation of the frame for this transaction.

(3) Payment of use tax on the frame and all component parts used is required, unless proof of payment of the sales or use tax is submitted.

(4) A completed declaration of value form (TD 420-737) to determine the value of the vehicle for excise tax purposes is required if the purchase cost and year of purchase is unknown.

(5) An odometer disclosure statement is required on all originals and transfers of title for vehicles under ten years old, unless otherwise exempt by law. [1996 c 225 § 9.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.12.500 Commercial vehicle—Compliance statement. When applicable, the certificate of registration must include a statement that the owner or entity operating a commercial vehicle must be in compliance with the requirements of the United States department of transportation federal motor carrier safety regulations contained in Title 49 C.F.R. Part 382, controlled substances and alcohol use and testing. [1999 c 351 § 4.]

Reviser's note: This section was directed to be codified in chapter 46.16 RCW, but placement in chapter 46.12 RCW appears to be more appropriate.

46.12.510 Donations for organ donation awareness. An applicant for a new or renewed registration for a vehicle required to be registered under this chapter or chapter 46.16 RCW may make a donation of one dollar or more to the organ and tissue donation awareness account to promote the donation of organs and tissues under the provisions of the uniform anatomical gift act, chapter 68.64 RCW. The department shall collect the donations and credit the donations to the organ and tissue donation awareness account, created in RCW 68.64.210. At least quarterly, the department shall transmit donations made to the organ and tissue donation awareness account to the foundation established for organ and tissue donation awareness purposes by the Washington state organ procurement organizations. All Washington state organ procurement organizations will have proportional

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access to these funds to conduct public education in their service areas. The donation of one or more dollars is voluntary and may be refused by the applicant. The department shall make available informational booklets or other informational sources on the importance of organ and tissue donations to applicants.

The department shall inquire of each applicant at the time the completed application is presented whether the applicant is interested in making a donation of one dollar or more and shall also specifically inform the applicant of the option for organ and tissue donations as required by RCW 46.20.113. The department shall also provide written information to each applicant volunteering to become an organ and tissue donor. The written information shall disclose that the applicant's name shall be transmitted to the organ and tissue donor registry created in RCW 68.64.200, and that the applicant shall notify a Washington state organ procurement organization of any changes to the applicant's donor status.

All reasonable costs associated with the creation of the donation program created under this section must be paid proportionally or by other agreement by a Washington state organ procurement organization.

For the purposes of this section, "reasonable costs" and "Washington state organ procurement organization" have the same meaning as defined in RCW 68.64.010. [2008 c 139 § 26; 2003 c 94 § 6.]

Uniformity of application and construction—2008 c 139: See RCW 68.64.902.

Application—2003 c 94 § 6: "Section 6 of this act takes effect with registrations that are due or become due January 1, 2004, or later." [2003 c 94 § 8.]

Findings—2003 c 94: See note following RCW 68.64.200.

**Chapter 46.16 RCW
VEHICLE LICENSES**

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46.16.004 Definitions. For the purposes of this chapter unless the context clearly requires otherwise:

(1) "Commercial motor vehicle," for the purposes of requiring a department of transportation number, means the same as defined in RCW 46.25.010(6), or a motor vehicle used in commerce when the motor vehicle: (a) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit of a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); (b) has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or (c) is used in the transportation of hazardous materials, as defined in RCW 46.25.010(13);

(2) "Department" means the department of licensing;

(3) "Department of transportation number" means a department of transportation number from the federal motor carrier safety administration;

(4) "Interstate commercial motor vehicle" means a commercial vehicle that operates in more than one state;

(5) "Intrastate commercial motor vehicle" means a commercial vehicle that operates exclusively within the state of Washington;

(6) "Motor carrier" means a person or entity who has been issued a department of transportation number and who owns a commercial motor vehicle. [2007 c 419 § 3.]

Findings—2007 c 419: "The legislature finds and declares that it is the policy of the state of Washington to prevent the loss of human lives and the loss of property and vehicles, and to protect the traveling environment of the state of Washington through sound and consistent regulatory provisions for interstate and intrastate motor carriers.

The legislature further finds and declares that it is a policy of the state of Washington to require commercial motor vehicles operating on state roadways to comply with rigorous federal and state safety regulations. The legislature also finds that intrastate and interstate commercial motor vehicles should comply with consistent state and federal commercial vehicle regulations." [2007 c 419 § 1.]

Short title—2007 c 419: "This act may be known and cited as the Tony Qamar and Daniel Johnson act." [2007 c 419 § 2.]

Application—2007 c 419: "This act does not apply to:

(1) Commercial motor vehicles that are operated under a permit and subject to economic regulation under chapters 81.68, 81.70, 81.77, and 81.80 RCW; and

(2) Vehicles exempted from registration by RCW 46.16.020." [2007 c 419 § 18.]

46.16.006 "Registration year" defined—Registration months—"Last day of the month" defined. (1) The term "registration year" for the purposes of chapters 46.16, 82.44, and 82.50 RCW means the effective period of a vehicle license issued by the department. Such year commences at 12:01 a.m. on the date of the calendar year designated by the department and ends at 12:01 a.m. on the same date of the next succeeding calendar year. If a vehicle license previously issued in this state has expired and is renewed with a different registered owner, a new registration year is deemed to commence upon the date the expired license is renewed in order that the renewed license be useable for a full twelve-month period.

(2) Each registration year may be divided into twelve registration months. Each registration month commences on the day numerically corresponding to the day of the calendar month on which the registration year begins, and terminates on the numerically corresponding day of the next succeeding calendar month.

(3) Where the term "last day of the month" is used in chapters 46.16, 82.44, and 82.50 RCW in lieu of a specified

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day of any calendar month it means the last day of such calendar month or months irrespective of the numerical designation of that day.

(4) If the final day of a registration year or month falls on a Saturday, Sunday, or legal holiday, such period extends through the end of the next business day. [1992 c 222 § 1; 1983 c 27 § 1; 1981 c 214 § 1; 1975 1st ex.s. c 118 § 1.]

Effective date—1975 1st ex.s. c 118: "This 1975 amendatory act shall take effect on January 1, 1977: PROVIDED, That the director of the department of motor vehicles may, prior to such effective date, undertake and perform duties and conduct activities necessary for the timely implementation of this 1975 amendatory act on such date." [1975 1st ex.s. c 118 § 19.]

Severability—1975 1st ex.s. c 118: "If any provision of this 1975 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this 1975 amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby." [1975 1st ex.s. c 118 § 18.]

46.16.010 Licenses and plates required—Penalties—Exceptions—Expired registration, impoundment. (1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a traffic infraction, and any person committing this infraction shall pay a penalty of five hundred twenty-nine dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(5) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Off-road vehicles operating on nonhighway roads under RCW 46.09.115;

(d) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding

temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(e) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(f) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(g) "Trams" used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have an average daily traffic of not more than 15,000 vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another;

(h) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(6) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

(c) An off-road vehicle operated on a street, road, or highway as authorized under RCW 46.09.180.

(7)(a) A motor vehicle subject to initial or renewal registration under this section shall not be registered to a natural person unless the person at time of application:

(i) Presents an unexpired Washington state driver's license; or

(ii) Certifies that he or she is:

(A) A Washington resident who does not operate a motor vehicle on public roads; or

(B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

(b) For shared or joint ownership, the department will set up procedures to verify that all owners meet the requirements of this subsection.

(c) A person falsifying residency is guilty of a gross misdemeanor punishable only by a fine of five hundred twenty-nine dollars.

(d) The department may adopt rules necessary to implement this subsection, including rules under which a natural person applying for registration may be exempt from the requirements of this subsection where the person provides evidence satisfactory to the department that he or she has a valid and compelling reason for not being able to meet the requirements of this subsection.

(8) A vehicle with an expired registration of more than forty-five days parked on a public street may be impounded by a police officer under RCW 46.55.113(2). [2007 c 242 § 2; 2006 c 212 § 1. Prior: 2005 c 350 § 1; 2005 c 323 § 2; 2005 c 213 § 6; prior: 2003 c 353 § 8; 2003 c 53 § 238; 2000 c 229 § 1; 1999 c 277 § 4; prior: 1997 c 328 § 2; 1997 c 241 § 13; 1996 c 184 § 1; 1993 c 238 § 1; 1991 c 163 § 1; 1989 c 192 § 2; 1986 c 186 § 1; 1977 ex.s. c 148 § 1; 1973 1st ex.s. c 17 § 2; 1972 ex.s. c 5 § 2; 1969 c 27 § 3; 1967 c 202 § 2; 1963 ex.s. c 3 § 51; 1961 ex.s. c 21 § 32; 1961 c 12 § 46.16.010; prior: 1955 c 265 § 1; 1947 c 33 § 1; 1937 c 188 § 15; Rem. Supp. 1947 § 6312-15; 1929 c 99 § 5; RRS § 6324.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—2005 c 350: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 350 § 2.]

Declaration and intent—2005 c 323: "When a person establishes residency in this state, unless otherwise exempt by statute, the person must register any vehicles to be operated on public highways, and pay all required licensing fees and taxes. Washington residents must renew vehicle registrations annually as well. The intent of this act is to increase the monetary penalties associated with failure to properly register vehicles in the state of Washington." [2005 c 323 § 1.]

Effective date—2005 c 323: "This act takes effect August 1, 2005." [2005 c 323 § 4.]

Application—2005 c 323: "This act applies to registrations due or to become due on or after January 1, 2006." [2005 c 323 § 5.]

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.010.

Effective date—2003 c 353: See note following RCW 46.04.320.

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

Effective date—2000 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 2000]." [2000 c 229 § 9.]

Effective date—1996 c 184 §§ 1-6: "Sections 1 through 6 of this act take effect January 1, 1997." [1996 c 184 § 8.]

Legislative intent—1989 c 192: "The legislature recognizes that there are residents of this state who intentionally register motor vehicles in other states to evade payment of taxes and fees required by the laws of this state. This results in a substantial loss of revenue to the state. It is the intent of the legislature to impose a stronger criminal penalty upon those residents who defraud the state, thereby enhancing compliance with the registration laws of this state and further enhancing enforcement and collection efforts.

In order to encourage voluntary compliance with the registration laws of this state, administrative penalties associated with failing to register a motor vehicle are waived until September 1, 1989. It is not the intent of the legislature to waive traffic infraction or criminal traffic violations imposed prior to July 23, 1989." [1989 c 192 § 1.]

Effective date—1989 c 192 § 2: "Section 2 of this act shall take effect September 1, 1989." [1989 c 192 § 3.]

46.16.0105 Exemption—Vehicles in national recreation areas. After initial vehicle registration, motor vehicles operated solely within a national recreation area that is not accessible by a state highway are exempt from annual registration renewal and the associated fees under RCW 46.16.0621. [2005 c 79 § 1.]

46.16.011 Allowing unauthorized person to drive—Penalty. It is unlawful for any person in whose name a vehicle is registered knowingly to permit another person to drive the vehicle when the other person is not authorized to do so under the laws of this state. A violation of this section is a misdemeanor. [1987 c 388 § 10.]

Severability—1987 c 388: See note following RCW 46.20.342.

Allowing unauthorized child to drive: RCW 46.20.024.

46.16.012 Immunity from liability for licensing non-roadworthy vehicle. The director, the state of Washington, and its political subdivisions shall be immune from civil liability arising from the issuance of a vehicle license to a non-roadworthy vehicle. [1986 c 186 § 5.]

46.16.015 Emission control inspections required—Exceptions—Educational information. (1) Neither the (2008 Ed.)

department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle or change the registered owner of a licensed vehicle, for any vehicle that is required to be inspected under chapter 70.120 RCW, unless the application for issuance or renewal is: (a) Accompanied by a valid certificate of compliance or a valid certificate of acceptance issued pursuant to chapter 70.120 RCW; or (b) exempted from this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within six months of the date of application for the vehicle license or license renewal. Certificates for fleet or owner tested diesel vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchased the vehicle for purposes other than resale;

(b) Motor vehicles with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) Farm vehicles as defined in RCW 46.04.181;

(g) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW;

(h) Classes of motor vehicles exempted by the director of the department of ecology;

(i) Collector cars as identified by the department of licensing under RCW 46.16.305(1);

(j) Beginning January 1, 2000, vehicles that are less than five years old or more than twenty-five years old; or

(k) Hybrid motor vehicles that obtain a rating by the environmental protection agency of at least fifty miles per gallon of gas during city driving. For purposes of this section, a hybrid motor vehicle is one that uses propulsion units powered by both electricity and gas.

The provisions of (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) The department of ecology shall provide information to motor vehicle owners regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such areas. In addition the department of ecology shall provide information to motor vehicle owners on the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution. The department of licensing shall send to all registered motor vehicle owners affected by the emission testing program notice that they must have an emission test to renew their registration. [2002 c 24 § 1; 1998 c 342 § 6; 1991 c 199 § 209; 1990 c 42 § 318; 1989 c 240 § 1; 1985 c 7 § 111. Prior: 1983 c 238 § 1; 1983 c 237 § 3; 1980 c 176 § 1; 1979 ex.s. c 163 § 11.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1989 c 240: See RCW 70.120.902.

Severability—1983 c 238: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 238 § 3.]

Legislative finding—1983 c 237: See note following RCW 46.37.467.

Effective date—1979 ex.s. c 163 § 11: "Section 11 of this act shall take effect on January 1, 1982. The director of the department of licensing and the director of the department of ecology are authorized to take immediately such steps as are necessary to ensure that section 11 of this act is implemented on its effective date." [1979 ex.s. c 163 § 16.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

46.16.016 Emission control inspections—Rules for licensing requirements. The director of the department of licensing shall adopt rules implementing and enforcing RCW 46.16.015, except for *RCW 46.16.015(2)(g) in accordance with chapter 34.05 RCW. [1979 ex.s. c 163 § 15.]

***Reviser's note:** RCW 46.16.015 was amended by 1991 c 199 § 209, changing subsection (2)(g) to subsection (2)(f).

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

46.16.017 Emission standards—Compliance required to register, lease, rent, or sell vehicles—Exemptions. After adoption of rules specified in RCW 70.120A.010, no vehicle shall be registered, leased, rented, or sold for use in the state starting with the model year as provided in RCW 70.120A.010 unless the vehicle: (1)(a) Is consistent with the vehicle emission standards as adopted by the department of ecology; (b) is consistent with the carbon dioxide equivalent emission standards as adopted by the department of ecology; and (c) has a California certification label for (i) all emission standards, and (ii) carbon dioxide equivalent emission standards necessary to meet fleet average requirements; or (2) has seven thousand five hundred miles or more. The department of licensing, in consultation with the department of ecology, may adopt rules necessary to implement this section and may provide for reasonable exemptions to these requirements. The department of ecology may exempt public safety vehicles from meeting the standards where the department finds that vehicles necessary to meet the needs of public safety agencies are not otherwise reasonably available. [2005 c 295 § 7.]

Effective date—2005 c 295 §§ 1, 2, 7, and 11-13: See note following RCW 70.120A.010.

46.16.020 Exemptions—State and publicly owned vehicles—Registration. Any vehicle owned, rented, or leased by the state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington and used exclusively by them, and all vehicles owned or leased with an option to purchase by the United States government, or by the government of foreign countries, or by international bodies to which the United States government is a signatory by treaty, or owned or leased by the governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior, and used exclu-

sively in its or their service shall be exempt from the payment of license fees for the licensing thereof as in this chapter provided: PROVIDED, HOWEVER, That such vehicles, except those owned and used exclusively by the United States government and which are identified by clearly exhibited registration numbers or license plates assigned by an instrumentality of that government, shall be registered as prescribed for the license registration of other vehicles and shall display the vehicle license number plates assigned to it. The department shall assign a plate or plates to each vehicle or may assign a block of plates to an agency or political subdivision for further assignment by the agency or political subdivision to individual vehicles registered to it pursuant to this section. The agency, political subdivision, or Indian tribe, except a foreign government or international body, shall pay a fee of two dollars for the plate or plates for each vehicle. An Indian tribe is not entitled to license and register any tribal government service vehicle under this section if that tribe itself licenses or registers any tribal government service vehicles under tribal law. No vehicle license or license number plates shall be issued to any such vehicle under the provisions of this section for the transportation of school children unless and until such vehicle shall have been first personally inspected by the director or the director's duly authorized representative. [1986 c 30 § 1; 1975 1st ex.s. c 169 § 5; 1973 1st ex.s. c 132 § 22; 1967 c 32 § 14; 1965 ex.s. c 106 § 1; 1961 c 12 § 46.16.020. Prior: 1939 c 182 § 4; 1937 c 188 § 21; RRS § 6312-21; 1925 ex.s. c 47 § 1; 1921 c 96 § 17; 1919 c 46 § 2; 1917 c 155 § 12; 1915 c 142 § 17; RRS § 6329.]

Severability—1973 1st ex.s. c 132: See RCW 46.16.900, 46.70.920.

Marking of publicly owned vehicles: RCW 46.08.065 through 46.08.068.

Special license plates issued without fee

Congressional Medal of Honor recipients: RCW 46.16.305.

Surviving spouse or surviving domestic partner of deceased prisoner of war: RCW 73.04.115.

veterans with disabilities, prisoners of war: RCW 73.04.110.

46.16.022 Exemptions—Vehicles owned by Indian tribes—Conditions. (1) The provisions of this chapter relating to licensing of vehicles by this state, including the display of vehicle license number plates and license registration certificates, do not apply to vehicles owned or leased by the governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior, only when:

(a) The vehicle is used exclusively in tribal government service; and

(b) The vehicle has been licensed and registered under a law adopted by such tribal government; and

(c) Vehicle license number plates issued by the tribe showing the initial or abbreviation of the name of the tribe are displayed on the vehicle substantially as provided therefor in this state; and

(d) The tribe has not elected to receive any Washington state license plates for tribal government service vehicles pursuant to RCW 46.16.020; and

(e) If required by the department, the tribe provides the department with vehicle description and ownership information similar to that required for vehicles registered in this state, which may include the model year, make, model series, body type, type of power (gasoline, diesel, or other), VIN,

and the license plate number assigned to each government service vehicle licensed by that tribe.

(2) The provisions of this section are operative as to a vehicle owned or leased by an Indian tribe located within this state and used exclusively in tribal government service only to the extent that under the laws of the tribe like exemptions and privileges are granted to all vehicles duly licensed under the laws of this state for operation of such vehicles on all tribal roads within the tribe's reservation. If under the laws of the tribe, persons operating vehicles licensed by this state are required to pay a license or registration fee or to carry or display vehicle license number plates or a registration certificate issued by the tribe, the tribal government shall comply with the provisions of this state's laws relating to the licensing and registration of vehicles operating on the highways of this state. [1986 c 30 § 2.]

46.16.023 Ride-sharing vehicles—Special plates—Gross misdemeanor. (1) Every owner or lessee of a vehicle seeking to apply for an excise tax exemption under RCW 82.08.0287, 82.12.0282, or 82.44.015 shall apply to the director for, and upon satisfactory showing of eligibility, receive in lieu of the regular motor vehicle license plates for that vehicle, special plates of a distinguishing separate numerical series or design, as the director shall prescribe. In addition to paying all other initial fees required by law, each applicant for the special license plates shall pay an additional license fee of twenty-five dollars upon the issuance of such plates. The special fee shall be deposited in the motor vehicle fund. Application for renewal of the license plates shall be as prescribed for the renewal of other vehicle licenses. No renewal is required for vehicles exempted under RCW 46.16.020.

(2) Whenever the ownership of a vehicle receiving special plates under subsection (1) of this section is transferred or assigned, the plates shall be removed from the motor vehicle, and if another vehicle qualifying for special plates is acquired, the plates shall be transferred to that vehicle for a fee of ten dollars, and the director shall be immediately notified of the transfer of the plates. Otherwise the removed plates shall be immediately forwarded to the director to be canceled. Whenever the owner or lessee of a vehicle receiving special plates under subsection (1) of this section is for any reason relieved of the tax-exempt status, the special plates shall immediately be forwarded to the director along with an application for replacement plates and the required fee. Upon receipt the director shall issue the license plates that are otherwise provided by law.

(3) Any person who knowingly makes any false statement of a material fact in the application for a special plate under subsection (1) of this section is guilty of a gross misdemeanor. [2004 c 223 § 2; 1993 c 488 § 5; 1987 c 175 § 2.]

Finding—Annual recertification rule—Report—1993 c 488: See notes following RCW 82.08.0287.

Effective date—1987 c 175 § 2: "Section 2 of this act shall take effect on January 1, 1988." [1987 c 175 § 4.]

46.16.025 Identification device for exempt farm vehicles—Application for—Contents—Fee. Before any "farm vehicle", as defined in RCW 46.04.181, shall operate on or move along a public highway, there shall be displayed upon

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it in a conspicuous manner a decal or other device, as may be prescribed by the director of licensing and issued by the department of licensing, which shall describe in some manner the vehicle and identify it as a vehicle exempt from the licensing requirements of this chapter. Application for such identifying devices shall be made to the department on a form furnished for that purpose by the director. Such application shall be made by the owner or lessee of the vehicle, or his duly authorized agent over the signature of such owner or agent, and he shall certify that the statements therein are true to the best of his knowledge. The application must show:

- (1) The name and address of the owner of the vehicle;
- (2) The trade name of the vehicle, model, year, type of body, the motor number or the identification number thereof if such vehicle be a motor vehicle, or the serial number thereof if such vehicle be a trailer;
- (3) The purpose for which said vehicle is to be principally used;
- (4) Such other information as shall be required upon such application by the director; and
- (5) Place where farm vehicle is principally used or garaged.

A fee of five dollars shall be charged for and submitted with such application for an identification decal as in this section provided as to each farm vehicle which fee shall be deposited in the motor vehicle fund and distributed proportionately as otherwise provided for vehicle license fees under RCW 46.68.030. Only one application need be made as to each such vehicle, and the status as an exempt vehicle shall continue until suspended or revoked for misuse, or when such vehicle no longer is used as a farm vehicle. [1979 c 158 § 139; 1967 c 202 § 3.]

46.16.028 "Resident" defined—Vehicle registration required. (1) For the purposes of vehicle license registration, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(2) The term "Washington public assistance programs" referred to in subsection (1)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and temporary assistance for needy families.

(3) A resident of the state shall register under chapters 46.12 and 46.16 RCW a vehicle to be operated on the highways of the state. New Washington residents shall be allowed thirty days from the date they become residents as defined in this section to procure Washington registration for their vehicles. This thirty-day period shall not be combined with any other period of reciprocity provided for in this chapter or

chapter 46.85 RCW. [1997 c 59 § 7; 1987 c 142 § 1; 1986 c 186 § 2; 1985 c 353 § 1.]

Effective date—1985 c 353: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except for section 1 of this act, which shall take effect September 1, 1985." [1985 c 353 § 6.]

46.16.029 Purchasing vehicle with foreign plates. It is unlawful to purchase a vehicle bearing foreign license plates without removing and destroying the plates unless (1) the out-of-state vehicle is sold to a Washington resident by a resident of a jurisdiction where the license plates follow the owner or (2) the out-of-state plates may be returned to the jurisdiction of issuance by the owner for refund purposes or (3) for such other reasons as the department may deem appropriate by rule. [1987 c 142 § 2.]

46.16.030 Nonresident exemption—Reciprocity. Except as is herein provided for foreign businesses, the provisions relative to the licensing of vehicles and display of vehicle license number plates and license registration certificates shall not apply to any vehicles owned by nonresidents of this state if the owner thereof has complied with the law requiring the licensing of vehicles in the names of the owners thereof in force in the state, foreign country, territory or federal district of his or her residence; and the vehicle license number plate showing the initial or abbreviation of the name of such state, foreign country, territory or federal district, is displayed on such vehicle substantially as is provided therefor in this state. The provisions of this section shall be operative as to a vehicle owned by a nonresident of this state only to the extent that under the laws of the state, foreign country, territory or federal district of his or her residence, like exemptions and privileges are granted to vehicles duly licensed under the laws of and owned by residents of this state. If under the laws of such state, foreign country, territory or federal district, vehicles owned by residents of this state, operating upon the highways of such state, foreign country, territory or federal district, are required to pay the license fee and carry the vehicle license number plates of such state, foreign country, territory or federal district, the vehicles owned by residents of such state, foreign country, territory or federal district, and operating upon the highways of this state, shall comply with the provisions of this state relating to the licensing of vehicles. Foreign businesses owning, maintaining, or operating places of business in this state and using vehicles in connection with such places of business, shall comply with the provisions relating to the licensing of vehicles insofar as vehicles used in connection with such places of business are concerned. Under provisions of the international registration plan, the nonmotor vehicles of member and nonmember jurisdictions which are properly based and licensed in such jurisdictions are granted reciprocity in this state as provided in *RCW 46.87.070(2). The director is empowered to make and enforce rules and regulations for the licensing of nonresident vehicles upon a reciprocal basis and with respect to any character or class of operation. [1991 c 163 § 2; 1990 c 42 § 110; 1967 c 32 § 15; 1961 c 12 § 46.16.030. Prior: 1937 c 188 § 23; RRS § 6312-23; 1931 c 120 § 1; 1929 c 99 § 4;

1921 c 96 § 11; 1919 c 59 § 6; 1917 c 155 § 7; 1915 c 142 § 11; RRS § 6322.]

***Reviser's note:** RCW 46.87.070 was amended by 2005 c 194 § 5, deleting subsection (1). The language from subsection (2) remains.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

46.16.035 Exemptions—Private school buses. Any bus or vehicle owned and operated by a private school or schools meeting the requirements of RCW 28A.195.010 and used by that school or schools primarily to transport children to and from school or to transport children in connection with school activities shall be exempt from the payment of license fees for the licensing thereof as in this chapter provided. A license issued by the department for such bus or vehicle shall be considered an exempt license under RCW 82.44.010. [1990 c 33 § 584; 1980 c 88 § 1.]

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

46.16.040 Form of application—Contents. Application for original vehicle license shall be made on [a] form furnished for the purpose by the department. Such application shall be made by the owner of the vehicle or duly authorized agent over the signature of such owner or agent, and the applicant shall certify that the statements therein are true to the best of the applicant's knowledge. The application must show:

(1) Name and address of the owner of the vehicle and, if the vehicle is subject to a security agreement, the name and address of the secured party;

(2) Trade name of the vehicle, model, year, type of body, the identification number thereof;

(3) The power to be used—whether electric, steam, gas or other power;

(4) The purpose for which said vehicle is to be used and the nature of the license required;

(5) The licensed gross weight for such vehicle which in the case of for hire vehicles and auto stages with seating capacity of more than six shall be the adult seating capacity thereof, including the operator, as provided for in RCW 46.16.111. In the case of motor trucks, tractors, and truck tractors, the licensed gross weight shall be the gross weight declared by the applicant pursuant to the provisions of RCW 46.16.111;

(6) The unladen weight of such vehicle, if it be a motor truck or trailer, which shall be the shipping weight thereof as given by the manufacturer thereof unless another weight is shown by weight slip verified by a certified weighmaster, which slip shall be attached to the original application;

(7) Such other information as shall be required upon such application by the department. [1987 c 244 § 2; 1975 c 25 § 15; 1969 ex.s. c 170 § 2. Prior: 1967 ex.s. c 83 § 59; 1967 c 32 § 16; 1961 c 12 § 46.16.040; prior: 1947 c 164 § 8; 1937 c 188 § 29; Rem. Supp. 1947 § 6312-29; 1921 c 96 § 5; 1919 c 178 § 1; 1919 c 59 § 4; 1915 c 142 § 5; RRS § 6316.]

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.045 Temporary permits—Authority—Fees—Secure system. (1) The department in its discretion may grant a temporary permit to operate a vehicle for which application for registration has been made, where such application is accompanied by the proper fee pending action upon said application by the department.

(2) The department may authorize vehicle dealers properly licensed pursuant to chapter 46.70 RCW to issue temporary permits to operate vehicles under such rules and regulations as the department deems appropriate.

(3) The fee for each temporary permit application distributed to an authorized vehicle dealer shall be fifteen dollars, five dollars of which shall be credited to the payment of registration fees at the time application for registration is made. The remainder shall be deposited to the state patrol highway account.

(4) The payment of the registration fees to an authorized dealer is considered payment to the state of Washington.

(5) By July 1, 2009, the department shall provide access to a secure system that allows temporary permits issued by vehicle dealers properly licensed pursuant to chapter 46.70 RCW to be generated and printed on demand. By July 1, 2011, all such permits must be generated using the designated system. [2008 c 51 § 1; 2007 c 155 § 1; 1990 c 198 § 1; 1973 1st ex.s. c 132 § 23; 1961 c 12 § 46.16.045. Prior: 1959 c 66 § 1.]

Effective date—2007 c 155: "This act takes effect August 1, 2007." [2007 c 155 § 3.]

Severability—1973 1st ex.s. c 132: See RCW 46.16.900, 46.70.920.

46.16.047 Temporary permits—Form and contents—Duration—Fees. Forms for such temporary permits shall be prescribed and furnished by the department. Temporary permits shall bear consecutive numbers, shall show the name and address of the applicant, trade name of the vehicle, model, year, type of body, identification number and date of application, and shall be such as may be affixed to the vehicle at the time of issuance, and remain on such vehicle only during the period of such registration and until the receipt of permanent license plates. The application shall be registered in the office of the person issuing the permit and shall be forwarded by him to the department each day together with the fee accompanying it.

A fee of fifty cents shall be charged by the person authorized to issue such permit which shall be accounted for in the same manner as the other fees collected by such officers, provided that such fees collected by county auditors or their agents shall be paid to the county treasurer in the same manner as other fees collected by the county auditor and credited to the county current expense fund. [1961 c 12 § 46.16.047. Prior: 1959 c 66 § 2.]

46.16.048 Temporary letter of authority for movement of unlicensed vehicle for special community event. The department in its discretion may issue a temporary letter of authority authorizing the movement of an unlicensed vehicle or the temporary usage of a special plate for the purpose of promoting or participating in an event such as a parade, pageant, fair, convention, or other special community activity. The letter of authority may not be issued to or used by anyone for personal gain, but public identification of the

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sponsor or owner of the donated vehicle shall not be considered to be personal gain. [1977 c 25 § 2.]

46.16.0621 License fee. (1) License tab fees are required to be \$30 per year for motor vehicles, regardless of year, value, make, or model.

(2) For the purposes of this section, "license tab fees" are defined as the general fees paid annually for licensing motor vehicles and trailers as defined in RCW 46.04.620 and 46.04.623, including cars, sport utility vehicles, motorcycles, and motor homes. Trailers licensed under RCW 46.16.068 or 46.16.085 and campers licensed under RCW 46.16.505 are not required to pay license tab fees under this section. [2003 c 1 § 2 (Initiative Measure No. 776, approved November 5, 2002); 2002 c 352 § 7; 2000 1st sp.s. c 1 § 1.]

Reviser's note: This section was amended by 2002 c 352 § 7 and by 2003 c 1 § 2 (Initiative Measure No. 776), each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Savings—2003 c 1 (Initiative Measure No. 776): See note following RCW 81.104.160.

Policies and purposes—2003 c 1 (Initiative Measure No. 776): "This measure would require license tab fees to be \$30 per year for motor vehicles and light trucks and would repeal certain government-imposed charges, including excise taxes and fees, levied on motor vehicles. Politicians promised "\$30 license tabs are here to stay" and promised any increases in vehicle-related taxes, fees and surcharges would be put to a public vote. Politicians should keep their promises. As long as taxpayers must pay incredibly high sales taxes when buying motor vehicles (meaning state and local governments receive huge windfalls of sales tax revenue from these transactions), the people want license tab fees to not exceed the promised \$30 per year. Without this follow-up measure, "tab creep" will continue until license tab fees are once again obscenely expensive, as they were prior to Initiative 695. The people want a public vote on any increases in vehicle-related taxes, fees and surcharges to ensure increased accountability. Voters will require more cost-effective use of existing revenues and fundamental reforms before approving higher charges on motor vehicles (such changes may remove the need for any increases). Also, dramatic changes to transportation plans and programs previously presented to voters must be resubmitted. This measure provides a strong directive to all taxing districts to obtain voter approval before imposing taxes, fees and surcharges on motor vehicles. However, if the legislature ignores this clear message, a referendum will be filed to protect the voters' rights. Politicians should just do the right thing and keep their promises." [2003 c 1 § 1 (Initiative Measure No. 776, approved November 5, 2002).]

Construction—2003 c 1 (Initiative Measure No. 776): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2003 c 1 § 9 (Initiative Measure No. 776, approved November 5, 2002).]

Intent—2003 c 1 (Initiative Measure No. 776): "The people have made clear through the passage of numerous initiatives and referenda that taxes need to be reasonable and tax increases should always be a last resort. However, politicians throughout the state of Washington continue to ignore these repeated mandates.

The people expect politicians to keep their promises. The legislative intent of this measure is to ensure that they do.

Politicians are reminded:

(1) Washington voters want license tab fees to be \$30 per year for motor vehicles unless voters authorize higher vehicle-related charges at an election.

(2) All political power is vested in the people, as stated in Article I, section 1 of the Washington state Constitution.

(3) The first power reserved by the people is the initiative, as stated in Article II, section 1 of the Washington state Constitution.

(4) When voters approve initiatives, politicians have a moral, ethical, and constitutional obligation to fully implement them. When politicians ignore this obligation, they corrupt the term "public servant."

(5) Any attempt to violate the clear intent and spirit of this measure undermines the trust of the people in their government and will increase the

likelihood of future tax limitation measures." [2003 c 1 § 11 (Initiative Measure No. 776, approved November 5, 2002).]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—2000 1st sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 1st sp.s. c 1 § 3.]

Retroactive application—2000 1st sp.s. c 1: "This act applies retroactively to January 1, 2000." [2000 1st sp.s. c 1 § 4.]

Boat trailer fee: RCW 46.16.670.

46.16.063 Additional fee for recreational vehicles. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each camper, travel trailer, and motor home as the same are defined in RCW 82.50.010 a fee of three dollars to be deposited in the RV account of the motor vehicle fund. Under RCW 43.135.055, the department of transportation may increase RV account fees by a percentage that exceeds the fiscal growth factor. After consultation with citizen representatives of the recreational vehicle user community, the department of transportation may implement RV account fee adjustments no more than once every four years. RV account fee adjustments must be preceded by evaluation of the following factors: Maintenance of a self-supporting program, levels of service at existing RV sanitary disposal facilities, identified needs for improved RV service at safety rest areas statewide, sewage treatment costs, and inflation. If the department chooses to adjust the RV account fee, it shall notify the department of licensing six months before implementation of the fee increase. Adjustments in the RV account fee must be in increments of no more than fifty cents per biennium. [1996 c 237 § 1; 1980 c 60 § 2.]

Effective date—1996 c 237 § 1: "Section 1 of this act takes effect with motor vehicle fees due or to become due September 1, 1996." [1996 c 237 § 4.]

Effective date—1980 c 60: See note following RCW 47.38.050.

46.16.068 Trailing units—Permanent plates. Trailing units which are subject to *RCW 82.44.020(4) shall, upon application, be issued a permanent license plate that is valid until the vehicle is sold, permanently removed from the state, or otherwise disposed of by the registered owner. The fee for this license plate is thirty-six dollars. Upon the sale, permanent removal from the state, or other disposition of a trailing unit bearing a permanent license plate the registered owner is required to return the license plate and registration certificate to the department. Violations of this section or misuse of a permanent license plate may subject the registered owner to prosecution or denial, or both, of future permanent registration of any trailing units. This section does not apply to any trailing units subject to the annual excise taxes prescribed in *RCW 82.44.020. The department is authorized to adopt rules to implement this section for leased vehicles and other applications as necessary. [1998 c 321 § 32 (Referendum Bill No. 49, approved November 3, 1998); 1993 c 123 § 4.]

***Reviser's note:** RCW 82.44.020 was repealed by 2000 1st sp.s. c 1 § 2.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

46.16.070 License fee on trucks, buses, and for hire vehicles based on gross weight. (1) In lieu of all other vehicle licensing fees, unless specifically exempt, and in addition to the mileage fees prescribed for buses and stages in RCW 46.16.125, there shall be paid and collected annually for each truck, motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, based upon the declared combined gross weight or declared gross weight under chapter 46.44 RCW, the following licensing fees by weight:

WEIGHT	SCHEDULE A	SCHEDULE B
4,000 lbs.....	\$ 40.00.....	\$ 40.00
6,000 lbs.....	\$ 50.00.....	\$ 50.00
8,000 lbs.....	\$ 60.00.....	\$ 60.00
10,000 lbs.....	\$ 62.00.....	\$ 62.00
12,000 lbs.....	\$ 79.00.....	\$ 79.00
14,000 lbs.....	\$ 90.00.....	\$ 90.00
16,000 lbs.....	\$ 102.00.....	\$ 102.00
18,000 lbs.....	\$ 154.00.....	\$ 154.00
20,000 lbs.....	\$ 171.00.....	\$ 171.00
22,000 lbs.....	\$ 185.00.....	\$ 185.00
24,000 lbs.....	\$ 200.00.....	\$ 200.00
26,000 lbs.....	\$ 211.00.....	\$ 211.00
28,000 lbs.....	\$ 249.00.....	\$ 249.00
30,000 lbs.....	\$ 287.00.....	\$ 287.00
32,000 lbs.....	\$ 346.00.....	\$ 346.00
34,000 lbs.....	\$ 368.00.....	\$ 368.00
36,000 lbs.....	\$ 399.00.....	\$ 399.00
38,000 lbs.....	\$ 438.00.....	\$ 438.00
40,000 lbs.....	\$ 501.00.....	\$ 501.00
42,000 lbs.....	\$ 521.00.....	\$ 611.00
44,000 lbs.....	\$ 532.00.....	\$ 622.00
46,000 lbs.....	\$ 572.00.....	\$ 662.00
48,000 lbs.....	\$ 596.00.....	\$ 686.00
50,000 lbs.....	\$ 647.00.....	\$ 737.00
52,000 lbs.....	\$ 680.00.....	\$ 770.00
54,000 lbs.....	\$ 734.00.....	\$ 824.00
56,000 lbs.....	\$ 775.00.....	\$ 865.00
58,000 lbs.....	\$ 806.00.....	\$ 896.00
60,000 lbs.....	\$ 859.00.....	\$ 949.00
62,000 lbs.....	\$ 921.00.....	\$ 1,011.00
64,000 lbs.....	\$ 941.00.....	\$ 1,031.00
66,000 lbs.....	\$ 1,048.00.....	\$ 1,138.00
68,000 lbs.....	\$ 1,093.00.....	\$ 1,183.00
70,000 lbs.....	\$ 1,177.00.....	\$ 1,267.00
72,000 lbs.....	\$ 1,259.00.....	\$ 1,349.00
74,000 lbs.....	\$ 1,368.00.....	\$ 1,458.00
76,000 lbs.....	\$ 1,478.00.....	\$ 1,568.00
78,000 lbs.....	\$ 1,614.00.....	\$ 1,704.00
80,000 lbs.....	\$ 1,742.00.....	\$ 1,832.00
82,000 lbs.....	\$ 1,863.00.....	\$ 1,953.00
84,000 lbs.....	\$ 1,983.00.....	\$ 2,073.00
86,000 lbs.....	\$ 2,104.00.....	\$ 2,194.00
88,000 lbs.....	\$ 2,225.00.....	\$ 2,315.00
90,000 lbs.....	\$ 2,346.00.....	\$ 2,436.00
92,000 lbs.....	\$ 2,466.00.....	\$ 2,556.00
94,000 lbs.....	\$ 2,587.00.....	\$ 2,677.00
96,000 lbs.....	\$ 2,708.00.....	\$ 2,798.00
98,000 lbs.....	\$ 2,829.00.....	\$ 2,919.00
100,000 lbs.....	\$ 2,949.00.....	\$ 3,039.00
102,000 lbs.....	\$ 3,070.00.....	\$ 3,160.00
104,000 lbs.....	\$ 3,191.00.....	\$ 3,281.00
105,500 lbs.....	\$ 3,312.00.....	\$ 3,402.00

Schedule A applies to vehicles either used exclusively for hauling logs or that do not tow trailers. Schedule B applies to vehicles that tow trailers and are not covered under Schedule A.

Every truck, motor truck, truck tractor, and tractor exceeding 6,000 pounds empty scale weight registered under chapter 46.16, 46.87, or 46.88 RCW shall be licensed for not less than one hundred fifty percent of its empty weight unless the amount would be in excess of the legal limits prescribed for such a vehicle in RCW 46.44.041 or 46.44.042, in which event the vehicle shall be licensed for the maximum weight authorized for such a vehicle or unless the vehicle is used only for the purpose of transporting any well drilling machine, air compressor, rock crusher, conveyor, hoist, donkey engine, cook house, tool house, bunk house, or similar machine or structure attached to or made a part of such vehicle.

The following provisions apply when increasing gross or combined gross weight for a vehicle licensed under this section:

(a) The new license fee will be one-twelfth of the fee listed above for the new gross weight, multiplied by the number of months remaining in the period for which licensing fees have been paid, including the month in which the new gross weight is effective.

(b) Upon surrender of the current certificate of registration or cab card, the new licensing fees due shall be reduced by the amount of the licensing fees previously paid for the same period for which new fees are being charged.

(2) The proceeds from the fees collected under subsection (1) of this section shall be distributed in accordance with RCW 46.68.035.

(3) In lieu of the gross weight fee under subsection (1) of this section, farm vehicles may be licensed upon payment of the fee in effect under subsection (1) of this section on May 1, 2005. In order to qualify for the reduced fee under this subsection, the farm vehicle must be exempt from property taxes in accordance with RCW 84.36.630. The applicant must submit copies of the forms required under RCW 84.36.630. The application for the reduced fee under this subsection shall require the applicant to attest that the vehicle shall be used primarily for farming purposes. The department shall provide licensing agents and subagents with a schedule of the appropriate licensing fees for farm vehicles. [2005 c 314 § 204. Prior: 2003 c 361 § 201; 2003 c 1 § 3 (Initiative Measure No. 776, approved November 5, 2002); 1994 c 262 § 8; 1993 sp.s. c 23 § 60; prior: 1993 c 123 § 5; 1993 c 102 § 1; 1990 c 42 § 105; 1989 c 156 § 1; prior: 1987 1st ex.s. c 9 § 4; 1987 c 244 § 3; 1986 c 18 § 4; 1985 c 380 § 15; 1975-'76 2nd ex.s. c 64 § 1; 1969 ex.s. c 281 § 54; 1967 ex.s. c 118 § 1; 1967 ex.s. c 83 § 56; 1961 ex.s. c 7 § 11; 1961 c 12 § 46.16.070; prior: 1957 c 273 § 1; 1955 c 363 § 2; prior: 1951 c 269 § 9; 1950 ex.s. c 15 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; Rem. Supp. 1949 § 6312-17, part; RRS § 6326, part.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Application—2003 c 361 § 201: "Section 201 of this act is effective with registrations that are due or will become due August 1, 2003, and thereafter." [2003 c 361 § 704.]

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Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Construction—Intent—2003 c 1 (Initiative Measure No. 776): See notes following RCW 46.16.0621.

Severability—Savings—2003 c 1 (Initiative Measure No. 776): See note following RCW 81.104.160.

Effective date—1994 c 262 §§ 8, 28: "Sections 8 and 28 of this act take effect July 1, 1994." [1994 c 262 § 29.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: "Chapter 102, Laws of 1993 and chapter 123, Laws of 1993 each take effect January 1, 1994." [1993 sp.s. c 23 § 66.]

Effective dates—1993 sp.s. c 23: See note following RCW 43.89.010.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Application—1989 c 156: "This act first applies to the renewal of vehicle registrations that have a December 1990 or later expiration date and all initial vehicle registrations that are effective on or after January 1, 1990." [1989 c 156 § 5.]

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Severability—1985 c 380: See RCW 46.87.900.

Effective dates—1975-'76 2nd ex.s. c 64: "Sections 1, 2, and 5 through 24 of this 1976 amendatory act shall take effect on July 1, 1976, and sections 3 and 4 of this 1976 amendatory act shall take effect on January 1, 1977. All current and outstanding valid licenses and permits held by licensees on July 1, 1976, shall remain valid until their expiration dates, but renewals and original applications made after July 1, 1976, shall be governed by the law in effect at the time such renewal or application is made." [1975-'76 2nd ex.s. c 64 § 25.]

Severability—1975-'76 2nd ex.s. c 64: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 64 § 26.]

Effective date—1969 ex.s. c 281: See note following RCW 46.88.010.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.071 Additional fees. (1) In addition to the fees set forth in RCW 46.16.070, there shall be paid and collected annually upon registration, a fee of one dollar for each truck, motor truck, truck tractor, road tractor, tractor, bus, auto stage, or for hire vehicle with seating capacity of more than six, notwithstanding the provisions of RCW 46.16.070.

(2) In addition to the fees set forth in RCW 46.16.085, there shall be paid and collected annually upon registration, a fee of one dollar for each trailer, semitrailer, and pole trailer, notwithstanding the provisions of RCW 46.16.085.

(3) The proceeds from the fees collected under subsections (1) and (2) of this section shall be deposited into the highway safety fund, except that for each vehicle registered by a county auditor or agent to a county auditor under RCW 46.01.140, the proceeds shall be credited to the current county expense fund. [1996 c 315 § 4.]

Effective dates—1996 c 315 §§ 1, 4, 5: See note following RCW 46.01.140.

46.16.073 Federal heavy vehicle use tax. The department may refuse registration of a vehicle if the applicant has failed to furnish proof, acceptable to the department, that the federal heavy vehicle use tax imposed by section 4481 of the internal revenue code of 1954 has been paid.

The department may adopt rules as deemed necessary to administer this section. [1985 c 79 § 1.]

46.16.076 Voluntary donation—State parks renewal and stewardship account. (1) The department shall provide an opportunity for owners of vehicles registered under RCW 46.16.0621 and vehicles licensed under RCW 46.16.070 with a declared gross weight of ten thousand pounds or less, to make a voluntary donation of five dollars at the time of initial or renewal registration. The donation must be deposited in the state parks renewal and stewardship account established in RCW 79A.05.215 to be used for the operation and maintenance of state parks.

(2) This section applies to registrations due or to become due on or after January 1, 2008. [2007 c 340 § 1.]

46.16.079 Fixed load motor vehicle equipped for lifting or towing—Capacity fee in addition to and in lieu. The licensee of any fixed load motor vehicle equipped for lifting or towing any disabled, impounded, or abandoned vehicle or part thereof, may pay a capacity fee of twenty-five dollars in addition to all other fees required for the annual licensing of motor vehicles in lieu of the licensing fees provided in RCW 46.16.070. [1986 c 18 § 5; 1975 c 25 § 16; 1963 c 18 § 1.]

46.16.085 Commercial trailers, pole trailers—Fee in lieu. In lieu of all other licensing fees, an annual license fee of thirty-six dollars shall be collected in addition to the excise tax prescribed in chapter 82.44 RCW for: (1) Each trailer and semitrailer not subject to the license fee under *RCW 46.16.065 or the capacity fees under **RCW 46.16.080; (2) every pole trailer. The proceeds from this fee shall be distributed in accordance with RCW 46.68.035. This section does not pertain to travel trailers or personal use trailers that are not used for commercial purposes or owned by commercial enterprises. [1991 c 163 § 3; 1989 c 156 § 2; 1987 c 244 § 4; 1986 c 18 § 8; 1985 c 380 § 16.]

Reviser's note: *(1) RCW 46.16.065 was repealed by 2002 c 352 § 28.

***(2) RCW 46.16.080 was repealed by 1994 c 262 § 28, effective July 1, 1994.

Application—1989 c 156: See note following RCW 46.16.070.

Severability—1985 c 380: See RCW 46.87.900.

46.16.086 Single-axle trailers—Fee in lieu. In lieu of the license tab fees provided in RCW 46.16.0621, private use single-axle trailers of two thousand pounds scale weight or less may be licensed upon the payment of a license fee in the sum of fifteen dollars, but only if the trailer is operated upon public highways. The license fee must be collected annually for each registration year or fraction of a registration year. This reduced license fee applies only to trailers operated for personal use of the owners, and not trailers held for rental to the public or used in any commercial or business endeavor. The proceeds from the fees collected under this section shall be distributed in accordance with RCW 46.68.035(2). [2006 c 337 § 2; 2005 c 314 § 203.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Boat trailer fee: RCW 46.16.670.

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46.16.088 Transfer of license plates—Penalty.

Except as provided in RCW 46.16.290, the transfer of license plates issued pursuant to this chapter between two or more vehicles is a traffic infraction subject to a fine not to exceed five hundred dollars. Any law enforcement agency that determines that a license plate has been transferred between two or more vehicles shall confiscate the license plates and return them to the department for nullification along with full details of the reasons for confiscation. Each vehicle identified in the transfer will be issued a new license plate upon application by the owner or owners thereof and payment of the full fees and taxes. [1986 c 18 § 9; 1985 c 380 § 17.]

Severability—1985 c 380: See RCW 46.87.900.

46.16.090 Gross weight fees on farm vehicles—Penalty. Motor trucks, truck tractors, and tractors may be specially licensed based on the declared gross weight thereof for the various amounts set forth in the schedule provided in RCW 46.16.070 less twenty-three dollars; divide the difference by two and add twenty-three dollars, when such vehicles are owned and operated by farmers, but only if the following condition or conditions exist:

(1) When such vehicles are to be used for the transportation of the farmer's own farm, orchard, or dairy products, or the farmer's own private sector cultured aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse, and of supplies to be used on the farmer's farm. Fish other than those that are such private sector cultured aquatic products and forestry products are not considered as farm products; and/or

(2) When such vehicles are to be used for the infrequent or seasonal transportation by one farmer for another farmer in the farmer's neighborhood of products of the farm, orchard, dairy, or aquatic farm owned by the other farmer from point of production to market or warehouse, or supplies to be used on the other farm, but only if transportation for another farmer is for compensation other than money. Farmers shall be permitted an allowance of an additional eight thousand pounds, within the legal limits, on such vehicles, when used in the transportation of the farmer's own farm machinery between the farmer's own farm or farms and for a distance of not more than thirty-five miles from the farmer's farm or farms.

The department shall prepare a special form of application to be used by farmers applying for licenses under this section, which form shall contain a statement to the effect that the vehicle concerned will be used subject to the limitations of this section. The department shall prepare special insignia which shall be placed upon all such vehicles to indicate that the vehicle is specially licensed, or may, in its discretion, substitute a special license plate for such vehicle for such designation.

Operation of such a specially licensed vehicle in transportation upon public highways in violation of the limitations of this section is a traffic infraction. [1989 c 156 § 3; 1986 c 18 § 10. Prior: 1985 c 457 § 16; 1985 c 380 § 18; 1979 ex.s. c 136 § 45; 1977 c 25 § 1; 1969 ex.s. c 169 § 1; 1961 c 12 § 46.16.090; prior: 1957 c 273 § 13; 1955 c 363 § 6; prior: 1953 c 227 § 1; 1951 c 269 § 12; 1950 ex.s. c 15 § 1, part; 1949 c 220 § 10, part; 1947 c 200 § 15, part; 1941 c 224 § 1, part; 1939 c 182 § 3, part; 1937 c 188 § 17, part; Rem. Supp.

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1949 § 6312-17, part; 1931 c 140 § 1, part; 1921 c 96 § 15, part; 1919 c 46 § 1, part; 1917 c 155 § 10, part; 1915 c 142 § 15, part; RRS § 6326, part.]

Application—1989 c 156: See note following RCW 46.16.070.

Severability—1985 c 380: See RCW 46.87.900.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Unprocessed agricultural products, license for transport: RCW 20.01.120.

46.16.111 Gross weight, how computed. The gross weight in the case of any motor truck, tractor, or truck tractor shall be the scale weight of the motor truck, tractor, or truck tractor, plus the scale weight of any trailer, semitrailer, converter gear, or pole trailer to be towed thereby, to which shall be added the weight of the maximum load to be carried thereon or towed thereby as set by the licensee in the application if it does not exceed the weight limitations prescribed by chapter 46.44 RCW. If the sum of the scale weight and maximum load of the trailer is not greater than four thousand pounds, that sum shall not be computed as part of the gross weight of any motor truck, tractor, or truck tractor. Where the trailer is a utility trailer, travel trailer, horse trailer, or boat trailer, for the personal use of the owner of the truck, tractor, or truck tractor, and not for sale or commercial purposes, the gross weight of such trailer and its load shall not be computed as part of the gross weight of any motor truck, tractor, or truck tractor. The weight of any camper is exempt from the determination of gross weight in the computation of any licensing fees required under RCW 46.16.070.

The gross weight in the case of any bus, auto stage, or for hire vehicle, except taxicabs, with a seating capacity over six, shall be the scale weight of each bus, auto stage, and for hire vehicle plus the seating capacity, including the operator's seat, computed at one hundred and fifty pounds per seat.

If the resultant gross weight, according to this section, is not listed in RCW 46.16.070, it shall be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW. [1987 c 244 § 5; 1986 c 18 § 11; 1971 ex.s. c 231 § 1; 1969 ex.s. c 170 § 6; 1967 ex.s. c 83 § 57.]

Effective date—1971 c 231: See note following RCW 46.01.130.

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.121 Seating capacity fees on stages, for hire vehicles. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually, for each auto stage and for hire vehicle, except taxicabs, with a seating capacity of six or less the sum of fifteen dollars. [1967 ex.s. c 83 § 58.]

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.125 Mileage fees on stages—Penalty. In addition to the fees required by RCW 46.16.070, operators of auto stages with seating capacity over six shall pay, at the time they file gross earning returns with the utilities and transportation commission, the sum of fifteen cents for each one hundred vehicle miles operated by each auto stage over the public highways of this state. However, in the case of each auto stage propelled by steam, electricity, natural gas, diesel oil,

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butane, or propane, the payment required in this section is twenty cents per one hundred miles of such operation. The commission shall transmit all sums so collected to the state treasurer, who shall deposit the same in the motor vehicle fund. Any person failing to make any payment required by this section is subject to a penalty of one hundred percent of the payment due in this section, in addition to any penalty provided for failure to submit a report. Any penalties so collected shall be credited to the public service revolving fund. [1997 c 215 § 2; 1967 ex.s. c 83 § 60; 1961 c 12 § 46.16.125. Prior: 1951 c 269 § 14.]

Severability—Effective dates—1967 ex.s. c 83: See RCW 47.26.900 and 47.26.910.

46.16.135 Monthly license fee—Penalty. The annual vehicle licensing fees as provided in RCW 46.16.070 for any motor vehicle or combination of vehicles having a declared gross weight in excess of twelve thousand pounds may be paid for any full registration month or months at one-twelfth of the usual annual fee plus two dollars, this sum to be multiplied by the number of full months for which the fees are paid if for less than a full year. An additional fee of two dollars shall be collected each time a license fee is paid.

Operation of a vehicle licensed under the provisions of this section by any person upon the public highways after the expiration of the monthly license is a traffic infraction, and in addition the person shall be required to pay a license fee for the vehicle involved covering an entire registration year's operation, less the fees for any registration month or months of the registration year already paid. If, within five days, no license fee for a full registration year has been paid as required aforesaid, the Washington state patrol, county sheriff, or city police shall impound such vehicle in such manner as may be directed for such cases by the chief of the Washington state patrol, until such requirement is met. [1986 c 18 § 12; 1985 c 380 § 19; 1979 ex.s. c 136 § 46; 1979 c 134 § 1; 1975-'76 2nd ex.s. c 64 § 3; 1975 1st ex.s. c 118 § 6; 1969 ex.s. c 170 § 7; 1961 c 12 § 46.16.135. Prior: 1951 c 269 § 16.]

Severability—1985 c 380: See RCW 46.87.900.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.140 Overloading licensed capacity—Additional license—Penalties—Exceptions. It is a traffic infraction for any person to operate, or cause, permit, or suffer to be operated upon a public highway of this state any bus, auto stage, motor truck, truck tractor, or tractor, with passengers, or with a maximum gross weight, in excess of that for which the motor vehicle or combination is licensed.

Any person who operates or causes to be operated upon a public highway of this state any motor truck, truck tractor, or tractor with a maximum gross weight in excess of the maximum gross weight for which the vehicle is licensed shall be deemed to have set a new maximum gross weight and shall, in addition to any penalties otherwise provided, be required to purchase a new license covering the new maximum gross

weight, and any failure to secure such new license is a traffic infraction. No such person may be permitted or required to purchase the new license for a gross weight or combined gross weight which would exceed the maximum gross weight or combined gross weight allowed by law. This section does not apply to for hire vehicles, buses, or auto stages operating principally within cities and towns. [1986 c 18 § 13; 1979 ex.s. c 136 § 47; 1961 c 12 § 46.16.140. Prior: 1955 c 384 § 16; 1951 c 269 § 18; 1937 c 188 § 25, part; RRS § 6312-25, part.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.145 Overloading licensed capacity—Penalties.

Any person violating any of the provisions of RCW 46.16.140 shall, upon a first offense, pay a penalty of not less than twenty-five dollars nor more than fifty dollars; upon a second offense pay a penalty of not less than fifty dollars nor more than one hundred dollars, and in addition the court may suspend the certificate of license registration of the vehicle for not more than thirty days; upon a third and subsequent offense pay a penalty of not less than one hundred dollars nor more than two hundred dollars, and in addition the court shall suspend the certificate of license registration of the vehicle for not less than thirty days nor more than ninety days.

Upon ordering the suspension of any certificate of license registration, the court or judge shall forthwith secure such certificate and mail it to the director. [1979 ex.s. c 136 § 48; 1975-'76 2nd ex.s. c 64 § 5; 1961 c 12 § 46.16.145. Prior: 1951 c 269 § 19; 1937 c 188 § 25, part; RRS § 6312-25, part.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.16.150 School buses exempt from load and seat capacity fees. No provision of the law of this state shall be construed to require for hire vehicle license or adult seating capacity fees, either directly or indirectly for the transportation of school children or teachers, or both, to and from school and other school activities, or either, whether the same be done in motor vehicles owned, leased, rented or used by the school authority or upon contract to furnish such transportation: PROVIDED, That this section shall apply to vehicles used exclusively for the purpose set forth and in the event that any vehicle so used is also used for any other purpose, such vehicle shall be appropriately licensed for such other purpose, as required by this chapter. [1961 c 12 § 46.16.150. Prior: 1937 c 188 § 22; RRS § 6312-22.]

46.16.160 Vehicle trip permits—Restrictions and requirements—Fees and taxes—Penalty—Rules. (1) The owner of a vehicle which under reciprocal relations with another jurisdiction would be required to obtain a license registration in this state or an unlicensed vehicle which would be required to obtain a license registration for operation on public highways of this state may, as an alternative to such license registration, secure and operate such vehicle under authority of a trip permit issued by this state in lieu of a

Washington certificate of license registration, and licensed gross weight if applicable. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles. Trip permits are required for movement of mobile homes or park model trailers and may only be issued if property taxes are paid in full. For the purpose of this section, a vehicle is considered unlicensed if the licensed gross weight currently in effect for the vehicle or combination of vehicles is not adequate for the load being carried. Vehicles registered under RCW 46.16.135 shall not be operated under authority of trip permits in lieu of further registration within the same registration year.

(2) Each trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for such vehicle for a period of three consecutive days commencing with the day of first use. No more than three such permits may be used for any one vehicle in any period of thirty consecutive days, except that in the case of a recreational vehicle as defined in RCW 43.22.335, no more than two trip permits may be used for any one vehicle in a one-year period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(3) Vehicles operating under authority of trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(4) Prorate operators operating commercial vehicles on trip permits in Washington shall retain the customer copy of such permit for four years.

(5) Trip permits may be obtained from field offices of the department of transportation, department of licensing, or other agents appointed by the department. The fee for each trip permit is twenty dollars. Five dollars from every twenty-dollar trip permit fee shall be deposited into the state patrol highway account and must be used for commercial motor vehicle inspections. For each permit issued, the fee includes a filing fee as provided by RCW 46.01.140 and an excise tax of one dollar. The remaining portion of the trip permit fee must be deposited to the credit of the motor vehicle fund as an administrative fee. If the filing fee amount of three dollars as prescribed in RCW 46.01.140 is increased or decreased after July 1, 2002, the administrative fee must be increased or decreased by the same amount so that the total trip permit would be adjusted equally to compensate. These fees and taxes are in lieu of all other vehicle license fees and taxes. No exchange, credits, or refunds may be given for trip permits after they have been purchased.

(6) The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(7) Commercial motor vehicles that are owned by a motor carrier subject to RCW 46.32.080, must not be operated on trip permits authorized by RCW 46.16.160 or

46.16.162 if the motor carrier's department of transportation number has been placed out of service by the Washington state patrol. A violation of or a failure to comply with this subsection is a gross misdemeanor, subject to a minimum monetary penalty of two thousand five hundred dollars for the first violation and five thousand dollars for each subsequent violation.

(8) Except as provided in subsection (7) of this section, a violation of or a failure to comply with any provision of this section is a gross misdemeanor.

(9) The department of licensing may adopt rules as it deems necessary to administer this section.

(10) A surcharge of five dollars is imposed on the issuance of trip permits. The portion of the surcharge paid by motor carriers must be deposited in the motor vehicle fund for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program. The remaining portion of the surcharge must be deposited in the motor vehicle fund for the purpose of supporting congestion relief programs. All other administrative fees and excise taxes collected under the provisions of this chapter shall be forwarded by the department with proper identifying detailed report to the state treasurer who shall deposit the administrative fees to the credit of the motor vehicle fund and the excise taxes to the credit of the general fund. Filing fees will be forwarded and reported to the state treasurer by the department as prescribed in RCW 46.01.140. [2007 c 419 § 6. Prior: 2002 c 352 § 8; 2002 c 168 § 5; 1999 c 270 § 1; 1996 c 184 § 2; 1993 c 102 § 2; 1987 c 244 § 6; 1981 c 318 § 1; 1977 ex.s. c 22 § 5; 1975-'76 2nd ex.s. c 64 § 6; 1969 ex.s. c 170 § 8; 1961 c 306 § 1; 1961 c 12 § 46.16.160; prior: 1957 c 273 § 3; 1955 c 384 § 17; 1949 c 174 § 1; 1947 c 176 § 1; 1937 c 188 § 24; Rem. Supp. 1949 § 6312-24.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1996 c 184: See note following RCW 46.16.010.

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.16.162 Farm vehicle trip permits. (1) The owner of a farm vehicle licensed under RCW 46.16.090 purchasing a monthly license under RCW 46.16.135 may, as an alternative to the first partial month of the license registration, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

(2) If a monthly license previously issued has expired, the owner of a farm vehicle may, as an alternative to purchasing a full monthly license, secure and operate the vehicle under authority of a farm vehicle trip permit issued by this state. The licensed gross weight may not exceed eighty thousand pounds for a combination of vehicles nor forty thousand pounds for a single unit vehicle with three or more axles.

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(3) Each farm vehicle trip permit shall authorize the operation of a single vehicle at the maximum legal weight limit for the vehicle for the period remaining in the first month of monthly license, commencing with the day of first use. No more than four such permits may be used for any one vehicle in any twelve-month period. Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety and signed by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, license number, or vehicle identification number invalidates the permit. The farm vehicle trip permit shall be displayed on the vehicle to which it is issued as prescribed by the department.

(4) Vehicles operating under authority of farm vehicle trip permits are subject to all laws, rules, and regulations affecting the operation of like vehicles in this state.

(5) Farm vehicle trip permits may be obtained from the department of licensing or agents and subagents appointed by the department. The fee for each farm vehicle trip permit is six dollars and twenty-five cents. Farm vehicle trip permits sold by the department's agents or subagents are subject to fees specified in RCW 46.01.140 (4)(a), (5)(b), or (6).

(6) The proceeds from farm vehicle trip permits received by the director shall be forwarded to the state treasurer to be distributed as provided in RCW 46.68.035(2).

(7) No exchange, credits, or refunds may be given for farm vehicle trip permits after they have been purchased.

(8) The department of licensing may adopt rules as it deems necessary to administer this section. [2006 c 337 § 3; 2005 c 314 § 206.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

46.16.180 Unlawful to carry passengers for hire without license. It shall be unlawful for the owner or operator of any vehicle not licensed annually for hire or as an auto stage and for which additional seating capacity fee as required by this chapter has not been paid, to carry passengers therein for hire. [1961 c 12 § 46.16.180. Prior: 1937 c 188 § 20; RRS § 6312-20.]

46.16.200 Applications to agents—Transmittal to director. Upon receipt by agents of the director, including county auditors, of original applications for vehicle license accompanied by the proper fees, such agents shall, if the applications are in proper form and accompanied by such information as may be required by the director, immediately forward them, together with the fees to the director. [1961 c 12 § 46.16.200. Prior: 1955 c 259 § 1; 1955 c 89 § 4; 1947 c 164 § 10; 1937 c 188 § 33; Rem. Supp. 1947 § 6312-33; 1921 c 96 § 6, part; 1917 c 155 § 4, part; 1915 c 142 § 6, part; RRS § 6317, part.]

46.16.210 Original applications—Renewals—Fees—Preissuance, when. (1) Upon receipt of the application and proper fee for original vehicle license, the director shall make

a recheck of the application and in the event that there is any error in the application it may be returned to the county auditor or other agent to effectively secure the correction of such error, who shall return the same corrected to the director.

(2) Application for the renewal of a vehicle license shall be made to the director or his agents, including county auditors, by the registered owner on a form prescribed by the director. The application must be accompanied by the payment of such license fees and excise tax as may be required by law. Such application shall be handled in the same manner and the fees transmitted to the state treasurer in the same manner as in the case of an original application. Any such application which upon validation becomes a renewal certificate need not have entered upon it the name of the lien holder, if any, of the vehicle concerned.

(3) Persons expecting to be out of the state during the normal renewal period of a vehicle license may secure renewal of such vehicle license and have license plates or tabs preissued by making application to the director or his agents upon forms prescribed by the director. The application must be accompanied by such license fees, and excise tax as may be required by law.

(4) Application for the annual renewal of a vehicle license number plate to the director or the director's agents shall not be required for those vehicles owned, rented, or leased by the state of Washington, or by any county, city, town, school district, or other political subdivision of the state of Washington or a governing body of an Indian tribe located within this state and recognized as a governmental entity by the United States department of the interior. [2001 c 206 § 1; 1997 c 241 § 8; 1994 c 262 § 9; 1977 c 8 § 1. Prior: 1975 1st ex.s. c 169 § 6; 1975 1st ex.s. c 118 § 8; 1969 ex.s. c 75 § 1; 1961 c 12 § 46.16.210; prior: 1957 c 273 § 5; 1955 c 89 § 2; 1953 c 252 § 3; 1947 c 164 § 11; 1937 c 188 § 34; Rem. Supp. 1947 § 6312-34.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Rental cars: RCW 46.87.023.

46.16.212 Notice of liability insurance requirement.

The department of licensing shall notify the public of the requirements of RCW 46.30.020 through 46.30.040 at the time of new vehicle registration and when the department sends a registration renewal notice. [1989 c 353 § 10.]

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

46.16.216 Payment of parking fines required for renewal. (1) To renew a vehicle license, an applicant shall satisfy all listed standing, stopping, and parking violations, and other infractions issued under RCW 46.63.030(1)(d) for the vehicle incurred while the vehicle was registered in the applicant's name and forwarded to the department pursuant to RCW 46.20.270(3). For the purposes of this section, "listed" standing, stopping, and parking violations, and other infractions issued under RCW 46.63.030(1)(d) include only those violations for which notice has been received from state or local agencies or courts by the department one hundred twenty days or more before the date the vehicle license expires and that are placed on the records of the department. Notice of such violations received by the department later

than one hundred twenty days before that date that are not satisfied shall be considered by the department in connection with any applications for license renewal in any subsequent license year. The renewal application may be processed by the department or its agents only if the applicant:

(a) Presents a preprinted renewal application showing no listed standing, stopping, or parking violations, or other infractions issued under RCW 46.63.030(1)(d), or in the absence of such presentation, the agent verifies the information that would be contained on the preprinted renewal application; or

(b) If listed standing, stopping, or parking violations, or other infractions issued under RCW 46.63.030(1)(d) exist, presents proof of payment and pays a fifteen dollar surcharge.

(2) The surcharge shall be allocated as follows:

(a) Ten dollars shall be deposited in the motor vehicle fund to be used exclusively for the administrative costs of the department of licensing; and

(b) Five dollars shall be retained by the agent handling the renewal application to be used by the agent for the administration of this section.

(3) If there is a change in the registered owner of the vehicle, the department shall forward the information regarding the change to the state or local charging jurisdiction and release any hold on the renewal of the vehicle license resulting from parking violations or other infractions issued under RCW 46.63.030(1)(d) incurred while the certificate of license registration was in a previous registered owner's name.

(4) The department shall send to all registered owners of vehicles who have been reported to have outstanding listed parking violations or other infractions issued under RCW 46.63.030(1)(d), at the time of renewal, a statement setting out the dates and jurisdictions in which the violations occurred as well as the amounts of unpaid fines and penalties relating to them and the surcharge to be collected. [2004 c 231 § 4; 1990 2nd ex.s. c 1 § 401; 1984 c 224 § 1.]

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Severability—1984 c 224: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 224 § 5.]

Effective date—1984 c 224: "This act shall take effect on July 1, 1984." [1984 c 224 § 6.]

46.16.220 Time of renewal of licenses—Duration. Vehicle licenses and vehicle license number plates may be renewed for the subsequent registration year up to eighteen months before the current expiration date and must be used and displayed from the date of issue or from the day of the expiration of the preceding registration year, whichever date is later. [1997 c 241 § 9; 1991 c 339 § 20; 1975 1st ex.s. c 118 § 9; 1969 ex.s. c 170 § 9; 1961 c 12 § 46.16.220. Prior: 1957 c 261 § 8; 1955 c 89 § 1; 1953 c 252 § 4; 1947 c 164 § 12; 1937 c 188 § 35; Rem. Supp. 1947 § 6312-35; 1921 c 96 § 7, part; RRS § 6318, part; 1921 c 6 § 1, part; 1916 c 142 § 7, part.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.225 Adjustment of vehicle registration periods to stagger renewal periods. Notwithstanding any provision of law to the contrary, the department may extend or diminish vehicle license registration periods for the purpose of staggering renewal periods. Such extension or diminishment of a vehicle license registration period shall be by rule of the department adopted in accordance with the provisions of chapter 34.05 RCW. The rules may provide for the omission of any classes or classifications of vehicle from the staggered renewal system and may provide for the gradual introduction of classes or classifications of vehicles into the system. The rules shall provide for the collection of proportionately increased or decreased vehicle license registration fees and of excise or property taxes required to be paid at the time of registration.

It is the intent of the legislature that there shall be neither a significant net gain nor loss of revenue to the state general fund or the motor vehicle fund as the result of implementing and maintaining a staggered vehicle registration system. [1986 c 18 § 15; 1979 c 158 § 140; 1975 1st ex.s. c 118 § 2.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

46.16.230 License plates furnished. The director shall furnish to all persons making satisfactory application for vehicle license as provided by law, two identical vehicle license number plates each containing the vehicle license number to be displayed on such vehicle as by law required: PROVIDED, That if the vehicle to be licensed is a trailer, semitrailer or motorcycle only one vehicle license number plate shall be issued for each thereof. The number and plate shall be of such size and color and shall contain such symbols indicative of the registration period for which the same is issued and of the state of Washington, as shall be determined and prescribed by the director. Any vehicle license number plate or plates issued to a dealer shall contain thereon a sufficient and satisfactory indication that such plates have been issued to a dealer in vehicles. All vehicle license number plates may be obtained by the director from the metal working plant of a state correctional facility or from any source in accordance with existing state of Washington purchasing procedures.

Notwithstanding the foregoing provisions of this section, the director may, in his discretion and under such rules and regulations as he may prescribe, adopt a type of vehicle license number plates whereby the same shall be used as long as legible on the vehicle for which issued, with provision for tabs or emblems to be attached thereto or elsewhere on the vehicle to signify renewals, in which event the term "vehicle license number plate" as used in any enactment shall be deemed to include in addition to such plate the tab or emblem signifying renewal except when such plate contains the designation of the current year without reference to any tab or emblem. Renewals shall be effected by the issuance and display of such tab or emblem. [1992 c 7 § 41; 1975 c 25 § 19; 1961 c 12 § 46.16.230. Prior: 1957 c 261 § 9; 1949 c 90 § 1; 1939 c 182 § 5; 1937 c 188 § 28; Rem. Supp. 1949 § 6312-28; 1921 c 96 § 12; 1921 c 6 § 2; 1919 c 59 § 7; 1917 c 155 § 8; 1915 c 142 § 12; RRS § 6323.]

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46.16.233 Standard background—Periodic replacement—Retention of current plate number. (1) Except for those license plates issued under RCW 46.16.305(1) before January 1, 1987, under RCW 46.16.305(3), and to commercial vehicles with a gross weight in excess of twenty-six thousand pounds, effective with vehicle registrations due or to become due on January 1, 2001, the appearance of the background of all vehicle license plates may vary in color and design but must be legible and clearly identifiable as a Washington state license plate, as designated by the department. Additionally, to ensure maximum legibility and reflectivity, the department shall periodically provide for the replacement of license plates, except for commercial vehicles with a gross weight in excess of twenty-six thousand pounds. Frequency of replacement shall be established in accordance with empirical studies documenting the longevity of the reflective materials used to make license plates.

(2) Special license plate series approved by the special license plate review board created under RCW 46.16.705 and enacted by the legislature may display a symbol or artwork approved by the special license plate review board.

(3) By November 1, 2003, in providing for the periodic replacement of license plates, the department shall offer to vehicle owners the option of retaining their current license plate numbers. The department shall charge a retention fee of twenty dollars if this option is exercised. Revenue generated from the retention fee must be deposited into the multimodal transportation account. [2003 c 361 § 501; 2003 c 196 § 401; 2000 c 37 § 1; 1997 c 291 § 2.]

Reviser's note: This section was amended by 2003 c 196 § 401 and by 2003 c 361 § 501, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.235 State name not abbreviated. Vehicle license number plates issued by the state of Washington commencing with the next general issuance of such plates shall be so designed as to designate the name of the state of Washington in full without abbreviation. [1965 ex.s. c 78 § 2.]

46.16.237 Reflectorized materials—Fee. All vehicle license number plates issued after January 1, 1968, or such earlier date as the director may prescribe with respect to plates issued in any county, shall be treated with fully reflectorized materials designed to increase the visibility and legibility of such plates at night. In addition to all other fees prescribed by law, there shall be paid and collected for each vehicle license number plate treated with such materials, the sum of two dollars and for each set of two plates, the sum of four dollars. However, one plate is available only to those vehicles that by law require only one plate. Such fees shall be deposited in the motor vehicle fund. [2005 c 314 § 301; 1987 c 52 § 1; 1967 ex.s. c 145 § 60.]

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.16.240 Attachment of plates to vehicles—Violations enumerated. The vehicle license number plates shall be attached conspicuously at the front and rear of each vehicle for which the same are issued and in such a manner that they can be plainly seen and read at all times. However, if only one license number plate is legally issued for any vehicle such plate shall be conspicuously attached to the rear of such vehicle. Each vehicle license number plate shall be placed or hung in a horizontal position at a distance of not more than four feet from the ground and shall be kept clean so as to be plainly seen and read at all times. In cases where the body construction of the vehicle is such that compliance with this section is impossible, permission to deviate therefrom may be granted by the state patrol. It shall be unlawful to display upon the front or rear of any vehicle, vehicle license number plate or plates other than those furnished by the director for such vehicle or to display upon any vehicle any vehicle license number plate or plates which have been in any manner changed, altered, disfigured or have become illegible. License plate frames may be used on vehicle license number plates only if the frames do not obscure license tabs or identifying letters or numbers on the plates and the plates can be plainly seen and read at all times. It is unlawful to use any holders, frames, or any materials that in any manner change, alter, or make the vehicle license number plates illegible. It shall be unlawful for any person to operate any vehicle unless there shall be displayed thereon valid vehicle license number plates attached as herein provided. [2006 c 326 § 1. Prior: 1987 c 330 § 704; 1987 c 142 § 3; 1969 ex.s. c 170 § 10; 1967 c 32 § 18; 1961 c 12 § 46.16.240; prior: 1947 c 89 § 1; 1937 c 188 § 36; Rem. Supp. 1947 § 6312-36.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Illumination of plate: RCW 46.37.050.

46.16.260 License registration certificate—Signature required—Carried in vehicle—Penalty—Inspection—Exception. A certificate of license registration to be valid must have endorsed thereon the signature of the registered owner (if a firm or corporation, the signature of one of its officers or other duly authorized agent) and must be carried in the vehicle for which it is issued, at all times in the manner prescribed by the department. It shall be unlawful for any person to operate or have in his possession a vehicle without carrying thereon such certificate of license registration. Any person in charge of such vehicle shall, upon demand of any of the local authorities or of any police officer or of any representative of the department, permit an inspection of such certificate of license registration. This section does not apply to a vehicle for which annual renewal of its license plates is not required and which is marked in accordance with the provisions of RCW 46.08.065. [1986 c 18 § 16; 1979 ex.s. c 113 § 3; 1969 ex.s. c 170 § 11; 1967 c 32 § 19; 1961 c 12 § 46.16.260. Prior: 1955 c 384 § 18; 1937 c 188 § 8; RRS § 6312-8.]

46.16.265 Replacement certificate. If a certificate of license registration is lost, stolen, mutilated, or destroyed or becomes illegible, the registered owner or owners, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon tender of one dollar and twenty-five cents in addition to all other fees and upon furnishing information satisfactory to the department. The duplicate of the license registration shall contain the legend, "duplicate."

A person recovering an original certificate of license registration for which a duplicate has been issued shall promptly surrender the original certificate to the department. [1997 c 241 § 6.]

46.16.270 Replacement of plates—Fee. The total replacement plate fee shall be deposited in the motor vehicle fund.

Upon the loss, defacement, or destruction of one or both of the vehicle license number plates issued for any vehicle where more than one plate was originally issued or where one or both have become so illegible or in such a condition as to be difficult to distinguish, or upon the owner's option, the owner of the vehicle shall make application for new vehicle license number plates upon a form furnished by the director. The application shall be filed with the director or the director's authorized agent, accompanied by the certificate of license registration of the vehicle and a fee in the amount of ten dollars per plate, whereupon the director, or the director's authorized agent, shall issue new vehicle license number plates to the applicant. It shall be accompanied by a fee of two dollars for a new motorcycle license number plate. In the event the director has issued license period tabs or a windshield emblem instead of vehicle license number plates, and upon the loss, defacement, or destruction of the tabs or windshield emblem, application shall be made on a form provided by the director and in the same manner as above described, and shall be accompanied by a fee of one dollar for each pair of tabs or for each windshield emblem, whereupon the director shall issue to the applicant a duplicate pair of tabs, year tabs, and when necessary month tabs or a windshield emblem to replace those lost, defaced, or destroyed. For vehicles owned, rented, or leased by the state of Washington or by any county, city, town, school district, or other political subdivision of the state of Washington or United States government, or owned or leased by the governing body of an Indian tribe as defined in RCW 46.16.020, a fee shall be charged for replacement of a vehicle license number plate only to the extent required by the provisions of RCW 46.16.020, 46.16.237, and 46.01.140. For vehicles owned, rented, or leased by foreign countries or international bodies to which the United States government is a signatory by treaty, the payment of any fee for the replacement of a vehicle license number plate shall not be required. [2005 c 314 § 302; 1997 c 291 § 3; 1990 c 250 § 32; 1987 c 178 § 2. Prior: 1986 c 280 § 4; 1986 c 30 § 3; 1975 1st ex.s. c 169 § 7; 1965 ex.s. c 78 § 1; 1961 c 12 § 46.16.270; prior: 1951 c 269 § 6; 1947 c 164 § 13; 1937 c 188 § 37; Rem. Supp. 1947 § 6312-37; 1929 c 99 § 6; 1921 c 96 § 14; 1919 c 59 § 8; 1915 c 142 § 14; RRS § 6325.]

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.276 Implementing rules. The director may make and enforce rules to implement this chapter. [1986 c 30 § 4.]

46.16.280 Sale, loss, or destruction of commercial vehicle—Credit for unused fee—Change in license classification. In case of loss, destruction, sale, or transfer of any motor vehicle with a registered gross weight in excess of twelve thousand pounds and subject to the license fees under RCW 46.16.070, the registered owner thereof may, under the following conditions, obtain credit for the unused portion of the licensing fee paid for the vehicle or may transfer such credit to the new owner if desired:

(1) The licensing fee paid for the motor vehicle will be reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first month of the current registration year in which the motor vehicle was registered and the month the registrant surrenders the vehicle's registration certificate for the registration year to the department or an authorized agent of the department.

(2) If any such credit is less than fifteen dollars, no credit may be given.

(3) The credit may only be applied against the licensing fee liability due under RCW 46.16.070 for the replacement motor vehicle or if such credit was transferred to the new owner, it shall remain with the vehicle. The credit may only be used during the registration year from which it was obtained.

(4) In no event is such credit subject to refund.

Whenever any vehicle has been so altered as to change its license classification in such a manner that the vehicle license number plates are rendered improper, the current license plates shall be surrendered to the department. New license plates shall be issued upon application accompanied by a one dollar fee in addition to any other or different charge by reason of licensing under a new classification. Such application shall be on forms prescribed by the department and forwarded with the proper fee to the department or the office of a duly authorized agent of the department. [1987 c 244 § 7; 1986 c 18 § 17; 1967 c 32 § 20; 1961 c 12 § 46.16.280. Prior: 1947 c 164 § 14; 1937 c 188 § 38; Rem. Supp. 1947 § 6312-38.]

46.16.290 Disposition of license plates, certificate on vehicle transfer. (1) In any case of a valid sale or transfer of the ownership of any vehicle, the right to the certificates properly transferable therewith, except as provided in RCW 46.16.280, and to the vehicle license plates passes to the purchaser or transferee. It is unlawful for the holder of such certificates, except as provided in RCW 46.16.280, or vehicle license plates to fail, neglect, or refuse to endorse the certificates and deliver the vehicle license plates to the purchaser or transferee.

(2)(a) If the sale or transfer is of a vehicle licensed with current standard issue license plates, the vehicle license plates may be retained and displayed upon a vehicle obtained in replacement of the vehicle so sold or transferred. If a person applies for a transfer of the plate or plates to another eli-

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gible vehicle, the plates must be transferred to a vehicle requiring the same type of plate. A transfer fee of ten dollars must be charged in addition to all other applicable fees. The transfer fees must be deposited in the motor vehicle fund.

(b) If the sale or transfer is of a vehicle licensed by the state or any county, city, town, school district, or other political subdivision entitled to exemption as provided by law, or, if the vehicle is licensed with personalized plates, amateur radio operator plates, medal of honor plates, disabled person plates, disabled veteran plates, prisoner of war plates, or other special license plates issued under RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, the vehicle license plates therefor shall be retained and may be displayed upon a vehicle obtained in replacement of the vehicle so sold or transferred. [2004 c 223 § 3; 1997 c 291 § 4; 1986 c 18 § 18; 1983 c 27 § 2; 1961 c 12 § 46.16.290. Prior: 1937 c 188 § 39; RRS § 6312-39; 1931 c 138 § 2; 1929 c 99 § 3; 1921 c 96 § 8; 1919 c 59 § 5; 1917 c 155 § 5; 1915 c 142 § 8; RRS § 6319.]

46.16.295 Returned plates—Reuse. The department may, upon request, provide license plates that have been used and subsequently returned to the department to individuals for nonvehicular use. The department may charge a fee of up to five dollars per plate to cover costs of recovery, postage, and handling. The department may waive the fee for plates used in educational projects, and may, by rule, provide standards for the fee waiver and restrictions on the number of plates provided to any one person. [2003 c 359 § 1.]

46.16.301 Baseball stadium license plates. The department shall create, design, and issue a special baseball stadium license plate that may be used in lieu of regular or personalized license plates for motor vehicles required to display two motor vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates shall commemorate the construction of a baseball stadium, as defined in RCW 82.14.0485. The department shall also issue to each recipient of a special baseball stadium license plate a certificate of participation in the construction of the baseball stadium. [1997 c 291 § 5; 1995 3rd sp.s. c 1 § 102; 1994 c 194 § 2; 1990 c 250 § 1.]

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Effective dates—1990 c 250 §§ 1-13: "Sections 1 through 9, and 11 through 13 of this act shall take effect on January 1, 1991. Section 10 of this act shall take effect on July 1, 1990." [1990 c 250 § 93.]

Severability—1990 c 250: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 250 § 92.]

State contribution for baseball stadium limited: RCW 82.14.0486.

46.16.305 Special license plates—Continuance of earlier issues—Conditions for current issues. The department shall continue to issue the categories of special plates issued by the department under the sections repealed under section 12 (1) through (7), chapter 250, Laws of 1990. Special license plates issued under those repealed sections before January 1, 1991, are valid to the extent and under the condi-

tions provided in those repealed sections. The following conditions, limitations, or requirements apply to certain special license plates issued after January 1, 1991:

(1) A horseless carriage plate and a plate or plates issued for collectors' vehicles more than thirty years old, upon payment of the initial fees required by law and the additional special license plate fee established by the department, are valid for the life of the vehicle for which application is approved by the department. When a single plate is issued, it shall be displayed on the rear of the vehicle.

(2) The department may issue special license plates denoting amateur radio operator status only to persons having a valid official radio operator license issued by the federal communications commission.

(3) The department shall issue one set of special license plates to each resident of this state who has been awarded the Congressional Medal of Honor for use on a passenger vehicle registered to that person. The department shall issue the plate without the payment of licensing fees and motor vehicle excise tax.

(4) The department may issue for use on only one motor vehicle owned by the qualified applicant special license plates denoting that the recipient of the plate is a survivor of the attack on Pearl Harbor on December 7, 1941, to persons meeting all of the following criteria:

(a) Is a resident of this state;

(b) Was a member of the United States Armed Forces on December 7, 1941;

(c) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(d) Received an honorable discharge from the United States Armed Forces; and

(e) Is certified by a Washington state chapter of the Pearl Harbor survivors association as satisfying the qualifications in (c) of this subsection.

The department may issue such plates to the surviving spouse of any deceased Pearl Harbor survivor who met the requirements of this subsection. If the surviving spouse remarries, he or she shall return the special plates to the department within fifteen days and apply for regular plates. The surviving spouse must be a resident of this state.

The department shall issue these plates upon payment by the applicant of all other license fees, but the department may not set or charge an additional fee for these special license plates.

(5) Effective with registrations that are due or become due on or after January 1, 2009, the department may issue for use on motor vehicles owned by the qualified applicant special license plates denoting that the recipient of the plate is a parent of a member of the United States armed forces who died while in service to his or her country or as a result of such service to persons meeting all of the following criteria:

(a) Is a resident of this state; and

(b) Is a mother or father of a member of the United States armed forces who died while in service to his or her country or who died as a result of such service, as certified by the Washington state department of veterans affairs.

The department shall issue these plates upon payment by the applicant of all other license fees, but the department may not set or charge an additional fee for these special plates.

(6) The department shall replace, free of charge, special license plates issued under subsections (3) through (5) of this section if they are lost, stolen, damaged, defaced, or destroyed. Such plates shall remain with the persons upon transfer or other disposition of the vehicle for which they were initially issued, and may be used on another vehicle registered to the recipient in accordance with the provisions of RCW 46.16.316(1). [2008 c 72 § 1. Prior: 1997 c 291 § 6; 1997 c 241 § 10; 1990 c 250 § 2.]

Exemption—2008 c 72 § 1: "Section 1 of this act is exempt from the requirements of RCW 46.16.775." [2008 c 72 § 3.]

Finding—1997 c 291: "The legislature finds that the proliferation of special license plate series has decreased the ready identification of vehicles by law enforcement, and increased the amount of computer programming conducted by the department of licensing, thereby increasing costs. Furthermore, rarely has the actual demand for special license plates met the requesters' projections. Most importantly, special plates detract from the primary purpose of license plates, that of vehicle identification." [1997 c 291 § 1.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.307 Collectors' vehicles—Use restrictions. A collectors' vehicle licensed under RCW 46.16.305(1) may only be used for participation in club activities, exhibitions, tours, parades, and occasional pleasure driving. [1996 c 225 § 11.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.16.309 Special license plates—Application. Persons applying to the department for special license plates shall apply on forms obtained from the department and in accordance with RCW 46.16.040. The applicant shall provide all information as is required by the department in order to determine the applicant's eligibility for the special license plates. [1997 c 291 § 7; 1990 c 250 § 3.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.30901 Professional firefighters and paramedics plate. The department shall issue a special license plate displaying a symbol, approved by the special license plate review board, for professional firefighters and paramedics who are members of the Washington State Council of Firefighters. Upon initial application and subsequent renewals, applicants must show proof of eligibility by providing a certificate of current membership from the Washington State Council of Firefighters. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon the terms and conditions established by the department. [2004 c 35 § 1.]

46.16.30902 Washington State Council of Firefighters benevolent fund. (1) The Washington State Council of Firefighters benevolent fund is created in the custody of the state treasurer. Upon the department's determination the

state has been reimbursed for the cost of implementing the professional firefighters and paramedics special license plate, all receipts, except as provided in RCW 46.16.313 (6) and (7), from professional firefighters and paramedics license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements of RCW 46.16.765, the department must contract with a qualified nonprofit organization to receive and disseminate funds for charitable purposes on behalf of members of the Washington State Council of Firefighters, their families, and others deemed in need.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of receiving and disseminating funds for charitable purposes on behalf of members of the Washington State Council of Firefighters, their families, and others deemed in need.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2004 c 35 § 4.]

46.16.30903 Helping Kids Speak plate. (1) The legislature recognizes the Helping Kids Speak license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol, approved by the special license plate review board, recognizing an organization that supports programs that provide no-cost speech pathology programs to children. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates will commemorate an organization that supports programs that provide free diagnostic and therapeutic services to children who have a severe delay in language or speech development. [2004 c 48 § 1.]

46.16.30904 "Helping Kids Speak" account. (1) The "Helping Kids Speak" account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" license plate, all receipts, except as provided in *RCW 46.16.313 (6) and (7), from the "Helping Kids Speak" license plate must be deposited into the account. Only the director or the director's designee may authorize expenditures from this account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements of RCW 46.16.765 the department must contract with a qualified nonprofit organization for the purpose of the organization providing free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must offer free language disorder diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development.

(c) The qualified nonprofit organization must meet all requirements of RCW 46.16.765. [2004 c 48 § 4.]

**Reviser's note:* RCW 46.16.313 was amended by 2004 c 35 § 3, 2004 c 48 § 3, and 2004 c 221 § 3. The subsections relating to the "Helping Kids Speak" plates have been renumbered as subsections (8) and (9).

46.16.30905 Law enforcement memorial plate. (1)

The legislature recognizes that the law enforcement memorial license plate has been reviewed by the special license plate review board as specified in chapter 196, Laws of 2003, and was found to fully comply with all provisions of chapter 196, Laws of 2003.

(2) The department shall issue a special license plate displaying a symbol, approved by the special license plate review board, honoring law enforcement officers in Washington killed in the line of duty. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon the terms and conditions established by the department. [2004 c 221 § 1.]

46.16.30906 Law enforcement memorial account. (1)

The law enforcement memorial account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate, all receipts, except as provided in *RCW 46.16.313 (7) and (8), from law enforcement memorial license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Pursuant to the requirements set out in RCW 46.16.765 the department must contract with a qualified nonprofit organization to provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organiza-

tion must have been established for the express purposes of providing support and assistance to the survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers.

(c) The qualified nonprofit must meet all requirements set out in RCW 46.16.765. [2004 c 221 § 4.]

***Reviser's note:** RCW 46.16.313 was amended by 2004 c 35 § 3, 2004 c 48 § 3, and 2004 c 221 § 3. The subsections relating to law enforcement memorial plates have been renumbered as subsections (10) and (11).

46.16.30907 Washington's Wildlife plate collection.

(1) The legislature recognizes that the Washington's Wildlife license plate collection, to include three distinct designs including bear, deer, and elk, has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate collection displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington's wildlife, that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 42 § 1.]

46.16.30908 Washington's Wildlife license plate collection—Definition. For the purposes of RCW 46.16.313 and 46.16.30907, the term "Washington's Wildlife license plate collection" means the collection of three separate license plate designs issued under RCW 46.16.30907. Each license plate design displays a distinct symbol or artwork recognizing the wildlife of Washington, to include bear, deer, and elk. [2005 c 42 § 2.]

46.16.30909 Washington state parks and recreation commission plate. (1) The legislature recognizes that the Washington state parks and recreation commission license plate application has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources, that may be used in lieu of regular or personalized license plates for vehicles required to display one and two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 44 § 1.]

46.16.30910 Washington state parks and recreation commission special license plate—Definition. For the purposes of RCW 46.16.313, "Washington state parks and recreation commission special license plate" means license plates issued under RCW 46.16.30909 that display a symbol or art-

work recognizing the efforts of state parks and recreation in Washington state. [2005 c 44 § 2.]

46.16.30911 "Washington Lighthouses" plate. (1) The legislature recognizes that the "Washington Lighthouses" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing an organization that supports selected Washington state lighthouses and provides environmental education programs. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 48 § 1.]

46.16.30912 Lighthouse environmental programs account. (1) The lighthouse environmental programs account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Washington Lighthouses" special license plate, all receipts, except as provided in RCW 46.16.313(14) (a) and (b), from "Washington Lighthouses" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; to provide environmental education programs; and to provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration and to encourage and support interpretive programs by lighthouse docents.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of supporting selected Washington state lighthouses that are open to the public and staffed by volunteers; providing environmental education programs; and encouraging and supporting interpretive programs by lighthouse docents.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 48 § 4.]

46.16.30913 "Keep Kids Safe" plate. (1) The legislature recognizes that the "Keep Kids Safe" license plate has been reviewed and approved by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying artwork, approved by the special license plate review board, recognizing efforts to prevent child abuse and neglect. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 53 § 1.]

46.16.30914 "We love our pets" plate. (1) The legislature recognizes that the "we love our pets" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board, recognizing an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets, in order to reduce pet overpopulation. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 71 § 1.]

46.16.30915 We love our pets account. (1) The we love our pets account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the we love our pets special license plate, all receipts, except as provided in RCW 46.16.313(16) (a) and (b), from we love our pets license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Pursuant to the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to support and to enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets, in order to reduce pet overpopulation.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purpose of assisting local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets, in order to reduce pet overpopulation.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 71 § 4.]

(2008 Ed.)

46.16.30916 Gonzaga University alumni association plate. (1) The legislature recognizes that the Gonzaga University alumni association license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board, recognizing the Gonzaga University alumni association. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 85 § 1.]

46.16.30917 Gonzaga University alumni association account. (1) The Gonzaga University alumni association account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the Gonzaga University alumni association special license plate, all receipts, except as provided in RCW 46.16.313(17) (a) and (b), from Gonzaga University alumni association license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Pursuant to the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to provide scholarship funds to needy and qualified students attending or planning to attend Gonzaga University.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purpose of providing student scholarships to Gonzaga University.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 85 § 4.]

46.16.30918 "Washington's National Park Fund" plate. (1) The legislature recognizes that the "Washington's National Park Fund" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing Washington's National Park Fund, that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 177 § 1.]

46.16.30919 "Washington's National Park Fund" account. (1) The "Washington's National Park Fund" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Washington's National Park Fund" special license plate, all receipts, except as provided in RCW 46.16.313 (18) and (19), from "Washington's National Park Fund" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to build awareness of Washington's national parks and to support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of building awareness of Washington's national parks, enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 177 § 4.]

46.16.30920 Armed forces plate collection. (1) The legislature recognizes that the armed forces license plate collection has been reviewed and approved by the special license plate review board.

(2) The department shall issue a special license plate collection, approved by the special license plate review board and the legislature, recognizing the contribution of veterans, active duty military personnel, reservists, and members of the national guard. The collection includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.

(3) Armed forces special license plates may be used in lieu of regular or personalized license plates for vehicles required to display one and two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department.

(4) Upon request, the department must make available to the purchaser, at no additional cost, a decal indicating the purchaser's military status. The department must work with the department of veterans affairs to establish a list of the decals to be made available. The list of available decals must include, but is not limited to, "veteran," "disabled veteran," "reservist," "retiree," or "active duty." The department may specify where the decal may be placed on the license plate.

Decals are required to be made available only for standard six-inch by twelve-inch license plates.

(5) Armed forces license plates and decals are available only to veterans as defined in RCW 41.04.007, active duty military personnel, reservists, members of the national guard, and the families of veterans and service members. Upon initial application, any purchaser requesting an armed forces license plate and decal will be required to show proof of eligibility by providing: A DD-214 or discharge papers if a veteran; a military identification or retired military identification card; or a declaration of fact attesting to the purchaser's eligibility as required under this section. "Family" or "families" means an individual's spouse, child, parent, sibling, aunt, uncle, or cousin. A child includes stepchild, adopted child, foster child, grandchild, and son or daughter-in-law. A parent includes stepparent, grandparent, and in-laws. A sibling includes brother, half brother, stepbrother, sister, half sister, stepsister, and brother or sister-in-law.

(6) The department of veterans affairs must enter into an agreement with the department to reimburse the department for the costs associated with providing military status decals described in subsection (4) of this section.

(7) Armed forces license plates are not available free of charge to disabled veterans, former prisoners of war, or spouses of deceased former prisoners of war under the privileges defined in RCW 73.04.110 and 73.04.115. [2008 c 183 § 1; 2005 c 216 § 1.]

46.16.30921 Armed forces license plate collection—Definition—No free issuance. (1) "Armed forces license plate collection" means the collection of six separate license plate designs issued under RCW 46.16.30920. Each license plate design displays a symbol representing one of the five branches of the armed forces, and one representing the national guard.

(2) Armed forces license plates are not available free of charge to disabled veterans, former prisoners of war, or spouses of deceased former prisoners of war under the privileges defined in RCW 73.04.110 and 73.04.115. [2008 c 183 § 2; 2005 c 216 § 2.]

46.16.30922 "Ski & Ride Washington" plate. (1) The legislature recognizes that the "Ski & Ride Washington" license plate has been reviewed and approved by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing the Washington snowsports industry, that may be used in lieu of regular or personalized license plates for vehicles required to display vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 220 § 1.]

46.16.30923 "Ski & Ride Washington" account. (1) The "Ski & Ride Washington" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Ski Washington" special license plate, all

receipts, except as provided in RCW 46.16.313(21), from "Ski & Ride Washington" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements of RCW 46.16.765, the department must contract with a qualified nonprofit organization for the purpose of promoting winter snowsports (i.e. skiing and snowboarding) and related programs such as ski and ride safety programs, underprivileged youth "ski and ride" programs, and active, healthy lifestyle programs.

(b) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 220 § 4.]

46.16.30924 Wild On Washington plate. (1) The legislature recognizes that the Wild On Washington license plate has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, referred to as "Wild On Washington license plates," that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 224 § 1.]

46.16.30925 Wild On Washington license plates—Definition. For the purposes of RCW 46.16.313 and 46.16.30924, the term "Wild On Washington license plates" means license plates issued under RCW 46.16.30924 that display a symbol or artwork symbolizing wildlife viewing in Washington state. [2005 c 224 § 2.]

46.16.30926 Endangered Wildlife plate. (1) The legislature recognizes that the Endangered Wildlife license plate has been reviewed by the special license plate review board under RCW 46.16.725 and was found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, referred to as "Endangered Wildlife license plates," that may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. [2005 c 225 § 1.]

46.16.30927 Endangered Wildlife license plates—Definition. For the purposes of RCW 46.16.313 and 46.16.30926, the term "Endangered Wildlife license plates" means license plates issued under RCW 46.16.30926 that display a symbol or artwork symbolizing endangered wildlife in Washington state. [2005 c 225 § 2.]

46.16.30928 "Share the Road" plate. (1) The legislature recognizes that the "Share the Road" license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol or artwork, approved by the special license plate review board and the legislature, recognizing an organization that promotes bicycle safety and awareness education. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates will commemorate the life of Cooper Jones. [2005 c 426 § 1.]

46.16.30929 "Share the Road" account. (1) The "Share the Road" account is created in the custody of the state treasurer. Upon the department's determination that the state had been reimbursed for the cost of implementing the "Share the Road" special license plate, all receipts, except as provided in RCW 46.16.313(24) (a) and (b), from "Share the Road" license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements set out in RCW 46.16.765, the department must contract with a qualified nonprofit organization to promote bicycle safety and awareness education in communities throughout Washington.

(b) For the purpose of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must promote bicycle safety and awareness education in communities throughout Washington.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765. [2005 c 426 § 4.]

46.16.313 Special license plates—Fees. (1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

(2) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it.

The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

(4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional firefighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional firefighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Firefighters benevolent fund established under RCW 46.16.30902.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional firefighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional firefighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Firefighters benevolent fund established under RCW 46.16.30902.

(8) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(9) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under RCW 46.16.30904.

(10) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "law enforcement memorial" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper

identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(11) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "law enforcement memorial" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the law enforcement memorial special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the law enforcement memorial account established under RCW 46.16.30906.

(12)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Washington's Wildlife collection license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington's Wildlife license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Washington's Wildlife license plate collection may be used only for the department of fish and wildlife's game species management activities.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Washington's Wildlife collection license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington's Wildlife license plate collection. Upon

determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Washington's Wildlife license plate collection may be used only for the department of fish and wildlife's game species management activities.

(13)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Washington state parks and recreation commission special license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington state parks and recreation commission special license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state parks education and enhancement account established in RCW 79A.05.059.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Washington state parks and recreation commission special license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Washington state parks and recreation commission special license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state parks education and enhancement account established in RCW 79A.05.059.

(14)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Washington Lighthouses" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington Lighthouses" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the lighthouse environmental programs account established under RCW 46.16.30912.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Washington Lighthouses" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington Lighthouses" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the lighthouse environmental programs account established under RCW 46.16.30912.

(15)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Keep Kids Safe" license plate shall pay an initial fee of forty-five dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Keep Kids Safe" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the children's trust fund established under RCW 43.121.100.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Keep Kids Safe" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Keep Kids Safe" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the children's trust fund established under RCW 43.121.100.

(16)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "we love our pets" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administrative and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the

state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "we love our pets" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the we love our pets account established under RCW 46.16.30915.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "we love our pets" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "we love our pets" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the we love our pets account established under RCW 46.16.30915.

(17)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Gonzaga University alumni association" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administrative and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Gonzaga University alumni association" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Gonzaga University alumni association account established under RCW 46.16.30917.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Gonzaga University alumni association" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Gonzaga University alumni association" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Gonzaga University alumni association account established under RCW 46.16.30917.

(18) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Washington's National Park Fund" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington's National Park Fund" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Washington's National Park Fund" account established under RCW 46.16.30919.

(19) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Washington's National Park Fund" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Washington's National Park Fund" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Washington's National Park Fund" account established under RCW 46.16.30919.

(20)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of an armed forces license plate shall pay an initial fee of forty dollars. The department shall retain an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the armed forces special license plate collection. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the veterans stewardship account established under RCW 43.60A.140.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of an armed forces license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be

remitted to the custody of the state treasurer with a proper identifying report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the armed forces special license plate collection. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the veterans stewardship account established in RCW 43.60A.140.

(21)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Ski & Ride Washington" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Ski & Ride Washington" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Ski & Ride Washington" account established under RCW 46.16.30923.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Ski & Ride Washington" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Ski & Ride Washington" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Ski & Ride Washington" account established under RCW 46.16.30923.

(22)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a Wild On Washington license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Wild On Washington license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Wild On Washington license plates must be dedicated to the

department of fish and wildlife's watchable wildlife activities defined in RCW 77.32.560(2).

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a Wild On Washington license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Wild On Washington license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Wild On Washington license plates must be dedicated to the department of fish and wildlife's watchable wildlife activities defined in RCW 77.32.560(2).

(23)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of an Endangered Wildlife license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Endangered Wildlife license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Endangered Wildlife license plates must be used only for the department of fish and wildlife's endangered wildlife program activities.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of an Endangered Wildlife license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the Endangered Wildlife license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the state wildlife account. Proceeds credited to the state wildlife account from the sale of the Endangered Wildlife license plates must be used only for

the department of fish and wildlife's endangered wildlife program activities.

(24)(a) Effective with vehicle registrations due or to become due on or after January 1, 2006, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Share the Road" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Share the Road" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Share the Road" account established under RCW 46.16.30929.

(b) Effective with annual renewals due or to become due on or after January 1, 2007, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Share the Road" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Share the Road" license plate. Upon determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Share the Road" account established under RCW 46.16.30929. [2005 c 426 § 3; 2005 c 225 § 3; 2005 c 224 § 3; 2005 c 220 § 3; 2005 c 216 § 3; 2005 c 177 § 3; 2005 c 85 § 3; 2005 c 71 § 3; 2005 c 53 § 3; 2005 c 48 § 3; 2005 c 44 § 3; 2005 c 42 § 3. Prior: 2004 c 221 § 3; 2004 c 48 § 3; 2004 c 35 § 3; 1997 c 291 § 8; 1996 c 165 § 506; 1995 3rd sp.s. c 1 § 103; 1994 c 194 § 4; 1990 c 250 § 4.]

Reviser's note: This section was amended by 2005 c 42 § 3, 2005 c 44 § 3, 2005 c 48 § 3, 2005 c 53 § 3, 2005 c 71 § 3, 2005 c 85 § 3, 2005 c 177 § 3, 2005 c 216 § 3, 2005 c 220 § 3, 2005 c 224 § 3, 2005 c 225 § 3, and by 2005 c 426 § 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1996 c 165: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 165 § 510.]

Effective date—1996 c 165: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 165 § 511.]

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

State contribution for baseball stadium limited: RCW 82.14.0486.

46.16.314 Special license plates—Authority to continue. The department has the sole discretion, based upon the number of sales to date, to determine whether or not to continue issuing license plates in a special series created before January 1, 2003. [2003 c 196 § 501; 1997 c 291 § 9.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.316 Special license plates—Transfer of vehicle—Replacement plates. Except as provided in RCW 46.16.305:

(1) When a person who has been issued a special license plate or plates: (a) Under RCW 46.16.30901, 46.16.30903, 46.16.30905, or 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, or under RCW 46.16.305(2) or 46.16.324; (b) approved by the special license plate review board under RCW 46.16.715 through 46.16.775; or (c) under RCW 46.16.601 sells, trades, or otherwise transfers or releases ownership of the vehicle upon which the special license plate or plates have been displayed, he or she shall immediately report the transfer of such plate or plates to an acquired vehicle or vehicle eligible for such plates pursuant to departmental rule, or he or she shall surrender such plates to the department immediately if such surrender is required by departmental rule. If a person applies for a transfer of the plate or plates to another eligible vehicle, a transfer fee of ten dollars shall be charged in addition to all other applicable fees. Such transfer fees shall be deposited in the motor vehicle fund. Failure to surrender the plates when required is a traffic infraction.

(2) If the special license plate or plates issued by the department become lost, defaced, damaged, or destroyed, application for a replacement special license plate or plates shall be made and fees paid as provided by law for the replacement of regular license plates. [2005 c 210 § 2. Prior: 2004 c 223 § 4; 2004 c 221 § 5, 2004 c 48 § 5; 2004 c 35 § 5; 1997 c 291 § 10; 1990 c 250 § 5.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.319 Veterans and military personnel—Emblems. (1) Veterans discharged under honorable conditions (veterans) and individuals serving on active duty in the United States armed forces (active duty military personnel) may purchase a veterans remembrance emblem or campaign medal emblem. The emblem is to be displayed on vehicle license plates in the manner described by the department, existing vehicular licensing procedures, and current laws.

(2) Veterans and active duty military personnel who served during periods of war or armed conflict may purchase a remembrance emblem depicting campaign ribbons which they were awarded.

(3) The following campaign ribbon remembrance emblems are available:

- (a) World War I victory medal;
- (b) World War II Asiatic-Pacific campaign medal;
- (c) World War II European-African Middle East campaign medal;
- (d) World War II American campaign medal;
- (e) Korean service medal;

- (f) Vietnam service medal;
- (g) Armed forces expeditionary medal awarded after 1958; and
- (h) Southwest Asia medal.

The director may issue additional campaign ribbon emblems by rule as authorized decorations by the United States department of defense.

(4) Veterans or active duty military personnel requesting a veteran remembrance emblem or campaign medal emblem or emblems must:

- (a) Pay a prescribed fee set by the department; and
- (b) Show proof of eligibility through:
 - (i) Providing a DD-214 or discharge papers if a veteran;
 - (ii) Providing a copy of orders awarding a campaign ribbon if an individual serving on military active duty; or
 - (iii) Attesting in a notarized affidavit of their eligibility as required under this section.

(5) Veterans or active duty military personnel who purchase a veteran remembrance emblem or a campaign medal emblem must be the legal or registered owner of the vehicle on which the emblem is to be displayed. [1997 c 234 § 1; 1991 c 339 § 11; 1990 c 250 § 6.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.324 Collegiate license plates. Effective January 1, 1995, a state university, regional university, or state college as defined in RCW 28B.10.016 may apply to the department, in a form prescribed by the department, and request the department to issue a series of collegiate license plates depicting the name and mascot or symbol of the college or university, as submitted and approved for use by the requesting institution. [1994 c 194 § 3.]

46.16.327 Military emblems—Material, display requirements. Vehicle license plate emblems and veteran remembrance emblems shall use fully reflectorized materials designed to provide visibility at night. Emblems shall be designed to be affixed to a vehicle license number plate by pressure-sensitive adhesive so as not to obscure the plate identification numbers or letters.

Emblems will be issued for display on the front and rear license number plates. Single emblems will be issued for vehicles authorized to display one license number plate. [1990 c 250 § 8.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.332 Military emblems—Fees. (1) The director may adopt fees to be charged by the department for emblems issued by the department under RCW 46.16.319.

(2) The fee for each remembrance emblem issued under RCW 46.16.319 shall be in an amount sufficient to offset the costs of production of remembrance emblems and the administration of that program by the department plus an amount for use by the department of veterans affairs, not to exceed a total fee of twenty-five dollars per emblem.

(3) The veterans' emblem account is created in the custody of the state treasurer. All receipts by the department from the issuance of remembrance emblems under RCW 46.16.319 shall be deposited into this fund. Expenditures from the fund may be used only for the costs of production of remembrance emblems and administration of the program by the department of licensing, with the balance used only by the department of veterans affairs for projects that pay tribute to those living veterans and to those who have died defending freedom in our nation's wars and conflicts and for the upkeep and operations of existing memorials, as well as for planning, acquiring land for, and constructing future memorials. Only the director of licensing, the director of veterans affairs, or their designees may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1994 c 194 § 5; 1990 c 250 § 9.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.333 Cooper Jones emblems. In cooperation with the Washington state patrol and the department of licensing, the traffic safety commission shall create and design, and the department shall issue, Cooper Jones license plate emblems displaying a symbol of bicycle safety that may be used on motor vehicles required to display two motor vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. These license plate emblems will fund the Cooper Jones act and provide funding for bicyclist and pedestrian safety education, enforcement, and encouragement.

Any person may purchase Cooper Jones license plate emblems. The emblems are to be displayed on the vehicle license plates in the manner described by the department, existing vehicular licensing procedures, and current laws. The fee for Cooper Jones emblems shall be twenty-five dollars. All moneys collected shall first go to the department to be deposited into the motor vehicle fund until all expenses of designing and producing the emblems are recovered. Thereafter, the department shall deduct an amount not to exceed five dollars of each fee collected for Cooper Jones emblems for administration and collection expenses. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the proceeds to the "Share the Road" account established under RCW 46.16.30929. [2005 c 426 § 5; 2002 c 264 § 3.]

Finding—2002 c 264: "The legislature finds that bicycling and walking are becoming increasingly popular in Washington as clean and efficient modes of transportation, as recreational activities, and as organized sports. Future plans for the state's transportation system will require increased access and safety for bicycles and pedestrians on our common roadways, and federal transportation legislation and funding programs have created strong incentives to implement these changes quickly. As a result, many more people are likely to take up bicycling in Washington both as a leisure activity and as a convenient, inexpensive form of transportation. Bicyclists are more vulnerable to injury and accident than motorists, and both should be knowledgeable about traffic laws. Bicyclists should be highly visible and predictable when riding in traffic, and be encouraged to wear bicycle safety helmets. Hundreds of bicyclists and pedestrians are seriously injured every year in accidents, and millions of dollars are spent on health care costs associated with these accidents. There is clear evidence that organized training in the rules and techniques of safe and effective cycling can significantly reduce

the incidence of serious injury and accidents, increase cooperation among road users, and significantly increase the incidence of bicycle helmet use, particularly among minors. A reduction in accidents benefits the entire community. Therefore, it is appropriate for businesses and community organizations to provide donations to bicycle and pedestrian safety training programs." [2002 c 264 § 1.]

46.16.335 Special license plates and emblems—Rules. The director shall adopt rules to implement RCW 46.16.301 through 46.16.332, including setting of fees. [1990 c 250 § 10.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

46.16.340 Amateur radio operator plates—Information furnished to various agencies. The director, from time to time, shall furnish the state military department, the department of community, trade, and economic development, the Washington state patrol, and all county sheriffs a list of the names, addresses, and license plate or radio station call letters of each person possessing the special amateur radio station license plates so that the facilities of such radio stations may be utilized to the fullest extent in the work of these governmental agencies. [1995 c 391 § 8; 1986 c 266 § 49; 1985 c 7 § 112; 1974 ex.s. c 171 § 43; 1967 c 32 § 23; 1961 c 12 § 46.16.340. Prior: 1957 c 145 § 3.]

Effective date—1995 c 391: See note following RCW 38.52.005.

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

46.16.350 Amateur radio operator plates—Expiration or revocation of radio license—Penalty. Any radio amateur operator who holds a special call letter license plate as issued under RCW 46.16.305, and who has allowed his or her federal communications commission license to expire, or has had it revoked, must notify the director in writing within thirty days and surrender his or her call letter license plate. Failure to do so is a traffic infraction. [1997 c 291 § 11; 1990 c 250 § 11; 1979 ex.s. c 136 § 49; 1967 c 32 § 24; 1961 c 12 § 46.16.350. Prior: 1957 c 145 § 4.]

Effective dates—1990 c 250 §§ 1-13: See note following RCW 46.16.301.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.371 Special plates for honorary consul, foreign government representative. (1) Every honorary consul or official representative of any foreign government who is a citizen or resident of the United States of America, duly licensed and holding an exequatur issued by the department of state of the United States of America is entitled to apply to the director for, and upon satisfactory showing, and upon payment of regular license fees and excise tax, to receive, in lieu of the regular motor vehicle license plates, such special plates of a distinguishing color and running in a separate numerical series, as the director shall prescribe. Application for renewal of the license plates shall be as prescribed for the license renewal of other vehicles.

(2) Whenever the owner or lessee as provided in subsection (1) of this section transfers or assigns his interest or title in the motor vehicle to which the special plates were

attached, the plates shall be removed from the motor vehicle, and if another vehicle is acquired, attached thereto, and the director shall be immediately notified of the transfer of the plates; otherwise the removed plates shall be immediately forwarded to the director to be destroyed. Whenever the owner or lessee as provided in subsection (1) of this section is for any reason relieved of his duties as an honorary consul or official representative of a foreign government, he shall immediately forward the special plates to the director, who shall upon receipt thereof provide such plates as are otherwise provided by law. [1987 c 237 § 1.]

46.16.374 Taipei Economic and Cultural Office—Special plates. (1) If the eligible applicant bears the entire cost of plate production, the department shall provide for the issuance of special license plates, in lieu of regular motor vehicle license plates, for passenger vehicles having manufacturers' rated carrying capacities of one ton or less that are owned or leased by an officer of the Taipei Economic and Cultural Office. The department shall issue the special license plates in a distinguishing color, running in a separate numerical series, and bearing the words "Foreign Organization." A vehicle for which special license plates are issued under this section is exempt from regular license fees under RCW 46.16.0621 and any additional vehicle license fees imposed under *RCW 82.80.020.

(2) Whenever the owner or lessee as provided in subsection (1) of this section transfers or assigns the interest or title in the motor vehicle for which the special plates were issued, the plates must be removed from the motor vehicle, and if another qualified vehicle is acquired, attached to that vehicle, and the director must be immediately notified of the transfer of the plates; otherwise the removed plates must be immediately forwarded to the director to be destroyed. Whenever the owner or lessee as provided in subsection (1) of this section is for any reason relieved of his or her duties as a representative of a recognized foreign organization, he or she shall immediately forward the special plates to the director, who shall upon receipt dispose of the plates as otherwise provided by law. [2001 c 64 § 5; 1996 c 139 § 1.]

***Reviser's note:** RCW 82.80.020 was repealed by 2003 c 1 § 5, (Initiative Measure No. 776, approved November 5, 2002).

46.16.376 Taipei Economic and Cultural Office—Fee exemption. A motor vehicle owned or leased by an officer of the Taipei Economic and Cultural Office eligible for a special license plate under RCW 46.16.374 is exempt from the payment of license fees for the licensing of the vehicle as provided in this chapter. [1996 c 139 § 2.]

46.16.381 Special parking for persons with disabilities—Penalties—Enforcement—Definition. (1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk or involves acute sensitivity to light and meets one of the following criteria, as determined by a licensed physician, an advanced registered nurse practitioner licensed under chapter 18.79 RCW, or a physician assistant licensed under chapter 18.71A or 18.57A RCW:

- (a) Cannot walk two hundred feet without stopping to rest;
- (b) Is severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;
- (c) Has such a severe disability, that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) Uses portable oxygen;
- (e) Is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (f) Impairment by cardiovascular disease or cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American Heart Association;
- (g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician, advanced registered nurse practitioner, or physician assistant of the applicant shall document that the disability is comparable in severity to the others listed in this subsection;
- (h) Is legally blind and has limited mobility; or
- (i) Is restricted by a form of porphyria to the extent that the applicant would significantly benefit from a decrease in exposure to light.

(2) The applications for parking permits for persons with disabilities and parking permits for persons with temporary disabilities are official state documents. Knowingly providing false information in conjunction with the application is a gross misdemeanor punishable under chapter 9A.20 RCW. The following statement must appear on each application form immediately below the physician's, advanced registered nurse practitioner's, or physician assistant's signature and immediately below the applicant's signature: "A parking permit for a person with disabilities may be issued only for a medical necessity that severely affects mobility or involves acute sensitivity to light (RCW 46.16.381). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to one year in jail and a fine of up to \$5,000 or both."

(3) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access and an individual serial number, along with a special identification card bearing the name and date of birth of the person to whom the placard is issued, and the placard's serial number. The special identification card shall be issued to all persons who are issued parking placards, including those issued for temporary disabilities, and special parking license plates for persons with disabilities. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the person with disabilities. Instead of regular motor vehicle license plates, persons with disabilities are entitled to receive special license plates under this section or RCW 46.16.385 bearing the international symbol of access for one vehicle registered in the name of the person with disabilities. Persons with disabilities

who are not issued the special license plates are entitled to receive a second special placard upon submitting a written request to the department. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the placard or special license plates issued under this section or RCW 46.16.385 may park in places reserved for persons with physical disabilities. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport persons with disabilities who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, boarding home, senior citizen center, private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, private nonprofit agencies, and cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

(4) Whenever the person with disabilities transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the person with disabilities and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the person with disabilities, the removed plate shall be immediately surrendered to the director.

(5) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the person's physician. The permanent parking placard and identification card of a person with disabilities shall be renewed at least every five years, as required by the director, by satisfactory proof of the right to continued use of the privileges. In the event of the permit holder's death, the parking placard and identification card must be immediately surrendered to the department. The department shall match and purge its database of parking permits issued to persons with disabilities with available death record information at least every twelve months.

(6) Additional fees shall not be charged for the issuance of the special placards or the identification cards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

(7) Any unauthorized use of the special placard, special license plate issued under this section or RCW 46.16.385, or

identification card is a traffic infraction with a monetary penalty of two hundred fifty dollars.

(8) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for a person to make inaccessible the access aisle located next to a space reserved for persons with physical disabilities. The clerk of the court shall report all violations related to this subsection to the department.

(9) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for persons with physical disabilities without a placard or special license plate issued under this section or RCW 46.16.385. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the placard or special license plate issued under this section or RCW 46.16.385 required under this section. A local jurisdiction providing nonmetered, on-street parking places reserved for persons with physical disabilities may impose by ordinance time restrictions of no less than four hours on the use of these parking places. A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards or special license plates issued under this section or RCW 46.16.385. All time restrictions must be clearly posted.

(10) The penalties imposed under subsections (8) and (9) of this section shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

(11) Except as provided by subsection (2) of this section, it is a traffic infraction with a monetary penalty of two hundred fifty dollars for any person willfully to obtain a special license plate issued under this section or RCW 46.16.385, placard, or identification card in a manner other than that established under this section.

(12)(a) A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of this section or RCW 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications the agency deems desirable.

(b) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(c) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(d) A police officer or a volunteer may request a person to show the person's identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(13) For second or subsequent violations of this section, in addition to a monetary fine, the violator must complete a minimum of forty hours of:

(a) Community restitution for a nonprofit organization that serves persons having disabilities or disabling diseases; or

(b) Any other community restitution that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

(14) The court may not suspend more than one-half of any fine imposed under subsection (7), (8), (9), or (11) of this section.

(15) For the purposes of this section, "legally blind" means a person who: (a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision; or (b) has an eye condition of a progressive nature which may lead to blindness. [2007 c 262 § 1; 2007 c 44 § 1; 2006 c 357 § 2; 2005 c 390 § 2; 2004 c 222 § 2; 2003 c 371 § 1; 2002 c 175 § 33; 2001 c 67 § 1; 1999 c 136 § 1; 1998 c 294 § 1; 1995 c 384 § 1; 1994 c 194 § 6; 1993 c 106 § 1; 1992 c 148 § 1; 1991 c 339 § 21; 1990 c 24 § 1; 1986 c 96 § 1; 1984 c 154 § 2.]

Reviser's note: This section was amended by 2007 c 44 § 1 and by 2007 c 262 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2006 c 357: "The legislature reaffirms its recognition that legal blindness does not affect the physical ability to walk, nor does it limit the ability to participate and contribute in employment and all aspects of life as an equal and productive citizen. Furthermore, for a legally blind individual with appropriate training in travel skills, any limitations on that individual's mobility are not resolved by the granting of special parking privileges. However, for some individuals, including the newly blind and those in transition, the availability of special parking privileges could prove to be an appropriate benefit if those individuals choose to avail themselves of the opportunity." [2006 c 357 § 1.]

Effective date—2004 c 222 §§ 1 and 2: See note following RCW 46.16.385.

Effective date—2002 c 175: See note following RCW 7.80.130.

Intent—1984 c 154: "The legislature intends to extend special parking privileges to persons with disabilities that substantially impair mobility." [1984 c 154 § 1.]

Application—1984 c 154: "This act applies to special license plates, cards, or decals issued after June 7, 1984. Nothing in this act invalidates special license plates, cards, or decals issued before June 7, 1984." [1984 c 154 § 9.]

Severability—1984 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 154 § 10.]

Accessible parking spaces required: RCW 70.92.140.

Free parking by individuals with disabilities: RCW 46.61.582.

46.16.385 Versions of special plates for persons with disabilities. (1) The department shall design and issue versions of special license plates including the international symbol of access described in RCW 70.92.120 for plates issued under (a) RCW 46.16.301; (b) RCW 46.16.305, except those plates issued under RCW 46.16.305 (1) and (2); (c) RCW 46.16.324; (d) RCW 46.16.745; (e) RCW 73.04.110; (f) RCW 73.04.115; (g) RCW 46.16.301(1) (a), (b), or (c), as it existed before amendment by section 5, chapter 291, Laws of 1997; (h) RCW 46.16.565; or (i) plates issued under RCW 46.16.601. The version of the special plate including the international symbol of access may be used in lieu of the

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parking placard issued to persons who qualify for special parking privileges under RCW 46.16.381. The department may not charge an additional fee for the issuance of the special license plate including the international symbol of access, except the regular motor vehicle registration fee, the fee associated with the particular special plate, and any other fees and taxes required to be paid upon registration of a motor vehicle. The international symbol of access must be incorporated into the design of the special license plate in a manner to be determined by the department, and under existing vehicular licensing procedures and existing laws.

(2) Persons who qualify for special parking privileges under RCW 46.16.381, and who have applied and paid the appropriate fee for any of the special license plates listed in subsection (1) of this section, are entitled to receive from the department a special license plate including the international symbol of access. The special license plate including the international symbol of access may be used for one vehicle registered in the name of the person with the disability. Persons who have been issued the parking privileges or who are using a vehicle displaying the special license plate including the international symbol of access may park in places reserved for persons with physical disabilities.

(3) Special license plates including the international symbol of access must be administered in the same manner as plates issued under RCW 46.16.381.

(4) The department shall adopt rules to implement this section. [2005 c 390 § 3; 2005 c 210 § 3; 2004 c 222 § 1.]

Reviser's note: This section was amended by 2005 c 210 § 3 and by 2005 c 390 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2004 c 222 §§ 1 and 2: "Sections 1 and 2 of this act take effect November 1, 2004." [2004 c 222 § 5.]

46.16.390 Special plate or card issued by another jurisdiction. A special license plate or card issued by another state or country that indicates an occupant of the vehicle has disabilities, entitles the vehicle on or in which it is displayed and being used to transport the person with disabilities to lawfully park in a parking place reserved for persons with physical disabilities pursuant to chapter 70.92 RCW or authority implemental thereof. [2005 c 390 § 4; 1991 c 339 § 22; 1984 c 51 § 1.]

46.16.450 Appeals to superior court from suspension, revocation, cancellation, or refusal of license or certificate. See RCW 46.12.240.

46.16.460 Nonresident members of armed forces—Issuance of temporary license. Upon the payment of a fee of ten dollars therefor, the department of licensing shall issue a temporary motor vehicle license for a motor vehicle in this state for a period of forty-five days when such motor vehicle has been or is being purchased by a nonresident member of the armed forces of the United States and an application, accompanied with prepayment of required fees, for out of state registration has been made by the purchaser. [1979 c 158 § 141; 1967 c 202 § 4.]

46.16.470 Temporary license—Display. The temporary license provided for in RCW 46.16.460 shall be carried on the interior of the motor vehicle in such a way as to be clearly visible from outside the vehicle. [1967 c 202 § 5.]

46.16.480 Nonresident members of armed forces—Exemption from sales, use, or motor vehicle excise taxes—Extent of exemption. The original purchaser of a motor vehicle, for which a temporary license as provided in RCW 46.16.460 has been issued, shall not be subject to the sales tax, use tax, or motor vehicle excise tax during the effective period of such license or thereafter unless the motor vehicle, after the effective period of such license, is still in this state or within a period of one year after the effective period of such license is returned to this state. [1967 c 202 § 6.]

46.16.490 Nonresident members of armed forces—Rules and regulations—Proof. The department of licensing shall prescribe rules and regulations governing the administration of RCW 46.16.460 through 46.16.490. The department may require that adequate proof of the facts asserted in the application for a temporary license shall be made before the temporary license shall be granted. [1979 c 158 § 142; 1967 c 202 § 7.]

46.16.500 Liability of operator, owner, lessee for violations. Whenever an act or omission is declared to be unlawful in chapter 46.16 RCW, if the operator of the vehicle is not the owner or lessee of such vehicle, but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and/or owner or lessee are both subject to the provisions of this chapter with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or lessee of the vehicle, such person is fully authorized to accept the citation and execute the promise to appear on behalf of the owner or lessee. [1980 c 104 § 3; 1969 ex.s. c 69 § 2.]

46.16.505 Campers—License and plates—Application—Fee. It shall be unlawful for a person to operate any vehicle equipped with a camper over and along a public highway of this state without first having obtained and having in full force and effect a current and proper camper license and displaying a camper license number plate therefor as required by law: PROVIDED, HOWEVER, That if a camper is part of the inventory of a manufacturer or dealer and is unoccupied at all times, and a dated demonstration permit, valid for no more than seventy-two hours is carried in the motor vehicle at all times it is operated by any such individual, such camper may be demonstrated if carried upon an appropriately licensed vehicle.

Application for an original camper license shall be made on a form furnished for the purpose by the director. Such application shall be made by the owner of the camper or his duly authorized agent over the signature of such owner or agent, and he shall certify that the statements therein are true and to the best of his knowledge. The application must show:

- (1) Name and address of the owner of the camper;

- (2) Trade name of the camper, model, year, and the serial number thereof;

- (3) Such other information as the director requires.

There shall be paid and collected annually for each registration year or fractional part thereof and upon each camper a license fee or, if the camper was previously licensed in this state and has not been registered in another jurisdiction in the intervening period, a renewal license fee. Such license fee shall be in the sum of four dollars and ninety cents, and such renewal license fee shall be in the sum of three dollars and fifty cents.

Except as otherwise provided for in this section, the provisions of chapter 46.16 RCW shall apply to campers in the same manner as they apply to vehicles. [1975 1st ex.s. c 118 § 11; 1975 c 41 § 1; 1971 ex.s. c 231 § 7.]

Effective date—Severability—1975 1st ex.s. c 118: See notes following RCW 46.16.006.

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.16.560 Personalized license plates—Defined. Personalized license plates, as used in this chapter, means license plates that have displayed upon them the registration number assigned to the vehicle or camper for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle or camper in accordance with this chapter. [1975 c 59 § 1; 1973 1st ex.s. c 200 § 2.]

Personalized license plates—Legislative declaration: "It is declared to be the public policy of the state of Washington to direct financial resources of this state toward the support and aid of the wildlife resources existing within the state of Washington in order that the general welfare of these inhabitants of the state be served. For the purposes of *this chapter, wildlife resources are understood to be those species of wildlife other than that managed by the department of fisheries under their existing jurisdiction as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries. The legislature further finds that the preservation, protection, perpetuation, and enhancement of such wildlife resources of the state is of major concern to it, and that aid for a satisfactory environment and ecological balance in this state for such wildlife resources serves a public interest, purpose, and desire.

It is further declared that such preservation, protection, perpetuation, and enhancement can be fostered through financial support derived on a voluntary basis from those citizens of the state of Washington who wish to assist in such objectives; that a desirable manner of accomplishing this is through offering personalized license plates for certain vehicles and campers the fees for which are to be directed to the state treasury to the credit of the **state game fund for the furtherance of the programs, policies, and activities of the state **game department in preservation, protection, perpetuation, and enhancement of the wildlife resources that abound within the geographical limits of the state of Washington.

In particular, the legislature recognizes the benefit of this program to be specifically directed toward those species of wildlife including but not limited to song birds, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates which shall remain under the jurisdiction of the director of fisheries that exist within the limits of the state of Washington." [1975 c 59 § 7; 1973 1st ex.s. c 200 § 1. Formerly RCW 77.12.175.]

Reviser's note: *(1) The term "this chapter" refers to chapter 77.12 RCW, where this section was originally codified, pursuant to legislative directive, as RCW 77.12.175. It was subsequently decodified by 1980 c 78 § 32.

** (2) References to the "state game fund" and "game department" mean the "state wildlife fund" and "department of wildlife." See note following RCW 77.04.020. The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

46.16.565 Personalized license plates—Application.

Any person who is the registered owner of a passenger motor vehicle, a motor truck, a trailer, a camper, a private bus, or a motorcycle registered with the department, excluding proportionally registered vehicles, or who makes application for an original registration or renewal registration of such vehicle or camper may, upon payment of the fee prescribed in RCW 46.16.585, apply to the department for personalized license plates, in the manner described in RCW 46.16.580, which plates shall be affixed to the vehicle or camper for which registration is sought in lieu of the regular license plates. [1985 c 173 § 1; 1983 c 27 § 4; 1975 c 59 § 2; 1973 1st ex.s. c 200 § 3.]

46.16.570 Personalized license plates—Design.

Except for personalized plates issued under RCW 46.16.601, the personalized license plates shall be the same design as regular license plates, and shall consist of numbers or letters, or any combination thereof not exceeding seven positions unless proposed by the department and approved by the Washington state patrol and not less than one position, to the extent that there are no conflicts with existing passenger, commercial, trailer, motorcycle, or special license plates series or with the provisions of RCW 46.16.230 or 46.16.235: PROVIDED, That the maximum number of positions on personalized license plates for motorcycles shall be designated by the department. [2005 c 210 § 4; 1986 c 108 § 1; 1983 1st ex.s. c 24 § 1; 1975 c 59 § 3; 1973 1st ex.s. c 200 § 4.]

Effective dates—1983 1st ex.s. c 24: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on July 1, 1983. Section 1 of this act takes effect on July 1, 1984." [1983 1st ex.s. c 24 § 4.]

46.16.575 Personalized license plates—Issuance to registered owner only. Personalized license plates shall be issued only to the registered owner of a vehicle on which they are to be displayed. [1973 1st ex.s. c 200 § 5.]

46.16.580 Personalized license plates—Application requirements. An applicant for issuance of personalized license plates or renewal of such plates in the subsequent year pursuant to this chapter shall file an application therefor in such form and by such date as the department may require, indicating thereon the combination of letters or numbers, or both, requested as a vehicle license plate number. There shall be no duplication or conflict with existing or projected vehicle license plate series or other numbering systems for records kept by the department, and the department may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which would be misleading or a duplication of license plates provided for in chapter 46.16 RCW. [1973 1st ex.s. c 200 § 6.]

46.16.585 Personalized license plates—Fees—Renewal—Penalty. In addition to the regular registration fee, and any other fees and taxes required to be paid upon registration, the applicant shall be charged a fee of thirty dollars. In addition to the regular renewal fee, and in addition to any other fees and taxes required to be paid, the applicant for a

renewal of such plates shall be charged an additional fee of twenty dollars: PROVIDED, That any person who purchased personalized license plates containing three letters and three digits on or between the dates of August 9, 1971, and November 6, 1973, shall not be required to pay the additional annual renewal fee of twenty dollars commencing with the year 1976. All personalized license plates must be renewed on an annual basis, regardless of whether a vehicle on which they are displayed will not be driven on public highways or may also be eligible to display permanent license plates valid for the life of such vehicle without annual renewal. Personalized license plates that are not renewed must be surrendered to the department, and failure to do so is a traffic infraction. [1979 ex.s. c 136 § 51; 1975 c 59 § 4; 1973 1st ex.s. c 200 § 7.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.590 Personalized license plates—Transfer fees.

Whenever any person who has been issued personalized license plates applies to the department for transfer of such plates to a subsequently acquired vehicle or camper eligible for personalized license plates, a transfer fee of ten dollars shall be charged in addition to all other appropriate fees. Such transfer fees shall be deposited in the motor vehicle fund. [2004 c 223 § 5; 1975 c 59 § 5; 1973 1st ex.s. c 200 § 8.]

46.16.595 Personalized license plates—Transfer or surrender upon sale or release of vehicle—Penalty.

When any person who has been issued personalized license plates sells, trades, or otherwise releases ownership of the vehicle upon which the personalized license plates have been displayed, he shall immediately report the transfer of such plates to an acquired vehicle or camper eligible for personalized license plates, pursuant to RCW 46.16.590, or he shall surrender such plates to the department forthwith and release his priority to the letters or numbers, or combination thereof, displayed on the personalized license plates. Failure to surrender such plates is a traffic infraction. [1979 ex.s. c 136 § 52; 1975 c 59 § 6; 1973 1st ex.s. c 200 § 9.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.16.600 Personalized license plates—Rules and regulations. (1) The director of licensing may establish such rules and regulations as may be necessary to carry out the purposes of RCW 46.16.560 through 46.16.595.

(2) Upon direction by the board, the department shall adopt a rule limiting the ability of organizations and governmental entities to apply for more than one license plate series. [2005 c 210 § 5; 1979 c 158 § 143; 1973 1st ex.s. c 200 § 10.]

46.16.601 Personalized special plates. (1) The following special license plate series created by the legislature may be personalized: (a) RCW 46.16.301 as currently law; (b) RCW 46.16.301(1) (a), (b), or (c), as it existed before amendment by section 5, chapter 291, Laws of 1997; (c) RCW 46.16.305, except those plates issued under RCW 46.16.305 (1) and (2); (d) RCW 46.16.324; (e) RCW 46.16.385; or (f) RCW 46.16.745.

(2) Personalized special plates issued under this section may be personalized only by using numbers or letters, or any combination thereof not exceeding seven positions, and not less than one position, to the extent that there are no conflicts with existing license plate series. A personalized special license plate is subject to the same requirements as personalized license plates listed in RCW 46.16.575, 46.16.580, 46.16.590, 46.16.595, and 46.16.600.

(3) In addition to any other fees and taxes due at the time of registration, applicants for a personalized special license plate must pay both the fees to purchase and renew a special plate as set out in the statute creating the special plate and the personalized plate as required in RCW 46.16.585 and 46.16.606. The special plate fee must be distributed in accordance with the requirements set out in the statute creating the special plate. The personalized plate fee must be distributed under RCW 46.16.605 and 46.16.606. The transfer of personalized special plates is to be administered under RCW 46.16.316. [2005 c 210 § 1.]

Effective date—2005 c 210 § 1: "Section 1 of this act takes effect March 1, 2007." [2005 c 210 § 9.]

46.16.605 Personalized license plates—Disposition of fees—Costs. All revenue derived from the fees provided for in RCW 46.16.585 shall be forwarded to the state treasurer and be deposited to the credit of the *state wildlife fund to be used for the preservation, protection, perpetuation, and enhancement of nongame species of wildlife including but not limited to song birds, raptors, protected wildlife, rare and endangered wildlife, aquatic life, and specialized-habitat types, both terrestrial and aquatic, as well as all unclassified marine fish, shellfish, and marine invertebrates.

Administrative costs incurred by the department of licensing as a direct result of RCW 46.16.560 through 46.16.605 and 77.12.170 shall be appropriated by the legislature from the *state wildlife fund from those funds deposited therein resulting from the sale of personalized license plates. If the actual costs incurred by the department of licensing are less than that which has been appropriated by the legislature the remainder shall revert to the *state wildlife fund. [1988 c 36 § 27; 1983 1st ex.s. c 24 § 2; 1983 c 3 § 118; 1979 c 158 § 144; 1973 1st ex.s. c 200 § 11.]

***Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

Effective dates—1983 1st ex.s. c 24: See note following RCW 46.16.570.

State wildlife account: RCW 77.12.170.

46.16.606 Personalized license plates—Additional fee. In addition to the fees imposed in RCW 46.16.585 for application and renewal of personalized license plates an additional fee of twelve dollars shall be charged. Ten dollars from the additional fee shall be deposited in the state wildlife account and used for the management of resources associated with the nonconsumptive use of wildlife. Two dollars from the additional fee shall be deposited into the wildlife rehabilitation account created under RCW 77.12.471. [2007 c 246 § 2; 1991 sp.s. c 7 § 13.]

Application—2007 c 246 § 2: "Section 2 of this act is effective for registrations due or to become due on or after January 1, 2008." [2007 c 246 § 6.]

Finding—2007 c 246: See note following RCW 77.12.467.

Effective date—1991 sp.s. c 7: See note following RCW 77.65.450.

46.16.615 Commercial motor vehicle registration.

(1) The department shall refuse to register a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, 46.87.294, and 46.87.296 upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier.

(2) The department shall revoke the vehicle registration of all commercial motor vehicles that are owned by a motor carrier subject to RCW 46.32.080, upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier. The revocation must remain in effect until the department has been notified by the Washington state patrol that the out-of-service order has been rescinded.

(3) By June 30, 2009, any original or renewal application for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080 that is submitted to the department must be accompanied by:

(a) The department of transportation number issued to the motor carrier; and

(b) The federal taxpayer identification number of the motor carrier.

(4) Beginning on June 30, 2012, the requirements of subsection (3) of this section apply to any original or renewal application that is submitted to the department for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more. [2007 c 419 § 5.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.16.630 Moped registration. Application for registration of a moped shall be made to the department of licensing in such manner and upon such forms as the department shall prescribe, and shall state the name and address of each owner of the moped to be registered, the vehicle identification number, and such other information as the department may require, and shall be accompanied by a registration fee of thirty dollars. Upon receipt of the application and the application fee, the moped shall be registered and a registration number assigned, which shall be affixed to the moped in the manner as provided by rules adopted by the department. The registration provided in this section shall be valid for a period of twelve months.

Every owner of a moped in this state shall renew the registration, in such manner as the department shall prescribe, for an additional period of twelve months, upon payment of a renewal fee of thirty dollars.

Any person acquiring a moped already validly registered must, within fifteen days of the acquisition or purchase of the moped, make application to the department for transfer of the registration, and the application shall be accompanied by a transfer fee of five dollars.

The registration fees provided in this section shall be in lieu of any personal property tax or the vehicle excise tax imposed by chapter 82.44 RCW.

The department shall, at the time the registration number is assigned, make available a decal or other identifying device to be displayed on the moped. A fee of one dollar and fifty cents shall be charged for the decal or other identifying device.

The provisions of RCW 46.01.130 and 46.01.140 shall apply to applications for the issuance of registration numbers or renewals or transfers thereof for mopeds as they do to the issuance of vehicle licenses, the appointment of agents, and the collection of application fees. Except for the fee collected pursuant to RCW 46.01.140, all fees collected under this section shall be deposited in the motor vehicle fund. [2002 c 352 § 9; 1997 c 241 § 11; 1979 ex.s. c 213 § 5.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Drivers' license, motorcycle endorsement, moped exemption: RCW 46.20.500.

Operation and safety standards for mopeds: RCW 46.61.710, 46.61.720.

46.16.640 Wheelchair conveyances. Wheelchair conveyances that are incapable of complying with RCW 46.37.340 shall be licensed in the manner provided for mopeds in RCW 46.16.630. [1983 c 200 § 2.]

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definition: RCW 46.04.710.

operator's license: RCW 46.20.109.

public roadways, operating on: RCW 46.61.730.

safety standards: RCW 46.37.610.

46.16.670 Boat trailers—Fee for freshwater aquatic weeds account. In addition to any other fee required under this chapter, boat trailers shall annually pay a fee of three dollars. The proceeds of this fee shall be deposited in the freshwater aquatic weeds account under RCW 43.21A.650. [1991 c 302 § 3.]

Effective date—1991 c 302: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991, except section 3 of this act shall be effective for vehicle registrations that expire August 31, 1992, and thereafter." [1991 c 302 § 6.]

Findings—1991 c 302: See note following RCW 43.21A.650.

46.16.680 Kit vehicles. All kit vehicles are licensed as original transactions when first titled in Washington, and the following provisions apply:

(1) The department of licensing shall charge original licensing fees and issue new plates appropriate to the use class.

(2) An inspection by the Washington state patrol is required to determine the correct identification number, and year or make if needed.

(3) The use class is the actual use of the vehicle, i.e. passenger car or truck.

(4) The make shall be listed as "KITV," and the series and body designation must describe what the vehicle looks like, i.e. 48 Bradley GT, 57 MG, and must include the word "replica."

(5) Upon payment of original licensing fees the department may license a kit vehicle under RCW 46.16.305(1) as a

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street rod if the vehicle is manufactured to have the same appearance as a similar vehicle manufactured before 1949.

(6) For a manufactured new vehicle kit and a manufactured body kit, the model year of the vehicle is the year reflected on the manufacturer's certificate of origin for that vehicle. If this is not available, the Washington state patrol shall assign a model year at the time of inspection.

(7) The vehicle identification number (VIN) of a new vehicle kit and body kit is the vehicle identification number as reflected on the manufacturer's certificate of origin. If the VIN is not available, the Washington state patrol shall assign a VIN at the time of inspection. [1996 c 225 § 10.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.16.685 License plate technology account. The license plate technology account is created in the state treasury. All receipts collected under RCW 46.01.140(4)(e)(ii) must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. During the 2007-2009 fiscal biennium, the legislature may transfer from the license plate technology account to the multimodal transportation account such amounts as reflect the excess fund balance of the license plate technology account. [2007 c 518 § 704; 2003 c 370 § 4.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

46.16.690 License plate design services—Fee. The department shall offer license plate design services to organizations that are sponsoring a new special license plate series or are seeking to redesign the appearance of an existing special license plate series that they sponsored. In providing this service, the department must work with the requesting organization in determining the specific qualities of the new plate design and must provide full design services to the organization. The department shall collect from the requesting organization a fee of two hundred dollars for providing license plate design services. This fee includes one original license plate design and up to five additional renditions of the original design. If the organization requests the department to provide further renditions, in addition to the five renditions provided for under the original fee, the department shall collect an additional fee of one hundred dollars per rendition. All revenue collected under this section must be deposited into the multimodal transportation account. [2005 c 210 § 6; 2003 c 361 § 502.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

46.16.700 Special license plates—Intent. The legislature has seen an increase in the demand from constituent groups seeking recognition and funding through the establishment of commemorative or special license plates. The high cost of implementing a new special license plate series

coupled with the uncertainty of the state's ability to recoup its costs, has led the legislature to delay the implementation of new special license plates. In order to address these issues, it is the intent of the legislature to create a mechanism that will allow for the evaluation of special license plate requests and establish a funding policy that will alleviate the financial burden currently placed on the state. Using these two strategies, the legislature will be better equipped to efficiently process special license plate legislation. [2003 c 196 § 1.]

Part headings not law—2003 c 196: "Part headings used in this act are not part of the law." [2003 c 196 § 601.]

46.16.705 Special license plate review board—Created. (1) The special license plate review board is created.

(2) The board will consist of seven members: One member appointed by the governor and who will serve as chair of the board; four members of the legislature, one from each caucus of the house of representatives and the senate; a department of licensing representative appointed by the director; and a Washington state patrol representative appointed by the chief.

(3) Members shall serve terms of four years, except that four of the members initially appointed will be appointed for terms of two years. No member may be appointed for more than three consecutive terms.

(4) The respective appointing authority may remove members from the board before the expiration of their terms only for cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office as ordered by the Thurston county superior court, upon petition and show cause proceedings brought for that purpose in that court and directed to the board member in question. [2005 c 319 § 117; 2003 c 196 § 101.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.715 Board—Administration. (1) The board shall meet periodically at the call of the chair, but must meet at least one time each year within ninety days before an upcoming regular session of the legislature. The board may adopt its own rules and may establish its own procedures. It shall act collectively in harmony with recorded resolutions or motions adopted by a majority vote of the members, and it must have a quorum present to take a vote on a special license plate application.

(2) The board will be compensated from the general appropriation for the department of licensing in accordance with RCW 43.03.250. Each board member will be compensated in accordance with RCW 43.03.250 and reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the board or that are incurred in the discharge of duties requested by the chair. However, in no event may a board member be compensated in any year for more than one hundred twenty days, except the chair may be compensated for not more than one hundred fifty days. Service on the board does not qualify as a service credit for the purposes of a public retirement system.

(3) The board shall keep proper records and is subject to audit by the state auditor or other auditing entities.

(4) The department of licensing shall provide administrative support to the board, which must include at least the following:

(a) Provide general staffing to meet the administrative needs of the board;

(b) Report to the board on the reimbursement status of any new special license plate series for which the state had to pay the start-up costs;

(c) Process special license plate applications and confirm that the sponsoring organization has submitted all required documentation. If an incomplete application is received, the department must return it to the sponsoring organization;

(d) Compile the annual financial reports submitted by sponsoring organizations with active special license plate series and present those reports to the board for review and approval. [2005 c 319 § 118; 2003 c 196 § 102.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.725 Board—Powers and duties—Moratorium on issuance of special plates. (1) The creation of the board does not in any way preclude the authority of the legislature to independently propose and enact special license plate legislation.

(2) The board must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(3) Duties of the board include but are not limited to the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the senate and house transportation committees;

(b) Report annually to the senate and house transportation committees on the special license plate applications that were considered by the board;

(c) Issue approval and rejection notification letters to sponsoring organizations, the department, the chairs of the senate and house of representatives transportation committees, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application;

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The board may submit a recommendation to discontinue a special license plate series to the chairs of the senate and house of representatives transportation committees;

(e) Provide policy guidance and directions to the department concerning the adoption of rules necessary to limit the number of special license plates that an organization or a governmental entity may apply for.

(4) Except as provided in chapter 72, Laws of 2008, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2009. During this period of time, the special license plate review board created in RCW 46.16.705 and the department of licensing are prohibited from accepting, reviewing, processing, or approving any applications. Additionally, no spe-

cial license plate may be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the board before February 15, 2005. [2008 c 72 § 2; 2007 c 518 § 711. Prior: 2005 c 319 § 119; 2005 c 210 § 7; 2003 c 196 § 103.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.735 Special license plates—Sponsoring organization requirements. (1) For an organization to qualify for a special license plate under the special license plate approval program created in RCW 46.16.705 through 46.16.765, the sponsoring organization must submit documentation in conjunction with the application to the department that verifies:

(a) That the organization is a nonprofit organization, as defined in 26 U.S.C. Sec. 501(c)(3). The department may request a copy of an Internal Revenue Service ruling to verify an organization's nonprofit status; and

(b) That the organization is located in Washington and has registered as a charitable organization with the secretary of state's office as required by law.

(2) For a governmental body to qualify for a special license plate under the special license plate approval program created in RCW 46.16.705 through 46.16.765, a governmental body must be:

(a) A political subdivision, including but not limited to any county, city, town, municipal corporation, or special purpose taxing district that has the express permission of the political subdivision's executive body to sponsor a special license plate;

(b) A federally recognized tribal government that has received the approval of the executive body of that government to sponsor a special license plate;

(c) A state agency that has received approval from the director of the agency or the department head; or

(d) A community or technical college that has the express permission of the college's board of trustees to sponsor a special license plate. [2004 c 222 § 3; 2003 c 196 § 201.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.745 Special license plates—Application requirements. (1) A sponsoring organization meeting the requirements of RCW 46.16.735, applying for the creation of a special license plate to the special license plate review board must, on an application supplied by the department, provide the minimum application requirements in subsection (2) of this section.

(2) The sponsoring organization shall:

(a) Submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The department shall place this money into the special license plate applicant trust account created under *RCW 46.16.755(4);

(b) Provide a proposed license plate design;

(c) Provide a marketing strategy outlining short and long-term marketing plans for each special license plate and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenues derived from the sale of the special license plate;

(d) Provide a signature of a legislative sponsor and proposed legislation creating the special license plate;

(e) Provide proof of organizational qualifications as determined by the department as provided for in RCW 46.16.735;

(f) Provide signature sheets that include signatures from individuals who intend to purchase the special license plate and the number of plates each individual intends to purchase. The sheets must reflect a minimum of three thousand five hundred intended purchases of the special license plate.

(3) After an application is approved by the special license plate review board, the application need not be reviewed again by the board for a period of three years. [2005 c 210 § 8; 2003 c 196 § 301.]

***Reviser's note:** The special license plate applicant trust account is created in RCW 46.16.755(3).

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.755 Special license plates—Disposition of revenues. (1)(a) Revenues generated from the sale of special license plates for those sponsoring organizations who used the application process in *RCW 46.16.745(3) must be deposited into the motor vehicle account until the department determines that the state's implementation costs have been fully reimbursed. The department shall apply the application fee required under *RCW 46.16.745(3)(a) towards those costs.

(b) When it is determined that the state has been fully reimbursed the department must notify the house of representatives and senate transportation committees, the sponsoring organization, and the treasurer, and commence the distribution of the revenue as otherwise provided by law.

(2) If reimbursement does not occur within two years from the date the plate is first offered for sale to the public, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the plate series must be discontinued immediately. Special plates issued before discontinuation are valid until replaced under RCW 46.16.233.

(3) The special license plate applicant trust account is created in the custody of the state treasurer. All receipts from special license plate applicants, except the application fee as provided in *RCW 46.16.745(3), must be deposited into the account. Only the director of the department or the director's designee may authorize disbursements from the account. The account is not subject to the allotment procedures under chapter 43.88 RCW, nor is an appropriation required for disbursements.

(4) The department shall provide the special license plate applicant with a written receipt for the payment.

(5) The department shall maintain a record of each special license plate applicant trust account deposit, including, but not limited to, the name and address of each special

license plate applicant whose funds are being deposited, the amount paid, and the date of the deposit.

(6) After the department receives written notice that the special license plate applicant's application has been:

(a) Approved by the legislature the director shall request that the money be transferred to the motor vehicle account;

(b) Denied by the special license plate review board or the legislature the director shall provide a refund to the applicant within thirty days; or

(c) Withdrawn by the special license plate applicant the director shall provide a refund to the applicant within thirty days. [2004 c 222 § 4; 2003 c 196 § 302.]

***Reviser's note:** RCW 46.16.745 was amended by 2005 c 210 § 8, deleting subsection (3).

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.765 Special license plates—Continuing requirements. (1) Within thirty days of legislative enactment of a new special license plate series for a qualifying organization meeting the requirements of RCW 46.16.735(1), the department shall enter into a written agreement with the organization that sponsored the special license plate. The agreement must identify the services to be performed by the sponsoring organization. The agreement must be consistent with all applicable state law and include the following provision:

"No portion of any funds disbursed under the agreement may be used, directly or indirectly, for any of the following purposes:

(a) Attempting to influence: (i) The passage or defeat of legislation by the legislature of the state of Washington, by a county, city, town, or other political subdivision of the state of Washington, or by the Congress; or (ii) the adoption or rejection of a rule, standard, rate, or other legislative enactment of a state agency;

(b) Making contributions reportable under chapter 42.17 RCW; or

(c) Providing a: (i) Gift; (ii) honoraria; or (iii) travel, lodging, meals, or entertainment to a public officer or employee."

(2) The sponsoring organization must submit an annual financial report by September 30th of each year to the department detailing actual revenues and expenditures of the revenues received from sales of the special license plate. Consistent with the agreement under subsection (1) of this section, the sponsoring organization must expend the revenues generated from the sale of the special license plate series for the benefit of the public, and it must be spent within this state. Disbursement of the revenue generated from the sale of the special license plate to the sponsoring organization is contingent upon the organization meeting all reporting and review requirements as required by the department.

(3) If the sponsoring organization ceases to exist or the purpose of the special license plate series ceases to exist, revenues generated from the sale of the special license plates must be deposited into the motor vehicle account.

(4) A sponsoring organization may not seek to redesign its plate series until all of the inventory is sold or purchased by the organization itself. All cost for redesign of a plate

series must be paid by the sponsoring organization. [2003 c 196 § 303.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.775 Special license plates—Nonreviewed plates. (1) A special license plate series created by the legislature after January 1, 2004, that has not been reviewed and approved by the special license plate review board is subject to the following requirements:

(a) The organization sponsoring the license plate series shall, within thirty days of enactment of the legislation creating the plate series, submit prepayment of all start-up costs associated with the creation and implementation of the special license plate in an amount determined by the department. The prepayment will be credited to the motor vehicle fund. The creation and implementation of the plate series may not commence until payment is received by the department.

(b) If the sponsoring organization is not able to meet the prepayment requirements in (a) of this subsection and can demonstrate this fact to the satisfaction of the department, the revenues generated from the sale of the special license plates must be deposited in the motor vehicle account until the department determines that the state's portion of the implementation costs have been fully reimbursed. When it is determined that the state has been fully reimbursed the department must notify the treasurer to commence distribution of the revenue according to statutory provisions.

(c) The sponsoring organization must provide a proposed license plate design to the department within thirty days of enactment of the legislation creating the plate series.

(2) The state must be reimbursed for its portion of the implementation costs within two years from the date the new plate series goes on sale to the public. If the reimbursement does not occur within the two-year time frame, the special license plate series must be placed in probationary status for a period of one year from that date. If the state is still not fully reimbursed for its implementation costs after the one-year probation, the plate series must be discontinued immediately. Those plates issued before discontinuation are valid until replaced under RCW 46.16.233.

(3) If the sponsoring organization ceases to exist or the purpose of the special plate series ceases to exist, revenues generated from the sale of the special license plates must be deposited into the motor vehicle account.

(4) A sponsoring organization may not seek to redesign their plate series until all of the existing inventory is sold or purchased by the organization itself. All cost for redesign of a plate series must be paid by the sponsoring organization. [2003 c 196 § 304.]

Part headings not law—2003 c 196: See note following RCW 46.16.700.

46.16.900 Severability—1973 1st ex.s. c 132. If any provision of this 1973 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby. [1973 1st ex.s. c 132 § 24.]

Chapter 46.17 RCW

VEHICLE WEIGHT FEES

Sections

- 46.17.010 Vehicle weight fee—Motor vehicles, except motor homes.
46.17.020 Vehicle weight fee—Motor homes.

46.17.010 Vehicle weight fee—Motor vehicles, except motor homes. (1) There shall be paid and collected annually for motor vehicles subject to the fee under RCW 46.16.0621, except motor homes, a vehicle weight fee. The amount of the fee shall be based upon the vehicle scale weight, which is correlated with vehicle size and roadway lane usage. Fees imposed under this section must be used for transportation purposes, and shall not be used for the general support of state government. The vehicle weight fee shall be that portion of the fee as reflected on the scale weight set forth in schedule B provided in RCW 46.16.070 that is in excess of the fee imposed under RCW 46.16.0621. This fee is due at the time of initial and renewal of vehicle registration.

(2) If the resultant weight according to this section is not listed in schedule B provided in RCW 46.16.070, it shall be increased to the next higher weight pursuant to chapter 46.44 RCW.

(3) For the purpose of administering this section, the department shall rely on the vehicle empty scale weights as provided by vehicle manufacturers, or other sources defined by the department, to determine the weight of each vehicle. The department shall adopt rules for determining weight for vehicles without manufacturer empty scale weights.

(4) The vehicle weight fee under this section is imposed to provide funds to mitigate the impact of vehicle loads on the state roads and highways and is separate and distinct from other vehicle license fees. Proceeds from the fee may be used for transportation purposes, or for facilities and activities that reduce the number of vehicles or load weights on the state roads and highways.

(5) The vehicle weight fee collected under this section shall be deposited as follows:

(a) On July 1, 2006, six million dollars shall be deposited into the freight mobility multimodal account created in RCW 46.68.310, and the remainder collected from June 7, 2006, through June 30, 2006, shall be deposited into the multimodal transportation account;

(b) Beginning July 1, 2007, and every July 1st thereafter, three million dollars shall be deposited into the freight mobility multimodal account created in RCW 46.68.310, and the remainder shall be deposited into the multimodal transportation account. [2006 c 337 § 9; 2005 c 314 § 201.]

Effective dates—2005 c 314 §§ 110 and 201-206: "(1) Section 110 of this act takes effect July 1, 2006.

(2) Sections 201 through 206 of this act take effect January 1, 2006." [2005 c 314 § 403.]

Application—2005 c 314 §§ 201-206, 301, and 302: "Sections 201 through 206, 301, and 302 of this act apply to vehicle registrations that are due or become due on or after January 1, 2006." [2005 c 314 § 402.]

Part headings not law—2005 c 314: "Part headings used in this act are not part of the law." [2005 c 314 § 407.]

46.17.020 Vehicle weight fee—Motor homes. In addition to any other fees or charges, there shall be paid and collected annually for motor homes a vehicle weight fee of sev-

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enty-five dollars. This fee is due at the time of initial and renewal of vehicle registration. The fee collected under this section shall be deposited in the multimodal transportation account. [2005 c 314 § 202.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.020.

Chapter 46.20 RCW

DRIVERS' LICENSES—IDENTICARDS

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DRIVER'S LICENSE AND PERMIT REQUIREMENTS

46.20.001 License required—Rights and restriction.

(1) No person may drive a motor vehicle upon a highway in this state without first obtaining a valid driver's license issued to Washington residents under this chapter. The only exceptions to this requirement are those expressly allowed by RCW 46.20.025.

(2) A person licensed as a driver under this chapter:

(a) May exercise the privilege upon all highways in this state;

(b) May not be required by a political subdivision to obtain any other license to exercise the privilege; and

(c) May not have more than one valid driver's license at any time. [1999 c 6 § 3.]

Intent—1999 c 6: See note following RCW 46.04.168.

46.20.005 Driving without a license—Misdemeanor, when.

Except as expressly exempted by this chapter, it is a misdemeanor for a person to drive any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter. This section does not apply if at the time of the stop the person is not in violation of RCW 46.20.342(1) or *46.20.420 and has in his or her possession an expired driver's license or other valid identifying documentation under RCW 46.20.035. A violation of this section is a lesser included offense within the offenses described in RCW 46.20.342(1) or *46.20.420. [1997 c 66 § 1.]

***Reviser's note:** RCW 46.20.420 was recodified as RCW 46.20.345, June 1999.

46.20.015 Driving without a license—Traffic infraction, when.

(1) Except as expressly exempted by this chapter, it is a traffic infraction and not a misdemeanor under RCW 46.20.005 if a person:

(a) Drives any motor vehicle upon a highway in this state without a valid driver's license issued to Washington residents under this chapter in his or her possession;

(b) Provides the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop; and

(c) Is not driving while suspended or revoked in violation of RCW 46.20.342(1) or *46.20.420.

(2) A person who violates this section is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he or she obtained a valid license after being cited, the court shall reduce the penalty to fifty dollars. [1999 c 6 § 4; 1997 c 66 § 2.]

***Reviser's note:** RCW 46.20.420 was recodified as RCW 46.20.345, June 1999.

Intent—1999 c 6: See note following RCW 46.04.168.

46.20.017 Immediate possession and displayed on demand. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. The offense described in this section is a nonmoving offense. [1979 ex.s. c 136 § 56; 1965 ex.s. c 121 § 15; 1961 c 12 § 46.20.190. Prior: 1937 c 188 § 59; RRS § 6312-59; 1921 c 108 § 7, part; RRS § 6369, part. Formerly RCW 46.20.190.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Driver's license, duty to display under other circumstances: RCW 46.52.020, 46.61.020, 46.61.021.

46.20.021 New residents. (1) New Washington residents must obtain a valid Washington driver's license within thirty days from the date they become residents.

(2) To qualify for a Washington driver's license, a person must surrender to the department all valid driver's licenses that any other jurisdiction has issued to him or her. The department must invalidate the surrendered photograph license and may return it to the person.

(a) The invalidated license, along with a valid temporary Washington driver's license provided for in RCW 46.20.065, is proper identification.

(b) The department shall notify the previous issuing department that the licensee is now licensed in a new jurisdiction.

(3) For the purposes of obtaining a valid driver's license, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

(a) Becoming a registered voter in this state; or

(b) Receiving benefits under one of the Washington public assistance programs; or

(c) Declaring residency for the purpose of obtaining a state license or tuition fees at resident rates.

(4)(a) "Washington public assistance programs" means public assistance programs that receive more than fifty percent of the combined costs of benefits and administration from state funds.

(b) "Washington public assistance programs" does not include:

(i) The Food Stamp program under the federal Food Stamp Act of 1964;

(ii) Programs under the Child Nutrition Act of 1966, 42 U.S.C. Secs. 1771 through 1788;

(iii) Temporary Assistance for Needy Families; and

(iv) Any other program that does not meet the criteria of (a) of this subsection. [1999 c 6 § 5. Prior: 1997 c 66 § 3; 1997 c 59 § 8; 1996 c 307 § 5; prior: 1991 c 293 § 3; 1991 c 73 § 1; 1990 c 250 § 33; 1988 c 88 § 1; 1985 c 302 § 2; 1979 ex.s. c 136 § 53; 1965 ex.s. c 121 § 2.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Intent—1999 c 6: See note following RCW 46.04.168.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Purpose—Construction—1965 ex.s. c 121: "With the advent of greatly increased interstate vehicular travel and the migration of motorists between the states, the legislature recognizes the necessity of enacting driver licensing laws which are reasonably uniform with the laws of other states and are at the same time based upon sound, realistic principles, stated in clear explicit language. To achieve these ends the legislature does hereby adopt this 1965 amendatory act relating to driver licensing modeled after the Uniform Vehicle Code subject to such variances as are deemed better suited to the people of this state. It is intended that this 1965 amendatory act be liberally construed to effectuate the purpose of improving the safety of our highways through driver licensing procedures within the framework of the traditional freedoms to which every motorist is entitled." [1965 ex.s. c 121 § 1.]

46.20.022 Unlicensed drivers—Subject to Title 46 RCW. Any person who operates a motor vehicle on the public highways of this state without a driver's license or nonresident privilege to drive shall be subject to all of the provisions of Title 46 RCW to the same extent as a person who is licensed. [1975-'76 2nd ex.s. c 29 § 1.]

Allowing unauthorized person to drive: RCW 46.16.011, 46.20.024.

46.20.024 Unlawful to allow unauthorized minors to drive. No person shall cause or knowingly permit his child or ward under the age of eighteen years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this chapter. [1965 ex.s. c 121 § 44. Formerly RCW 46.20.343.]

46.20.025 Exemptions. The following persons may operate a motor vehicle on a Washington highway without a valid Washington driver's license:

(1) A member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or in the service of the National Guard of this state or any other state, if licensed by the military to operate an official motor vehicle in such service;

(2) A nonresident driver who is at least:

(a) Sixteen years of age and has immediate possession of a valid driver's license issued to the driver by his or her home state; or

(b) Fifteen years of age with:

(i) A valid instruction permit issued to the driver by his or her home state; and

(ii) A licensed driver who has had at least five years of driving experience occupying a seat beside the driver; or

(c) Sixteen years of age and has immediate possession of a valid driver's license issued to the driver by his or her home country. A nonresident driver may operate a motor vehicle in this state under this subsection (2)(c) for up to one year;

(3) Any person operating special highway construction equipment as defined in RCW 46.16.010;

(4) Any person while driving or operating any farm tractor or implement of husbandry that is only incidentally operated or moved over a highway; or

(5) An operator of a locomotive upon rails, including a railroad crossing over a public highway. A locomotive operator is not required to display a driver's license to any law enforcement officer in connection with the operation of a locomotive or train within this state. [1999 c 6 § 6; 1993 c 148 § 1; 1979 c 75 § 1; 1965 ex.s. c 121 § 3.]

Intent—1999 c 6: See note following RCW 46.04.168.

46.20.027 Armed forces, dependents. A Washington state motor vehicle driver's license issued to any service member if valid and in force and effect while such person is serving in the armed forces, shall remain in full force and effect so long as such service continues unless the same is sooner suspended, canceled, or revoked for cause as provided by law and for not to exceed ninety days following the date on which the holder of such driver's license is honorably separated from service in the armed forces of the United States. A Washington state driver's license issued to the spouse or dependent child of such service member likewise remains in full force and effect if the person is residing with the service member.

For purposes of this section, "service member" means every person serving in the armed forces whose branch of service as of the date of application for the driver's license is included in the definition of veteran pursuant to RCW 41.04.007 or the person will meet the definition of veteran at the time of discharge. [2002 c 292 § 3; 1999 c 199 § 1; 1967 c 129 § 1.]

Effective date—1999 c 199: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 199 § 5.]

46.20.031 Ineligibility. The department shall not issue a driver's license to a person:

- (1) Who is under the age of sixteen years;
- (2) Whose driving privilege has been withheld unless and until the department may authorize the driving privilege under RCW 46.20.311;
- (3) Who has been classified as an alcoholic, drug addict, alcohol abuser, or drug abuser by a program approved by the department of social and health services. The department may, however, issue a license if the person:
 - (a) Has been granted a deferred prosecution under chapter 10.05 RCW; or
 - (b) Is satisfactorily participating in or has successfully completed an alcohol or drug abuse treatment program approved by the department of social and health services and has established control of his or her alcohol or drug abuse problem;
- (4) Who has previously been adjudged to be mentally ill or insane, or to be incompetent due to a mental disability or disease. The department shall, however, issue a license to the person if he or she otherwise qualifies and:
 - (a) Has been restored to competency by the methods provided by law; or
 - (b) The superior court finds the person able to operate a motor vehicle with safety upon the highways during such incompetency;
- (5) Who has not passed the driver's licensing examination required by RCW 46.20.120 and 46.20.305, if applicable;
- (6) Who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited such proof;
- (7) Who is unable to safely operate a motor vehicle upon the highways due to a physical or mental disability. The department's conclusion that a person is barred from licensing under this subsection must be reasonable and be based

upon good and substantial evidence. This determination is subject to review by a court of competent jurisdiction. [2002 c 279 § 3; 1999 c 6 § 7; 1995 c 219 § 1; 1993 c 501 § 2; 1985 c 101 § 1; 1977 ex.s. c 162 § 1; 1965 ex.s. c 121 § 4.]

Intent—1999 c 6: See note following RCW 46.04.168.

Allowing unauthorized person to drive: RCW 46.16.011, 46.20.024.

Juvenile driving privileges, alcohol or drug violations: RCW 66.44.365, 69.50.420.

46.20.035 Proof of identity. The department may not issue an identicard or a Washington state driver's license that is valid for identification purposes unless the applicant meets the identification requirements of subsection (1), (2), or (3) of this section.

(1) A driver's license or identicard applicant must provide the department with at least one of the following pieces of valid identifying documentation that contains the signature and a photograph of the applicant:

- (a) A valid or recently expired driver's license or instruction permit that includes the date of birth of the applicant;
- (b) A Washington state identicard or an identification card issued by another state;
- (c) An identification card issued by the United States, a state, or an agency of either the United States or a state, of a kind commonly used to identify the members or employees of the government agency;
- (d) A military identification card;
- (e) A United States passport; or
- (f) An Immigration and Naturalization Service form.

(2) An applicant who is a minor may establish identity by providing an affidavit of the applicant's parent or guardian. The parent or guardian must accompany the minor and display or provide:

- (a) At least one piece of documentation in subsection (1) of this section establishing the identity of the parent or guardian; and
- (b) Additional documentation establishing the relationship between the parent or guardian and the applicant.

(3) A person unable to provide identifying documentation as specified in subsection (1) or (2) of this section may request that the department review other available documentation in order to ascertain identity. The department may waive the requirement if it finds that other documentation clearly establishes the identity of the applicant. Notwithstanding the requirements in subsection (2) of this section, the department shall issue an identicard to an applicant for whom it receives documentation pursuant to RCW 74.13.283.

(4) An identicard or a driver's license that includes a photograph that has been renewed by mail or by electronic commerce is valid for identification purposes if the applicant met the identification requirements of subsection (1), (2), or (3) of this section at the time of previous issuance.

(5) The form of an applicant's name, as established under this section, is the person's name of record for the purposes of this chapter.

(6) If the applicant is unable to prove his or her identity under this section, the department shall plainly label the license "not valid for identification purposes." [2008 c 267 § 8; 2004 c 249 § 2; 1999 c 6 § 8; 1998 c 41 § 10; 1993 c 452 § 1.]

Intent—1999 c 6: See note following RCW 46.04.168.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

46.20.037 Biometric matching system—Administration—Exception. (1) No later than two years after full implementation of the provisions of Title II of P.L. 109-13, improved security for driver's licenses and personal identification cards (Real ID), as passed by Congress May 10, 2005, the department shall implement a voluntary biometric matching system for driver's licenses and identicards. A biometric matching system shall be used only to verify the identity of an applicant for a renewal or duplicate driver's license or identicard by matching a biometric identifier submitted by the applicant against the biometric identifier submitted when the license was last issued. This project requires a full review by the information services board using the criteria for projects of the highest visibility and risk.

(2) Any biometric matching system selected by the department shall be capable of highly accurate matching, and shall be compliant with biometric standards established by the American association of motor vehicle administrators.

(3) The biometric matching system selected by the department must incorporate a process that allows the owner of a driver's license or identicard to present a personal identification number or other code along with the driver's license or identicard before the information may be verified by a third party, including a governmental entity.

(4) Upon the establishment of a biometric driver's license and identicard system as described in this section, the department shall allow every person applying for an original, renewal, or duplicate driver's license or identicard to voluntarily submit a biometric identifier. Each applicant shall be informed of all ways in which the biometric identifier may be used, all parties to whom the identifier may be disclosed and the conditions of disclosure, the expected error rates for the biometric matching system which shall be regularly updated as the technology changes or empirical data is collected, and the potential consequences of those errors. The department shall adopt rules to allow applicants to verify the accuracy of the system at the time that biometric information is submitted, including the use of at least two separate devices.

(5) The department may not disclose biometric information to the public or any governmental entity except when authorized by court order.

(6) All biometric information shall be stored with appropriate safeguards, including but not limited to encryption.

(7) The department shall develop procedures to handle instances in which the biometric matching system fails to verify the identity of an applicant for a renewal or duplicate driver's license or identicard. These procedures shall allow an applicant to prove identity without using a biometric identifier.

(8) Any person who has voluntarily submitted a biometric identifier may choose to discontinue participation in the biometric matching program at any time, provided that the department utilizes a secure procedure to prevent fraudulent requests for a renewal or duplicate driver's license or identicard. When the person discontinues participation, any previously collected biometric information shall be destroyed.

(9) This section does not apply when an applicant renews his or her driver's license or identicard by mail or electronic commerce. [2006 c 292 § 1; 2004 c 273 § 3.]

Finding—Purpose—Effective date—2004 c 273: See notes following RCW 9.35.020.

46.20.038 Biometric matching system—Funding. (1) The department is authorized to charge persons opting to submit a biometric identifier under RCW 46.20.037 an additional fee of no more than two dollars at the time of application for an original, renewal, or duplicate driver's license or identicard issued by the department. This fee shall be used exclusively to defray the cost of implementation and ongoing operation of a biometric security system.

(2) The biometric security account is created in the state treasury. All receipts from subsection (1) of this section shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account must be used only for the purpose of defraying the cost of implementation and ongoing operation of a biometric security system. [2004 c 273 § 4.]

Finding—Purpose—Effective date—2004 c 273: See notes following RCW 9.35.020.

46.20.041 Persons with physical or mental disabilities or diseases. (1) If the department has reason to believe that a person is suffering from a physical or mental disability or disease that may affect that person's ability to drive a motor vehicle, the department must evaluate whether the person is able to safely drive a motor vehicle. As part of the evaluation:

(a) The department shall permit the person to demonstrate personally that notwithstanding the disability or disease he or she is able to safely drive a motor vehicle.

(b) The department may require the person to obtain a statement signed by a licensed physician or other proper authority designated by the department certifying the person's condition.

(i) The statement is for the confidential use of the director and the chief of the Washington state patrol and for other public officials designated by law. It is exempt from public inspection and copying notwithstanding chapter 42.56 RCW.

(ii) The statement may not be offered as evidence in any court except when appeal is taken from the order of the director canceling or withholding a person's driving privilege. However, the department may make the statement available to the director of the department of retirement systems for use in determining eligibility for or continuance of disability benefits and it may be offered and admitted as evidence in any administrative proceeding or court action concerning the disability benefits.

(2) On the basis of the evaluation the department may:

(a) Issue or renew a driver's license to the person without restrictions;

(b) Cancel or withhold the driving privilege from the person; or

(c) Issue a restricted driver's license to the person. The restrictions must be suitable to the licensee's driving ability. The restrictions may include:

(i) Special mechanical control devices on the motor vehicle operated by the licensee;

(ii) Limitations on the type of motor vehicle that the licensee may operate; or

(iii) Other restrictions determined by the department to be appropriate to assure the licensee's safe operation of a motor vehicle.

(3) The department may either issue a special restricted license or may set forth the restrictions upon the usual license form.

(4) The department may suspend or revoke a restricted license upon receiving satisfactory evidence of any violation of the restrictions. In that event the licensee is entitled to a driver improvement interview and a hearing as provided by RCW 46.20.322 or 46.20.328.

(5) Operating a motor vehicle in violation of the restrictions imposed in a restricted license is a traffic infraction. [2005 c 274 § 306; 1999 c 274 § 12; 1999 c 6 § 9; 1986 c 176 § 1; 1979 ex.s. c 136 § 54; 1979 c 61 § 2; 1965 ex.s. c 121 § 5.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Intent—1999 c 6: See note following RCW 46.04.168.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.20.045 School bus, for hire drivers—Age. A person who is under the age of eighteen years shall not drive:

(1) A school bus transporting school children; or

(2) A motor vehicle transporting persons for compensation. [1999 c 6 § 10; 1971 ex.s. c 292 § 43; 1965 ex.s. c 121 § 6.]

Intent—1999 c 6: See note following RCW 46.04.168.

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

46.20.049 Commercial driver's license—Additional fee, disposition. There shall be an additional fee for issuing any class of commercial driver's license in addition to the prescribed fee required for the issuance of the original driver's license. The additional fee for each class shall be thirty dollars for the original commercial driver's license or subsequent renewals. If the commercial driver's license is renewed or extended for a period other than five years, the fee for each class shall be six dollars for each year that the commercial driver's license is renewed or extended. The fee shall be deposited in the highway safety fund. [2005 c 314 § 309; 1999 c 308 § 4; 1989 c 178 § 21; 1985 ex.s. c 1 § 7; 1969 ex.s. c 68 § 3; 1967 ex.s. c 20 § 4. Formerly RCW 46.20.470.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective date—1999 c 308: See note following RCW 46.20.120.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—1967 ex.s. c 20: "Sections 1, 3, and 4 of this amendatory act shall be effective January 1, 1968." [1967 ex.s. c 20 § 5.]

46.20.055 Instruction permit. (1) **Driver's instruction permit.** The department may issue a driver's instruction permit with or without a photograph to an applicant who has successfully passed all parts of the examination other than the

driving test, provided the information required by RCW 46.20.091, paid a fee of twenty dollars, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

(b) Is at least fifteen years of age and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program offered, approved, and accredited by the superintendent of public instruction or offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

(2) **Waiver of written examination for instruction permit.** The department may waive the written examination, if, at the time of application, an applicant is enrolled in:

(a) A traffic safety education course as defined by RCW 28A.220.020(2); or

(b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(4).

The department may require proof of registration in such a course as it deems necessary.

(3) **Effect of instruction permit.** A person holding a driver's instruction permit may drive a motor vehicle, other than a motorcycle, upon the public highways if:

(a) The person has immediate possession of the permit; and

(b) An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

(4) **Term of instruction permit.** A driver's instruction permit is valid for one year from the date of issue.

(a) The department may issue one additional one-year permit.

(b) The department may issue a third driver's permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency.

(c) A person applying to renew an instruction permit must submit the application to the department in person. [2006 c 219 § 14; 2005 c 314 § 303; 2004 c 249 § 3. Prior: 2002 c 352 § 10; 2002 c 195 § 2; 1999 c 274 § 13; 1999 c 6 § 11; 1990 c 250 § 34; 1986 c 17 § 1; 1985 c 234 § 1; 1981 c 260 § 10; prior: 1979 c 63 § 1; 1979 c 61 § 3; 1969 ex.s. c 218 § 8; 1965 ex.s. c 121 § 7.]

Effective date—2006 c 219: See note following RCW 46.82.285.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Intent—1999 c 6: See note following RCW 46.04.168.

Severability—1990 c 250: See note following RCW 46.16.301.

46.20.065 Temporary permit. (1) If the department is completing an investigation and determination of facts concerning an applicant's right to receive a driver's license, it may issue a temporary driver's permit to the applicant.

(2) A temporary driver's permit authorizes the permittee to drive a motor vehicle for up to sixty days. The permittee must have immediate possession of the permit while driving a motor vehicle.

(3) A temporary driver's permit is invalid if the department has issued a license to the permittee or refused to issue a license to the permittee for good cause. [1999 c 6 § 12.]

Intent—1999 c 6: See note following RCW 46.04.168.

46.20.070 Juvenile agricultural driving permit. (1) **Agricultural driving permit authorized.** The director may issue a juvenile agricultural driving permit to a person under the age of eighteen years if:

(a) The application is signed by the applicant and the applicant's father, mother, or legal guardian;

(b) The applicant has passed the driving examination required by RCW 46.20.120;

(c) The department has investigated the applicant's need for the permit and determined that the need justifies issuance;

(d) The department has determined the applicant is capable of operating a motor vehicle without endangering himself or herself or other persons and property; and

(e) The applicant has paid a fee of twenty dollars.

The permit must contain a photograph of the person.

(2) **Effect of agricultural driving permit.** (a) The permit authorizes the holder to:

(i) Drive a motor vehicle on the public highways of this state in connection with farm work. The holder may drive only within a restricted farming locality described on the permit; and

(ii) Participate in the classroom portion of a traffic safety education course authorized under RCW 28A.220.030 or the classroom portion of a traffic safety education course offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW offered in the community where the holder resides.

(b) The director may transfer the permit from one farming locality to another. A transfer is not a renewal of the permit.

(3) **Term and renewal of agricultural driving permit.** An agricultural driving permit expires one year from the date of issue.

(a) A person under the age of eighteen who holds a permit may renew the permit by paying a fee of fifteen dollars.

(b) A person applying to renew an agricultural driving permit must submit the application to the department in person.

(c) An agricultural driving permit is invalidated when a permittee attains age eighteen. In order to drive a motor vehicle on a highway he or she must obtain a motor vehicle driver's license under this chapter.

(4) **Suspension, revocation, or cancellation.** The director has sole discretion to suspend, revoke, or cancel a juvenile agricultural driving permit if:

(a) The permittee has been found to have committed an offense that requires mandatory suspension or revocation of a driver's license; or

(b) The director is satisfied that the permittee has violated the permit's restrictions. [2005 c 314 § 304; 2004 c 249 § 4. Prior: 2002 c 352 § 11; 2002 c 195 § 3; 1999 c 6 § 13; 1997 c 82 § 1; 1985 ex.s. c 1 § 1; 1979 c 61 § 4; 1969 ex.s. c 218 § 9; 1969 ex.s. c 170 § 12; 1967 c 32 § 27; 1963 c 39 § 9; 1961 c 12 § 46.20.070; prior: 1947 c 158 § 1, part; 1937 c 188 § 45, part; Rem. Supp. 1947 § 6312-45, part.]

(2008 Ed.)

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Intent—1999 c 6: See note following RCW 46.04.168.

Effective date—1985 ex.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 ex.s. c 1 § 14.]

46.20.075 Intermediate license. (1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

(a) Have possessed a valid instruction permit for a period of not less than six months;

(b) Have passed a driver licensing examination administered by the department;

(c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW 42.17.020. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

(5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(6) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

(7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

- (a) Has not been involved in an automobile accident; and
- (b) Has not been convicted or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section. [2000 c 115 § 2.]

Finding—2000 c 115: "The legislature has recognized the need to develop a graduated licensing system in light of the disproportionately high incidence of motor vehicle crashes involving youthful motorists. This system will improve highway safety by progressively developing and improving the skills of younger drivers in the safest possible environment, thereby reducing the number of vehicle crashes." [2000 c 115 § 1.]

Effective date—2000 c 115 §§ 1-10: "Sections 1 through 10 of this act take effect July 1, 2001." [2000 c 115 § 14.]

OBTAINING OR RENEWING A DRIVER'S LICENSE

46.20.091 Application—Penalty for false statement—Driving records from and to other jurisdictions.

(1) **Application.** In order to apply for a driver's license or instruction permit the applicant must provide his or her:

- (a) Name of record, as established by documentation required under RCW 46.20.035;
- (b) Date of birth, as established by satisfactory evidence of age;
- (c) Sex;
- (d) Washington residence address;
- (e) Description;
- (f) Driving licensing history, including:
 - (i) Whether the applicant has ever been licensed as a driver or chauffeur and, if so, (A) when and by what state or country; (B) whether the license has ever been suspended or revoked; and (C) the date of and reason for the suspension or revocation; or
 - (ii) Whether the applicant's application to another state or country for a driver's license has ever been refused and, if so, the date of and reason for the refusal; and
- (g) Any additional information required by the department.

(2) **Sworn statement.** An application for an instruction permit or for an original driver's license must be made upon a form provided by the department. The form must include a section for the applicant to indicate whether he or she has received driver training and, if so, where. The identifying documentation verifying the name of record must be accompanied by the applicant's written statement that it is valid. The information provided on the form must be sworn to and signed by the applicant before a person authorized to administer oaths. An applicant who makes a false statement on an application for a driver's license or instruction permit is guilty of false swearing, a gross misdemeanor, under RCW 9A.72.040.

(3) **Driving records from other jurisdictions.** If a person previously licensed in another jurisdiction applies for a Washington driver's license, the department shall request a copy of the applicant's driver's record from the other jurisdiction. The driving record from the other jurisdiction becomes a part of the driver's record in this state.

(4) **Driving records to other jurisdictions.** If another jurisdiction requests a copy of a person's Washington driver's record, the department shall provide a copy of the record. The department shall forward the record without charge if the other jurisdiction extends the same privilege to the state of Washington. Otherwise the department shall charge a reasonable fee for transmittal of the record. [2000 c 115 § 4; 1999 c 6 § 14; 1998 c 41 § 11; 1996 c 287 § 5; 1990 c 250 § 35; 1985 ex.s. c 1 § 2; 1979 c 63 § 2; 1965 ex.s. c 121 § 8.]

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

Intent—1999 c 6: See note following RCW 46.04.168.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Social Security number: RCW 26.23.150.

46.20.0921 Violations—Penalty. (1) It is a misdemeanor for any person:

- (a) To display or cause or permit to be displayed or have in his or her possession any fictitious or fraudulently altered driver's license or identicard;
- (b) To lend his or her driver's license or identicard to any other person or knowingly permit the use thereof by another;
- (c) To display or represent as one's own any driver's license or identicard not issued to him or her;
- (d) Willfully to fail or refuse to surrender to the department upon its lawful demand any driver's license or identicard which has been suspended, revoked or canceled;
- (e) To use a false or fictitious name in any application for a driver's license or identicard or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;
- (f) To permit any unlawful use of a driver's license or identicard issued to him or her.

(2) It is a class C felony for any person to sell or deliver a stolen driver's license or identicard.

(3) It is unlawful for any person to manufacture, sell, or deliver a forged, fictitious, counterfeit, fraudulently altered, or unlawfully issued driver's license or identicard, or to manufacture, sell, or deliver a blank driver's license or identicard except under the direction of the department. A violation of this subsection is:

- (a) A class C felony if committed (i) for financial gain or (ii) with intent to commit forgery, theft, or identity theft; or
- (b) A gross misdemeanor if the conduct does not violate (a) of this subsection.

(4) Notwithstanding subsection (3) of this section, it is a misdemeanor for any person under the age of twenty-one to manufacture or deliver fewer than four forged, fictitious, counterfeit, or fraudulently altered driver's licenses or identicards for the sole purpose of misrepresenting a person's age.

(5) In a proceeding under subsection (2), (3), or (4) of this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in

which any part of the offense took place, regardless of whether the defendant was ever actually in that locality. [2003 c 214 § 1; 1990 c 210 § 3; 1981 c 92 § 1; 1965 ex.s. c 121 § 41. Formerly RCW 46.20.336.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.20.093 Bicycle safety. The department of licensing shall incorporate a section on bicycle safety and sharing the road into its instructional publications for drivers and shall include questions in the written portion of the driver's license examination on bicycle safety and sharing the road with bicycles. [1998 c 165 § 4.]

Short title—1998 c 165: See note following RCW 43.59.010.

46.20.095 Instructional publication information. The department's instructional publications for drivers must include information on:

(1) The proper use of the left-hand lane by motor vehicles on multilane highways; and

(2) Bicyclists' and pedestrians' rights and responsibilities. [1999 c 6 § 15; 1998 c 165 § 5; 1986 c 93 § 3.]

Intent—1999 c 6: See note following RCW 46.04.168.

Short title—1998 c 165: See note following RCW 43.59.010.

Keep right except when passing, etc.: RCW 46.61.100.

46.20.100 Persons under eighteen. (1) **Application.** The application of a person under the age of eighteen years for a driver's license or a motorcycle endorsement must be signed by a parent or guardian with custody of the minor. If the person under the age of eighteen has no father, mother, or guardian, then the application must be signed by the minor's employer.

(2) **Traffic safety education requirement.** For a person under the age of eighteen years to obtain a driver's license he or she must meet the traffic safety education requirements of this subsection.

(a) To meet the traffic safety education requirement for a driver's license the applicant must satisfactorily complete a traffic safety education course as defined in RCW 28A.220.020 for a course offered by a school district, or as defined by the department of licensing for a course offered by a driver training school licensed under chapter 46.82 RCW. The course offered by a school district or an approved private school must meet the standards established by the office of the state superintendent of public instruction. The course offered by a driver training school must meet the standards established by the department of licensing with the advice of the driver instructors' advisory committee, pursuant to RCW 46.82.300. The traffic safety education course may be provided by:

(i) A recognized secondary school; or

(ii) A driver training school licensed under chapter 46.82 RCW that is annually approved by the department of licensing.

(b) To meet the traffic safety education requirement for a motorcycle endorsement, the applicant must successfully complete a motorcycle safety education course that meets the standards established by the department of licensing.

(2008 Ed.)

(c) The department may waive the traffic safety education requirement for a driver's license if the applicant demonstrates to the department's satisfaction that:

(i) He or she was unable to take or complete a traffic safety education course;

(ii) A need exists for the applicant to operate a motor vehicle; and

(iii) He or she has the ability to operate a motor vehicle in such a manner as not to jeopardize the safety of persons or property.

The department may adopt rules to implement this subsection (2)(c) in concert with the supervisor of the traffic safety education section of the office of the superintendent of public instruction.

(d) The department may waive the traffic safety education requirement if the applicant was licensed to drive a motor vehicle or motorcycle outside this state and provides proof that he or she has had education equivalent to that required under this subsection. [2002 c 195 § 1; 1999 c 274 § 14; 1999 c 6 § 16; 1990 c 250 § 36; 1985 c 234 § 2; 1979 c 158 § 146; 1973 1st ex.s. c 154 § 87; 1972 ex.s. c 71 § 1; 1969 ex.s. c 218 § 10; 1967 c 167 § 1; 1965 ex.s. c 170 § 43; 1961 c 12 § 46.20.100. Prior: 1937 c 188 § 51; RRS § 6312-51; 1921 c 108 § 6, part; RRS § 6368, part.]

Intent—1999 c 6: See note following RCW 46.04.168.

Severability—1990 c 250: See note following RCW 46.16.301.

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

46.20.105 Identifying types of licenses and permits.

(1) The department may provide a method to distinguish the driver's license of a person who is under the age of twenty-one from the driver's license of a person who is twenty-one years of age or older.

(2) An instruction permit must be identified as an "instruction permit" and issued in a distinctive form as determined by the department.

(3) An intermediate license must be identified as an "intermediate license" and issued in a distinctive form as determined by the department. [2000 c 115 § 5; 1987 c 463 § 3.]

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

46.20.109 Wheelchair conveyances. Each operator of a wheelchair conveyance shall undergo a special examination conducted for the purpose of determining whether that person can properly and safely operate the conveyance on public roadways within a specified area. An operator's license issued after the special examination may specify the route, area, time, or other restrictions that are necessary to ensure the safety of the operator as well as the general motoring public. The department shall adopt rules for periodic review of the performance of operators of wheelchair conveyances. Operation of a wheelchair conveyance in violation of these rules is a traffic infraction. [1983 c 200 § 3. Formerly RCW 46.20.550]

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definition: RCW 46.04.710.

licensing: RCW 46.16.640.

public roadways, operating on: RCW 46.61.730.
safety standards: RCW 46.37.610.

46.20.113 Anatomical gift statement. The department of licensing shall provide a statement whereby the licensee may certify his or her willingness to make an anatomical gift under RCW 68.64.030, as now or hereafter amended. The department shall provide the statement in at least one of the following ways:

- (1) On each driver's license; or
- (2) With each driver's license; or
- (3) With each in-person driver's license application. [2008 c 139 § 27; 1993 c 228 § 18; 1987 c 331 § 81; 1979 c 158 § 147; 1975 c 54 § 1.]

Uniformity of application and construction—2008 c 139: See RCW 68.64.902.

Application, construction—Severability—1993 c 228: See RCW 68.50.902 and 68.50.903.

Effective date—1987 c 331: See RCW 68.05.900.

46.20.1131 Information for organ donor registry. The department shall electronically transfer the information of all persons who upon application for a driver's license or identicard volunteer to donate organs or tissue to a registry created in RCW 68.64.200, and any subsequent changes to the applicant's donor status when the applicant renews a driver's license or identicard or applies for a new driver's license or identicard. [2008 c 139 § 28; 2003 c 94 § 5.]

Uniformity of application and construction—2008 c 139: See RCW 68.64.902.

Findings—2003 c 94: See note following RCW 68.64.200.

46.20.114 Preventing alteration or reproduction. The department shall prepare and issue drivers' licenses and identicards using processes that prohibit as nearly as possible the alteration or reproduction of such cards, or the superimposing of other photographs on such cards, without ready detection. [1999 c 6 § 17; 1977 ex.s. c 27 § 2.]

Intent—1999 c 6: See note following RCW 46.04.168.

Purpose—1977 ex.s. c 27: "The legislature finds that the falsification of cards and licenses is a serious social problem creating economic hardship and problems which impede the efficient conduct of commerce and government. The legislature is particularly concerned that the increasing use of false drivers' licenses and identicards to purchase liquor, to cash bad checks, and to obtain food stamps and other benefits is causing the loss of liquor licenses, the loss of jobs, the loss of income, and the loss of human life in addition to significant monetary losses in business and government. It is the purpose of RCW 46.20.114 to require an effective means of rendering drivers' licenses and identicards as immune as possible from alteration and counterfeiting in order to promote the public health and safety of the people of this state." [1977 ex.s. c 27 § 1.]

46.20.117 Identicards. (1) **Issuance.** The department shall issue an identicard, containing a picture, if the applicant:

- (a) Does not hold a valid Washington driver's license;
- (b) Proves his or her identity as required by RCW 46.20.035; and
- (c) Pays the required fee. The fee is twenty dollars unless an applicant is a recipient of continuing public assistance grants under Title 74 RCW, who is referred in writing by the secretary of social and health services. For those per-

sons the fee must be the actual cost of production of the identicard.

(2) **Design and term.** The identicard must:

- (a) Be distinctly designed so that it will not be confused with the official driver's license; and
- (b) Expire on the fifth anniversary of the applicant's birthdate after issuance.

(3) **Renewal.** An application for identicard renewal may be submitted by means of:

- (a) Personal appearance before the department; or
- (b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her identicard by mail or by electronic commerce when it last expired. However, the department may accept an application for renewal of an identicard submitted by means of mail or electronic commerce only if specific authority and funding is provided for this purpose by June 30, 2004, in the omnibus transportation appropriations act.

An identicard may not be renewed by mail or by electronic commerce unless the renewal issued by the department includes a photograph of the identicard holder.

(4) **Cancellation.** The department may cancel an identicard if the holder of the identicard used the card or allowed others to use the card in violation of RCW 46.20.0921. [2005 c 314 § 305; 2004 c 249 § 5; 2002 c 352 § 12; 1999 c 274 § 15; 1999 c 6 § 18; 1993 c 452 § 3; 1986 c 15 § 1; 1985 ex.s. c 1 § 3; 1985 c 212 § 1; 1981 c 92 § 2; 1971 ex.s. c 65 § 1; 1969 ex.s. c 155 § 4.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Intent—1999 c 6: See note following RCW 46.04.168.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Purpose—1971 ex.s. c 65: "The efficient and effective operation and administration of state government affects the health, safety, and welfare of the people of this state and it is the intent and purpose of this act to promote the health, safety, and welfare of the people by improving the operation and administration of state government." [1971 ex.s. c 65 § 2.]

Effective date—Purpose—1969 ex.s. c 155: See notes following RCW 46.20.118.

46.20.118 Negative file. The department shall maintain a negative file. It shall contain negatives of all pictures taken by the department of licensing as authorized by RCW 46.20.070 through 46.20.119. Negatives in the file shall not be available for public inspection and copying under chapter 42.56 RCW. The department may make the file available to official governmental enforcement agencies to assist in the investigation by the agencies of suspected criminal activity. The department shall make the file available to the office of the secretary of state, at the expense of the secretary of state, to assist in maintenance of the statewide voter registration database. The department may also provide a print to the driver's next of kin in the event the driver is deceased. [2005 c 274 § 307; 2005 c 246 § 23; 1990 c 250 § 37; 1981 c 22 § 1; 1979 c 158 § 149; 1969 ex.s. c 155 § 5.]

Reviser's note: This section was amended by 2005 c 246 § 23 and by 2005 c 274 § 307, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—2005 c 246: See note following RCW 10.64.140.

Severability—1990 c 250: See note following RCW 46.16.301.

Purpose—1969 ex.s. c 155: "The identification of the injured or the seriously ill is often difficult. The need for an identification file to facilitate use by proper law enforcement officers has hampered law enforcement. Personal identification for criminal, personal and commercial reasons is becoming most important at a time when it is increasingly difficult to accomplish. The legislature finds that the public health and welfare requires a standard and readily recognizable means of identification of each person living within the state. The legislature further finds that the need for an identification file by law enforcement agencies must be met. The use of photographic drivers' licenses will greatly aid the problem, but some means of identification must be provided for persons who do not possess a driver's license. The purpose of this 1969 amendatory act is to provide for the positive identification of persons, both through an expanded use of drivers' licenses and also through issue of personal identification cards for nondrivers." [1969 ex.s. c 155 § 1.]

Effective date—1969 ex.s. c 155: "This 1969 amendatory act shall take effect September 1, 1969." [1969 ex.s. c 155 § 7.]

Voter registration database: RCW 29A.08.651.

46.20.119 Reasonable rules. The rules and regulations adopted pursuant to RCW 46.20.070 through 46.20.119 shall be reasonable in view of the purposes to be served by RCW 46.20.070 through 46.20.119. [1990 c 250 § 38; 1969 ex.s. c 155 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Purpose—1969 ex.s. c 155: See notes following RCW 46.20.118.

46.20.120 Examinations—Waiver—Renewals—Fees. An applicant for a new or renewed driver's license must successfully pass a driver licensing examination to qualify for a driver's license. The department shall give examinations at places and times reasonably available to the people of this state.

(1) **Waiver.** The department may waive:

(a) All or any part of the examination of any person applying for the renewal of a driver's license unless the department determines that the applicant is not qualified to hold a driver's license under this title; or

(b) All or any part of the examination involving operating a motor vehicle if the applicant:

(i) Surrenders a valid driver's license issued by the person's previous home state; or

(ii) Provides for verification a valid driver's license issued by a foreign driver licensing jurisdiction with which the department has an informal agreement under RCW 46.20.125; and

(iii) Is otherwise qualified to be licensed.

(2) **Fee.** Each applicant for a new license must pay an examination fee of twenty dollars.

(a) The examination fee is in addition to the fee charged for issuance of the license.

(b) "New license" means a license issued to a driver:

(i) Who has not been previously licensed in this state; or

(ii) Whose last previous Washington license has been expired for more than five years.

(3) An application for driver's license renewal may be submitted by means of:

(a) Personal appearance before the department; or

(b) Mail or electronic commerce, if permitted by rule of the department and if the applicant did not renew his or her license by mail or by electronic commerce when it last expired. However, the department may accept an application for renewal of a driver's license submitted by means of mail or electronic commerce only if specific authority and funding is provided for this purpose by June 30, 2004, in the omnibus transportation appropriations act.

(4) A person whose license expired or will expire while he or she is living outside the state, may:

(a) Apply to the department to extend the validity of his or her license for no more than twelve months. If the person establishes to the department's satisfaction that he or she is unable to return to Washington before the date his or her license expires, the department shall extend the person's license. The department may grant consecutive extensions, but in no event may the cumulative total of extensions exceed twelve months. An extension granted under this section does not change the expiration date of the license for purposes of RCW 46.20.181. The department shall charge a fee of five dollars for each license extension;

(b) Apply to the department to renew his or her license by mail or, if permitted by rule of the department, by electronic commerce even if subsection (3)(b) of this section would not otherwise allow renewal by that means. If the person establishes to the department's satisfaction that he or she is unable to return to Washington within twelve months of the date that his or her license expires, the department shall renew the person's license by mail or, if permitted by rule of the department, by electronic commerce.

(5) If a qualified person submits an application for renewal under subsection (3)(b) or (4)(b) of this section, he or she is not required to pass an examination nor provide an updated photograph. A license renewed by mail or by electronic commerce that does not include a photograph of the licensee must be labeled "not valid for identification purposes." [2005 c 314 § 306; 2005 c 61 § 2; 2004 c 249 § 6; 2002 c 352 § 13. Prior: 1999 c 308 § 1; 1999 c 199 § 3; 1999 c 6 § 19; 1990 c 9 § 1; 1988 c 88 § 2; 1985 ex.s. c 1 § 4; 1979 c 61 § 6; 1975 1st ex.s. c 191 § 2; 1967 c 167 § 4; 1965 ex.s. c 121 § 9; 1961 c 12 § 46.20.120; prior: 1959 c 284 § 1; 1953 c 221 § 2; 1937 c 188 § 55, part; RRS § 6312-55, part.]

Reviser's note: This section was amended by 2005 c 61 § 2 and by 2005 c 314 § 306, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Intent—2005 c 61: See note following RCW 46.20.125.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1999 c 308: "Sections 1 through 5 of this act take effect July 1, 2000." [1999 c 308 § 6.]

Effective date—1999 c 199: See note following RCW 46.20.027.

Intent—1999 c 6: See note following RCW 46.04.168.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.125 Waiver—Agreement with other jurisdictions. (1) The department may enter into an informal agreement with one or more other licensing jurisdictions to waive

the requirement for the examination involving operating a motor vehicle by licensed drivers, age eighteen years or older, from that jurisdiction.

(2) The department may only enter into an agreement with a jurisdiction if:

(a) The jurisdiction has procedures in place to verify the validity of the drivers' licenses it issues; and

(b) The jurisdiction has agreed to waive all or any part of the driver's license examination requirements for Washington licensed drivers applying for a driver's license in that jurisdiction. [2005 c 61 § 3.]

Intent—2005 c 61: "The legislature recognizes the importance of global markets to our state and national economy. As a leader among states in international commerce, Washington houses many multinational corporations. Competition among states for foreign businesses and personnel is fierce and it is necessary to Washington's future economic viability to eliminate a significant regulatory barrier to efficient personnel exchange, resulting in a more attractive business climate in Washington. The legislature recognizes that more than twenty other states have entered into informal reciprocal agreements with other nations to waive driver's license testing requirements in order to ease the transition of personnel to and from those states. By removing an unnecessary barrier to efficient personnel mobility it is the intent of the legislature to strengthen and diversify Washington's economy." [2005 c 61 § 1.]

46.20.126 Rules. The department may make rules to carry out the purposes of RCW 46.20.120 and 46.20.125. [2005 c 61 § 4.]

46.20.130 Content and conduct of examinations. (1) The director shall prescribe the content of the driver licensing examination and the manner of conducting the examination, which shall include but is not limited to:

(a) A test of the applicant's eyesight and ability to see, understand, and follow highway signs regulating, warning, and directing traffic;

(b) A test of the applicant's knowledge of traffic laws and ability to understand and follow the directives of lawful authority, orally or graphically, that regulate, warn, and direct traffic in accordance with the traffic laws of this state;

(c) An actual demonstration of the applicant's ability to operate a motor vehicle without jeopardizing the safety of persons or property. If the applicant is deaf or hearing impaired, the applicant may be accompanied by an interpreter to assist the applicant during the demonstration. The interpreter will be of the applicant's choosing from a list provided by the department of licensing; and

(d) Such further examination as the director deems necessary:

(i) To determine whether any facts exist that would bar the issuance of a vehicle operator's license under chapters 46.20, 46.21, and 46.29 RCW; and

(ii) To determine the applicant's fitness to operate a motor vehicle safely on the highways.

(2) If the applicant desires to drive a motorcycle or a motor-driven cycle he or she must qualify for a motorcycle endorsement under RCW 46.20.500 through 46.20.515. [2006 c 190 § 1; 1999 c 6 § 20; 1990 c 250 § 39; 1981 c 245 § 4; 1967 c 232 § 2; 1965 ex.s. c 121 § 10; 1961 c 12 § 46.20.130. Prior: 1959 c 284 § 2; 1943 c 151 § 1; 1937 c 188 § 57; Rem. Supp. 1943 § 6312-57.]

Collective bargaining rights not affected—2006 c 190: "This act does not affect the right of state employees to collectively bargain wages, hours,

and other terms and conditions of employment under chapter 41.80 RCW." [2006 c 190 § 2.]

Intent—1999 c 6: See note following RCW 46.04.168.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1981 c 245: See note following RCW 46.20.161.

46.20.153 Voter registration—Posting signs. The department shall post signs at each driver licensing facility advertising the availability of voter registration services and advising of the qualifications to register to vote. [2001 c 41 § 15.]

46.20.155 Voter registration—Services. (1) Before issuing an original license or identicard or renewing a license or identicard under this chapter, the licensing agent shall determine if the applicant wants to register to vote or transfer his or her voter registration by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the agent shall ask the following:

(1) "Are you a United States citizen?"

(2) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

(2) The department shall establish a procedure that substantially meets the requirements of subsection (1) of this section when permitting an applicant to renew a license or identicard by mail or by electronic commerce. [2005 c 246 § 24; 2004 c 249 § 7; 2001 c 41 § 14; 1990 c 143 § 6.]

Effective date—2005 c 246: See note following RCW 10.64.140.

Effective date—1990 c 143: See note following RCW 29A.08.340.

Voter registration with driver licensing: RCW 29A.08.340 and 29A.08.350.

46.20.157 Data to department of information services—Confidentiality. (1) Except as provided in subsection (2) of this section, the department shall annually provide to the department of information services an electronic data file. The data file must:

(a) Contain information on all licensed drivers and identicard holders who are eighteen years of age or older and whose records have not expired for more than two years;

(b) Be provided at no charge; and

(c) Contain the following information on each such person: Full name, date of birth, residence address including county, sex, and most recent date of application, renewal, replacement, or change of driver's license or identicard.

(2) Before complying with subsection (1) of this section, the department shall remove from the file the names of any certified participants in the Washington state address confidentiality program under chapter 40.24 RCW that have been

identified to the department by the secretary of state. [1999 c 6 § 21; 1993 c 408 § 12.]

Intent—1999 c 6: See note following RCW 46.04.168.

Severability—Effective dates—1993 c 408: See notes following RCW 2.36.054.

46.20.161 Issuance of license—Contents—Fee. The department, upon receipt of a fee of twenty-five dollars, unless the driver's license is issued for a period other than five years, in which case the fee shall be five dollars for each year that the license is issued, which includes the fee for the required photograph, shall issue to every qualifying applicant a driver's license. A driver's license issued to a person under the age of eighteen is an intermediate license, subject to the restrictions imposed under RCW 46.20.075, until the person reaches the age of eighteen. The license must include a distinguishing number assigned to the licensee, the name of record, date of birth, Washington residence address, photograph, a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write his or her usual signature with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee. [2000 c 115 § 6; 1999 c 308 § 2; 1999 c 6 § 22; 1998 c 41 § 12; 1990 c 250 § 40; 1981 c 245 § 1; 1975 1st ex.s. c 191 § 3; 1969 c 99 § 6; 1965 ex.s. c 121 § 11.]

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

Effective date—1999 c 308: See note following RCW 46.20.120.

Intent—1999 c 6: See note following RCW 46.04.168.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1981 c 245: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 245 § 5.]

Effective date—1969 c 99: See note following RCW 79A.05.070.

46.20.181 Expiration date—Renewal—Fees—Penalty. (1) Except as provided in subsection (4) of this section, every driver's license expires on the fifth anniversary of the licensee's birthdate following the issuance of the license.

(2) A person may renew his or her license on or before the expiration date by submitting an application as prescribed by the department and paying a fee of twenty-five dollars. This fee includes the fee for the required photograph.

(3) A person renewing his or her driver's license more than sixty days after the license has expired shall pay a penalty fee of ten dollars in addition to the renewal fee, unless his or her license expired when:

(a) The person was outside the state and he or she renews the license within sixty days after returning to this state; or

(b) The person was incapacitated and he or she renews the license within sixty days after the termination of the incapacity.

(4) During the period from July 1, 2000, to July 1, 2006, the department may issue or renew a driver's license for a period other than five years, or may extend by mail a license that has already been issued, in order to evenly distribute, as

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nearly as possible, the yearly renewal rate of licensed drivers. The fee for a driver's license issued or renewed for a period other than five years, or that has been extended by mail, is five dollars for each year that the license is issued, renewed, or extended. The department may adopt any rules as are necessary to carry out this subsection. [1999 c 308 § 3; 1999 c 6 § 23; 1990 c 250 § 41; 1981 c 245 § 2; 1975 1st ex.s. c 191 § 4; 1969 c 99 § 7; 1965 ex.s. c 170 § 46; 1965 ex.s. c 121 § 17.]

Effective date—1999 c 308: See note following RCW 46.20.120.

Intent—1999 c 6: See note following RCW 46.04.168.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—1981 c 245: See note following RCW 46.20.161.

Effective date—1969 c 99: See note following RCW 79A.05.070.

46.20.185 Photograph during renewal. The department of licensing shall establish a procedure for renewal of drivers' licenses under this chapter which does not deprive the applicant during the renewal process of an identification bearing the applicant's photograph.

This identification shall be designed to and shall be accepted as proper identification under RCW 66.16.040. [1979 ex.s. c 87 § 1.]

46.20.187 Registration of sex offenders. The department, at the time a person renews his or her driver's license or identicard, or surrenders a driver's license from another jurisdiction pursuant to RCW 46.20.021 and makes an application for a driver's license or an identicard, shall provide the applicant with written information on the registration requirements of RCW 9A.44.130. [1990 c 3 § 407.]

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

46.20.191 Compliance with federal REAL ID Act of 2005 requirements. Before issuing a driver's license or identicard that complies with the requirements of the REAL ID Act of 2005, P.L. 109-13, and before storing or including data about Washington state residents in any database, records facility, or computer system for purposes of meeting the requirements of the REAL ID Act of 2005, the department of licensing shall certify that the driver's license, identicard, database, records facility, computer system, and the department's personnel screening and training procedures: (1) Include all reasonable security measures to protect the privacy of Washington state residents; (2) include all reasonable safeguards to protect against unauthorized disclosure of data; and (3) do not place unreasonable costs or recordkeeping burdens on a driver's license or identicard applicant. [2007 c 85 § 2.]

46.20.1911 Costs and burdens of compliance with federal REAL ID Act of 2005 requirements—Legal challenge. (1) The department of licensing and the office of financial management may analyze the costs and burdens to the state of Washington, and to applicants of drivers' licenses or identicards, of complying with the requirements of the REAL ID Act of 2005, P.L. 109-13, and any related federal regulations.

(2) The attorney general may, with approval of the governor, challenge the legality or constitutionality of the REAL ID Act of 2005. [2007 c 85 § 3.]

46.20.200 Lost, destroyed, corrected licenses or permits. (1) If an instruction permit, identicard, or a driver's license is lost or destroyed, the person to whom it was issued may obtain a duplicate of it upon furnishing proof of such fact satisfactory to the department and payment of a fee of fifty dollars to the department.

(2) A replacement permit, identicard, or driver's license may be obtained to change or correct material information upon payment of a fee of ten dollars and surrender of the permit, identicard, or driver's license being replaced. [2002 c 352 § 14; 1985 ex.s. c 1 § 5; 1975 1st ex.s. c 191 § 5; 1965 ex.s. c 121 § 16; 1961 c 12 § 46.20.200. Prior: 1947 c 164 § 18; 1937 c 188 § 60; Rem. Supp. 1947 § 6312-60; 1921 c 108 § 11; RRS § 6373.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.202 Enhanced drivers' licenses and identicards for Canadian border crossing—Border-crossing initiative. (1) The department may enter into a memorandum of understanding with any federal agency for the purposes of facilitating the crossing of the border between the state of Washington and the Canadian province of British Columbia.

(2) The department may enter into an agreement with the Canadian province of British Columbia for the purposes of implementing a border-crossing initiative.

(3)(a) The department may issue an enhanced driver's license or identicard for the purposes of crossing the border between the state of Washington and the Canadian province of British Columbia to an applicant who provides the department with proof of: United States citizenship, identity, and state residency. The department shall continue to offer a standard driver's license and identicard. If the department chooses to issue an enhanced driver's license, the department must allow each applicant to choose between a standard driver's license or identicard, or an enhanced driver's license or identicard.

(b) The department shall implement a one-to-many biometric matching system for the enhanced driver's license or identicard. An applicant for an enhanced driver's license or identicard shall submit a biometric identifier as designated by the department. The biometric identifier must be used solely for the purpose of verifying the identity of the holders and for any purpose set out in RCW 46.20.037. Applicants are required to sign a declaration acknowledging their understanding of the one-to-many biometric match.

(c) The enhanced driver's license or identicard must include reasonable security measures to protect the privacy of Washington state residents, including reasonable safeguards to protect against unauthorized disclosure of data about Washington state residents. If the enhanced driver's license or identicard includes a radio frequency identification chip, or similar technology, the department shall ensure that the technology is encrypted or otherwise secure from unauthorized data access.

(d) The requirements of this subsection are in addition to the requirements otherwise imposed on applicants for a driver's license or identicard. The department shall adopt such rules as necessary to meet the requirements of this subsection. From time to time the department shall review technological innovations related to the security of identity cards and amend the rules related to enhanced driver's licenses and identicards as the director deems consistent with this section and appropriate to protect the privacy of Washington state residents.

(e) Notwithstanding RCW 46.20.118, the department may make images associated with enhanced drivers' licenses or identicards from the negative file available to United States customs and border agents for the purposes of verifying identity.

(4) The department may set a fee for the issuance of enhanced drivers' licenses and identicards under this section. [2007 c 7 § 1.]

Effective date—2007 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2007]." [2007 c 7 § 4.]

46.20.2021 Statewide education campaign for border-crossing initiative. The department shall develop and implement a statewide education campaign to educate Washington citizens about the border-crossing initiative authorized by chapter 7, Laws of 2007. The educational campaign must include information on the forms of travel for which the existing and enhanced driver's license can be used. The campaign must include information on the time frames for implementation of laws that impact identification requirements at the border with Canada. [2007 c 7 § 2.]

Effective date—2007 c 7: See note following RCW 46.20.202.

46.20.205 Change of address or name. (1) Whenever any person after applying for or receiving a driver's license or identicard moves from the address named in the application or in the license or identicard issued to him or her, the person shall within ten days thereafter notify the department of the address change. The notification must be in writing on a form provided by the department and must include the number of the person's driver's license. The written notification, or other means as designated by rule of the department, is the exclusive means by which the address of record maintained by the department concerning the licensee or identicard holder may be changed.

(a) The form must contain a place for the person to indicate that the address change is not for voting purposes. The department of licensing shall notify the secretary of state by the means described in *RCW 29.07.270(3) of all change of address information received by means of this form except information on persons indicating that the change is not for voting purposes.

(b) Any notice regarding the cancellation, suspension, revocation, disqualification, probation, or nonrenewal of the driver's license, commercial driver's license, driving privilege, or identicard mailed to the address of record of the licensee or identicard holder is effective notwithstanding the licensee's or identicard holder's failure to receive the notice.

(2) When a licensee or holder of an identicard changes his or her name of record, the person shall notify the department of the name change. The person must make the notification within ten days of the date that the name change is effective. The notification must be in writing on a form provided by the department and must include the number of the person's driver's license. The department of licensing shall not change the name of record of a person under this section unless the person has again satisfied the department regarding his or her identity in the manner provided by RCW 46.20.035. [1999 c 6 § 24; 1998 c 41 § 13; 1996 c 30 § 4; 1994 c 57 § 52; 1989 c 337 § 6; 1969 ex.s. c 170 § 13; 1965 ex.s. c 121 § 18.]

***Reviser's note:** RCW 29.07.270 was recodified as RCW 29A.08.350 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29.07.270 was also amended by 2003 c 111 § 226, deleting subsection (3).

Intent—1999 c 6: See note following RCW 46.04.168.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Effective date—1996 c 30: See note following RCW 46.25.010.

Severability—Effective date—1994 c 57: See notes following RCW 10.64.021.

RESTRICTING THE DRIVING PRIVILEGE

46.20.207 Cancellation. (1) The department is authorized to cancel any driver's license upon determining that the licensee was not entitled to the issuance of the license, or that the licensee failed to give the required or correct information in his or her application, or that the licensee is incompetent to drive a motor vehicle for any of the reasons under RCW 46.20.031 (4) and (7).

(2) Upon such cancellation, the licensee must surrender the license so canceled to the department. [1993 c 501 § 3; 1991 c 293 § 4; 1965 ex.s. c 121 § 20.]

46.20.215 Nonresidents—Suspension or revocation—Reporting offenders. (1) The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the department in like manner and for like cause as a driver's license issued hereunder may be suspended or revoked.

(2) The department shall, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, forward a report of such conviction to the motor vehicle administrator in the state wherein the person so convicted is a resident. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; and indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security.

(3) The department shall, upon receiving a record of the commission of a traffic infraction in this state by a nonresident driver of a motor vehicle, forward a report of the traffic infraction to the motor vehicle administrator in the state where the person who committed the infraction resides. The report shall clearly identify the person found to have committed the infraction; describe the infraction, specifying the sec-

tion of the statute, code or ordinance violated; identify the court in which action was taken; and indicate whether the determination that an infraction was committed was contested or whether the individual failed to respond to the notice of infraction. [1979 ex.s. c 136 § 57; 1965 ex.s. c 121 § 21.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.20.220 Vehicle rentals—Records. (1) It shall be unlawful for any person to rent a motor vehicle of any kind including a motorcycle to any other person unless the latter person is then duly licensed as a vehicle driver for the kind of motor vehicle being rented in this state or, in case of a nonresident, then that he is duly licensed as a driver under the laws of the state or country of his residence except a nonresident whose home state or country does not require that a motor vehicle driver be licensed;

(2) It shall be unlawful for any person to rent a motor vehicle to another person until he has inspected the vehicle driver's license of such other person and compared and verified the signature thereon with the signature of such other person written in his presence;

(3) Every person renting a motor vehicle to another person shall keep a record of the vehicle license number of the motor vehicle so rented, the name and address of the person to whom the motor vehicle is rented, the number of the vehicle driver's license of the person renting the vehicle and the date and place when and where such vehicle driver's license was issued. Such record shall be open to inspection by any police officer or anyone acting for the director. [1969 c 27 § 1. Prior: 1967 c 232 § 9; 1967 c 32 § 28; 1961 c 12 § 46.20.220; prior: 1937 c 188 § 63; RRS § 6312-63.]

Allowing unauthorized person to drive: RCW 46.16.011, 46.20.024.

Helmet requirements: RCW 46.37.535.

46.20.245 Mandatory revocation—Notice—Administrative, judicial review—Rules—Application. (1) Whenever the department proposes to withhold the driving privilege of a person or disqualify a person from operating a commercial motor vehicle and this action is made mandatory by the provisions of this chapter or other law, the department must give notice to the person in writing by posting in the United States mail, appropriately addressed, postage prepaid, or by personal service. Notice by mail is given upon deposit in the United States mail. Notice given under this subsection must specify the date upon which the driving privilege is to be withheld which shall not be less than forty-five days after the original notice is given.

(2) Within fifteen days after notice has been given to a person under subsection (1) of this section, the person may request in writing an administrative review before the department. If the request is mailed, it must be postmarked within fifteen days after the date the department has given notice. If a person fails to request an administrative review within fifteen days after the date the department gives notice, the person is considered to have defaulted and loses his or her right to an administrative review unless the department finds good cause for a request after the fifteen-day period.

(a) An administrative review under this subsection shall consist solely of an internal review of documents and records

submitted or available to the department, unless the person requests an interview before the department, in which case all or any part of the administrative review may, at the discretion of the department, be conducted by telephone or other electronic means.

(b) The only issues to be addressed in the administrative review are:

(i) Whether the records relied on by the department identify the correct person; and

(ii) Whether the information transmitted from the court or other reporting agency or entity regarding the person accurately describes the action taken by the court or other reporting agency or entity.

(c) For the purposes of this section, the notice received from a court or other reporting agency or entity, regardless of form or format, is prima facie evidence that the information from the court or other reporting agency or entity regarding the person is accurate. A person requesting administrative review has the burden of showing by a preponderance of the evidence that the person is not subject to the withholding of the driving privilege.

(d) The action subject to the notification requirements of subsection (1) of this section shall be stayed during the administrative review process.

(e) Judicial review of a department order affirming the action subject to the notification requirements of subsection (1) of this section after an administrative review shall be available in the same manner as provided in RCW 46.20.308(9). The department shall certify its record to the court within thirty days after service upon the department of the petition for judicial review. The action subject to the notification requirements of subsection (1) of this section shall not automatically be stayed during the judicial review. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury.

(3) The department may adopt rules that are considered necessary or convenient by the department for purposes of administering this section, including, but not limited to, rules regarding expedited procedures for issuing orders and expedited notice procedures.

(4) This section does not apply where an opportunity for an informal settlement, driver improvement interview, or formal hearing is otherwise provided by law or rule of the department. [2005 c 288 § 1.]

Effective date—2005 c 288: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 288 § 9.]

46.20.265 Juvenile driving privileges—Revocation for alcohol or drug violations. (1) In addition to any other authority to revoke driving privileges under this chapter, the department shall revoke all driving privileges of a juvenile when the department receives notice from a court pursuant to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420, 69.52.070, or a substantially similar municipal ordinance adopted by a local legislative authority, or from a diversion unit pursuant to RCW 13.40.265.

(2) The driving privileges of the juvenile revoked under subsection (1) of this section shall be revoked in the following manner:

(a) Upon receipt of the first notice, the department shall impose a revocation for one year, or until the juvenile reaches seventeen years of age, whichever is longer.

(b) Upon receipt of a second or subsequent notice, the department shall impose a revocation for two years or until the juvenile reaches eighteen years of age, whichever is longer.

(c) Each offense for which the department receives notice shall result in a separate period of revocation. All periods of revocation imposed under this section that could otherwise overlap shall run consecutively up to the juvenile's twenty-first birthday, and no period of revocation imposed under this section shall begin before the expiration of all other periods of revocation imposed under this section or other law. Periods of revocation imposed consecutively under this section shall not extend beyond the juvenile's twenty-first birthday.

(3)(a) If the department receives notice from a court that the juvenile's privilege to drive should be reinstated, the department shall immediately reinstate any driving privileges that have been revoked under this section if the minimum term of revocation as specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3), 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and subject to subsection (2)(c) of this section.

(b) The juvenile may seek reinstatement of his or her driving privileges from the department when the juvenile reaches the age of twenty-one. A notice from the court reinstating the juvenile's driving privilege shall not be required if reinstatement is pursuant to this subsection.

(4)(a) If the department receives notice pursuant to RCW 13.40.265(2)(b) from a diversion unit that a juvenile has completed a diversion agreement for which the juvenile's driving privileges were revoked, the department shall reinstate any driving privileges revoked under this section as provided in (b) of this subsection, subject to subsection (2)(c) of this section.

(b) If the diversion agreement was for the juvenile's first violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of ninety days after the date the juvenile turns sixteen or ninety days after the juvenile entered into a diversion agreement for the offense. If the diversion agreement was for the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department shall not reinstate the juvenile's privilege to drive until the later of the date the juvenile turns seventeen or one year after the juvenile entered into the second or subsequent diversion agreement. [2005 c 288 § 2; 2003 c 20 § 1; 1998 c 41 § 2; 1994 sp.s. c 7 § 439; 1991 c 260 § 1; 1989 c 271 § 117; 1988 c 148 § 7.]

Effective date—2005 c 288: See note following RCW 46.20.245.

Intent—Construction—1998 c 41: "It is the intent and purpose of this act to clarify procedural issues and make technical corrections to statutes relating to drivers' licenses. This act should not be construed as changing existing public policy." [1998 c 41 § 1.]

Effective date—1998 c 41: "This act takes effect July 1, 1998." [1998 c 41 § 15.]

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

46.20.267 Intermediate licensees. If a person issued an intermediate license is convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate license under RCW 46.20.075:

(1) On the first such conviction or finding the department shall mail the parent or guardian of the person a letter warning the person of the provisions of this section;

(2) On the second such conviction or finding, the department shall suspend the person's intermediate driver's license for a period of six months or until the person reaches eighteen years of age, whichever occurs first, and mail the parent or guardian of the person a notification of the suspension;

(3) On the third such conviction or finding, the department shall suspend the person's intermediate driver's license until the person reaches eighteen years of age, and mail the parent or guardian of the person a notification of the suspension.

For the purposes of this section, a single ticket for one or more traffic offenses constitutes a single traffic offense. [2000 c 115 § 3.]

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

46.20.270 Conviction of offense requiring withholding driving privilege—Procedures—Definitions. (1) Whenever any person is convicted of any offense for which this title makes mandatory the withholding of the driving privilege of such person by the department, the court in which such conviction is had shall forthwith mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department. A valid driver's license or permit to drive marked under this subsection shall remain in effect until the person's driving privilege is withheld by the department pursuant to notice given under RCW 46.20.245, unless the license or permit expires or otherwise becomes invalid prior to the effective date of this action. Perfection of notice of appeal shall stay the execution of sentence including the withholding of the driving privilege.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations within this state, shall immediately forward to the department a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine, penalty, or court cost, a plea of guilty or nolo contendere or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the

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form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(3) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or other infraction issued under RCW 46.63.030(1)(d) has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking or one or more other infractions issued under RCW 46.63.030(1)(d) have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of Title 46 RCW the term "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine or court cost, a plea of guilty or nolo contendere, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(5) For the purposes of Title 46 RCW the term "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding. [2006 c 327 § 1; 2005 c 288 § 3; 2004 c 231 § 5; 1990 2nd ex.s. c 1 § 402; 1990 c 250 § 42; 1982 1st ex.s. c 14 § 5; 1979 ex.s. c 136 § 58; 1979 c 61 § 7; 1977 ex.s. c 3 § 1; 1967 ex.s. c 145 § 55; 1965 ex.s. c 121 § 22; 1961 c 12 § 46.20.270. Prior: 1937 c 188 § 68; RRS § 6312-68; prior: 1923 c 122 § 2, part; 1921 c 108 § 9, part; RRS § 6371, part.]

Effective date—2005 c 288: See note following RCW 46.20.245.

Severability—1990 2nd ex.s. c 1: See note following RCW 82.14.300.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.20.285 Offenses requiring revocation. The department shall revoke the license of any driver for the period of one calendar year unless otherwise provided in this section, upon receiving a record of the driver's conviction of any of the following offenses, when the conviction has become final:

(1) For vehicular homicide the period of revocation shall be two years. The revocation period shall be tolled during any period of total confinement for the offense;

(2) Vehicular assault. The revocation period shall be tolled during any period of total confinement for the offense;

(3) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle, for the period prescribed in RCW 46.61.5055;

(4) Any felony in the commission of which a motor vehicle is used;

(5) Failure to stop and give information or render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another or resulting in damage to a vehicle that is driven or attended by another;

(6) Perjury or the making of a false affidavit or statement under oath to the department under Title 46 RCW or under any other law relating to the ownership or operation of motor vehicles;

(7) Reckless driving upon a showing by the department's records that the conviction is the third such conviction for the driver within a period of two years. [2005 c 288 § 4; 2001 c 64 § 6. Prior: 1998 c 207 § 4; 1998 c 41 § 3; 1996 c 199 § 5; 1990 c 250 § 43; 1985 c 407 § 2; 1984 c 258 § 324; 1983 c 165 § 16; 1983 c 165 § 15; 1965 ex.s. c 121 § 24.]

Effective date—2005 c 288: See note following RCW 46.20.245.

Effective date—1998 c 207: See note following RCW 46.61.5055.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Severability—1996 c 199: See note following RCW 9.94A.505.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

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

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Revocation of license for attempting to elude pursuing police vehicle: RCW 46.61.024.

Vehicular assault, penalty: RCW 46.61.522.

Vehicular homicide, penalty: RCW 46.61.520.

46.20.286 Adoption of procedures. The department of licensing shall adopt procedures in cooperation with the administrative office of the courts and the department of corrections to implement RCW 46.20.285. [2005 c 282 § 47; 1996 c 199 § 6.]

Severability—1996 c 199: See note following RCW 9.94A.505.

46.20.289 Suspension for failure to respond, appear, etc. The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after July 1, 2005. A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. In the case of failure to respond to a traffic infraction issued under RCW 46.55.105, the department shall suspend all driving privileges until the person provides evidence from the court that all penalties and restitution have been paid. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated. [2005 c 288 § 5; 2002 c 279 § 4; 1999 c 274 § 1; 1995 c 219 § 2; 1993 c 501 § 1.]

Effective date—2005 c 288: See note following RCW 46.20.245.

46.20.291 Authority to suspend—Grounds. The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);

(5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289;

(6) Is subject to suspension under RCW 46.20.305 or 9A.56.078;

(7) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.0921; or

(8) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320. [2007 c 393 § 2; 1998 c 165 § 12; 1997 c 58 § 806; 1993 c 501 § 4; 1991 c 293 § 5; 1980 c 128 § 12; 1965 ex.s. c 121 § 25.]

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Reckless driving, suspension of license: RCW 46.61.500.

Vehicular assault

drug and alcohol evaluation and treatment: RCW 9.94A.703.
penalty: RCW 46.61.522.

Vehicular homicide

drug and alcohol evaluation and treatment: RCW 9.94A.703.
penalty: RCW 46.61.520.

46.20.292 Finding of juvenile court officer. The department may suspend, revoke, restrict, or condition any driver's license upon a showing of its records that the licensee has been found by a juvenile court, chief probation officer, or any other duly authorized officer of a juvenile court to have committed any offense or offenses which under Title 46 RCW constitutes grounds for said action. [1979 c 61 § 8; 1967 c 167 § 9.]

46.20.293 Minor's record to juvenile court, parents, or guardians. The department is authorized to provide juvenile courts with the department's record of traffic charges compiled under RCW 46.52.101 and 13.50.200, against any minor upon the request of any state juvenile court or duly authorized officer of any juvenile court of this state. Further, the department is authorized to provide any juvenile court with any requested service which the department can reasonably perform which is not inconsistent with its legal authority which substantially aids juvenile courts in handling traffic cases and which promotes highway safety.

The department is authorized to furnish to the parent, parents, or guardian of any person under eighteen years of age who is not emancipated from such parent, parents, or guardian, the department records of traffic charges compiled against the person and shall collect for the copy a fee of ten dollars fifty percent of which must be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038. [2007 c 424 § 1; 2002 c 352 § 15; 1999 c 86 § 3; 1990 c 250 § 44; 1979 c 61 § 9; 1977 ex.s. c 3 § 2; 1971 ex.s. c 292 § 45; 1969 ex.s. c 170 § 14; 1967 c 167 § 10.]

Effective date—2007 c 424: "This act takes effect August 1, 2007." [2007 c 424 § 5.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Severability—1990 c 250: See note following RCW 46.16.301.

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

46.20.300 Extraterritorial convictions. The director of licensing shall suspend, revoke, or cancel the vehicle driver's license of any resident of this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be ground for the suspension or revocation of the vehicle driver's license. The director may further, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws

of this state, forward a certified copy of such record to the motor vehicle administrator in the state of which the person so convicted is a resident; such record to consist of a copy of the judgment and sentence in the case. [1989 c 337 § 7; 1979 c 158 § 150; 1967 c 32 § 29; 1961 c 12 § 46.20.300. Prior: 1957 c 273 § 8; prior: 1937 c 188 § 66, part; RRS § 6312-66, part; 1923 c 122 § 1, part; 1921 c 108 § 9, part; RRS § 6371, part.]

46.20.305 Incompetent, unqualified driver—Reexamination—Physician's certificate—Action by department. (1) The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed may upon notice require him or her to submit to an examination.

(2) The department shall require a driver reported under RCW 46.52.070 (2) and (3) to submit to an examination. The examination must be completed no later than one hundred twenty days after the accident report required under RCW 46.52.070(2) is received by the department unless the department, at the request of the operator, extends the time for examination.

(3) The department may in addition to an examination under this section require such person to obtain a certificate showing his or her condition signed by a licensed physician or other proper authority designated by the department.

(4) Upon the conclusion of an examination under this section the department shall take driver improvement action as may be appropriate and may suspend or revoke the license of such person or permit him or her to retain such license, or may issue a license subject to restrictions as permitted under RCW 46.20.041. The department may suspend or revoke the license of such person who refuses or neglects to submit to such examination.

(5) The department may require payment of a fee by a person subject to examination under this section. The department shall set the fee in an amount that is sufficient to cover the additional cost of administering examinations required by this section. [1999 c 351 § 3; 1998 c 165 § 13; 1965 ex.s. c 121 § 26.]

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

46.20.308 Implied consent—Test refusal—Procedures. (Effective until January 1, 2009.) (1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in

actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of

the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice

has been given, request in writing a formal hearing before the department. The person shall pay a fee of two hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required two hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required two hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is

accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever

time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license. [2005 c 314 § 307; 2005 c 269 § 1. Prior: 2004 c 187 § 1; 2004 c 95 § 2; 2004 c 68 § 2; prior: 1999 c 331 § 2; 1999 c 274 § 2; prior: 1998 c 213 § 1; 1998 c 209 § 1; 1998 c 207 § 7; 1998 c 41 § 4; 1995 c 332 § 1; 1994 c 275 § 13; 1989 c 337 § 8; 1987 c 22 § 1; prior: 1986 c 153 § 5; 1986 c 64 § 1; 1985 c 407 § 3; 1983 c 165 § 2; 1983 c 165 § 1; 1981 c 260 § 11; prior: 1979 ex.s. c 176 § 3; 1979 ex.s. c 136 § 59; 1979 c 158 § 151; 1975 1st ex.s. c 287 § 4; 1969 c 1 § 1 (Initiative Measure No. 242, approved November 5, 1968).]

Reviser's note: This section was amended by 2005 c 269 § 1 and by 2005 c 314 § 307, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: "Sections 1, 5, 7, 8, and 10 of this act take effect July 1, 2005." [2004 c 187 § 11.]

Contingent effect—2004 c 95 § 2: "Section 2 of this act takes effect if section 2 of Substitute House Bill No. 3055 is enacted into law." [2004 c 95 § 17.] 2004 c 68 § 2 was enacted into law, effective June 10, 2004.

Finding—Intent—2004 c 68: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers continue at unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to ensure swift and certain consequences for those who drink and drive.

To accomplish this goal, the legislature adopts standards governing the admissibility of tests of a person's blood or breath. These standards will provide a degree of uniformity that is currently lacking, and will reduce the delays caused by challenges to various breath test instrument components and maintenance procedures. Such challenges, while allowed, will no longer go to admissibility of test results. Instead, such challenges are to be considered by the finder of fact in deciding what weight to place upon an admitted blood or breath test result.

The legislature's authority to adopt standards governing the admissibility of evidence involving alcohol is well established by the Washington Supreme Court. See generally *State v. Long*, 113 Wn.2d 266, 778 P.2d 1027 (1989); *State v. Sears*, 4 Wn.2d 200, 215, 103 P.2d 337 (1940) (the legislature has the power to enact laws which create rules of evidence); *State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929) ("rules of evidence are substantive law"). [2004 c 68 § 1.]

Effective date—1999 c 331: See note following RCW 9.94A.525.

Effective date—1998 c 213: "This act takes effect January 1, 1999." [1998 c 213 § 9.]

Effective date—1998 c 209: "This act takes effect January 1, 1999." [1998 c 209 § 6.]

Effective date—1998 c 207: See note following RCW 46.61.5055.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Severability—1995 c 332: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 332 § 23.]

Effective dates—1995 c 332: "This act shall take effect September 1, 1995, except for sections 13 and 22 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 332 § 24.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—1983 c 165: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers have reached unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to insure swift and certain punishment for those who drink and drive. The legislature does not intend to discourage or deter courts and other agencies from directing or providing treatment for problem drinkers. However, it is the intent that such treatment, where appropriate, be in addition to and not in lieu of the sanctions to be applied to all those convicted of driving while intoxicated." [1983 c 165 § 44.]

Effective dates—1983 c 165: "Sections 2, 3 through 12, 14, 16, 18, 22, 24, and 26 of chapter 165, Laws of 1983 shall take effect on January 1, 1986. The remainder of chapter 165, Laws of 1983 is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. The director of licensing may immediately take such steps as are necessary to insure that all sections of chapter 165, Laws of 1983 are implemented on their respective effective dates." [1984 c 219 § 1; 1983 c 165 § 47.]

Severability—1983 c 165: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 165 § 48.]

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

Liability of medical personnel withdrawing blood: RCW 46.61.508.

Refusal of test—Admissibility as evidence: RCW 46.61.517.

46.20.308 Implied consent—Test refusal—Procedures. (Effective January 1, 2009.) (1) Any person who

operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be

administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section and that the person waives the right to a hearing if he or she receives an ignition interlock driver's license;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of two hundred dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required two hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required two hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was

administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be

in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license. [2008 c 282 § 2. Prior: 2005 c 314 § 307; 2005 c 269 § 1; prior: 2004 c 187 § 1; 2004 c 95 § 2; 2004 c 68 § 2; prior: 1999 c 331 § 2; 1999 c 274 § 2; prior: 1998 c 213 § 1; 1998 c 209 § 1; 1998 c 207 § 7; 1998 c 41 § 4; 1995 c 332 § 1; 1994 c 275 § 13; 1989 c 337 § 8; 1987 c 22 § 1; prior:

1986 c 153 § 5; 1986 c 64 § 1; 1985 c 407 § 3; 1983 c 165 § 2; 1983 c 165 § 1; 1981 c 260 § 11; prior: 1979 ex.s. c 176 § 3; 1979 ex.s. c 136 § 59; 1979 c 158 § 151; 1975 1st ex.s. c 287 § 4; 1969 c 1 § 1 (Initiative Measure No. 242, approved November 5, 1968).]

Effective date—2008 c 282: "Sections 2, 4 through 8, and 11 through 14 of this act take effect January 1, 2009." [2008 c 282 § 23.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: "Sections 1, 5, 7, 8, and 10 of this act take effect July 1, 2005." [2004 c 187 § 11.]

Contingent effect—2004 c 95 § 2: "Section 2 of this act takes effect if section 2 of Substitute House Bill No. 3055 is enacted into law." [2004 c 95 § 17.] 2004 c 68 § 2 was enacted into law, effective June 10, 2004.

Finding—Intent—2004 c 68: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers continue at unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to ensure swift and certain consequences for those who drink and drive.

To accomplish this goal, the legislature adopts standards governing the admissibility of tests of a person's blood or breath. These standards will provide a degree of uniformity that is currently lacking, and will reduce the delays caused by challenges to various breath test instrument components and maintenance procedures. Such challenges, while allowed, will no longer go to admissibility of test results. Instead, such challenges are to be considered by the finder of fact in deciding what weight to place upon an admitted blood or breath test result.

The legislature's authority to adopt standards governing the admissibility of evidence involving alcohol is well established by the Washington Supreme Court. See generally *State v. Long*, 113 Wn.2d 266, 778 P.2d 1027 (1989); *State v. Sears*, 4 Wn.2d 200, 215, 103 P.2d 337 (1940) (the legislature has the power to enact laws which create rules of evidence); *State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929) ("rules of evidence are substantive law")." [2004 c 68 § 1.]

Effective date—1999 c 331: See note following RCW 9.94A.525.

Effective date—1998 c 213: "This act takes effect January 1, 1999." [1998 c 213 § 9.]

Effective date—1998 c 209: "This act takes effect January 1, 1999." [1998 c 209 § 6.]

Effective date—1998 c 207: See note following RCW 46.61.5055.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Severability—1995 c 332: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 332 § 23.]

Effective dates—1995 c 332: "This act shall take effect September 1, 1995, except for sections 13 and 22 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 332 § 24.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—1983 c 165: "The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers have reached unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the legislature seeks to insure swift and certain punishment for those who drink and drive. The legislature does not intend to discourage or deter courts and other agencies from directing or providing treatment for problem drinkers. However, it is the intent that such treatment, where appropriate, be in addition to and not in lieu of the sanctions to be

applied to all those convicted of driving while intoxicated." [1983 c 165 § 44.]

Effective dates—1983 c 165: "Sections 2, 3 through 12, 14, 16, 18, 22, 24, and 26 of chapter 165, Laws of 1983 shall take effect on January 1, 1986. The remainder of chapter 165, Laws of 1983 is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. The director of licensing may immediately take such steps as are necessary to insure that all sections of chapter 165, Laws of 1983 are implemented on their respective effective dates." [1984 c 219 § 1; 1983 c 165 § 47.]

Severability—1983 c 165: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 165 § 48.]

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

Liability of medical personnel withdrawing blood: RCW 46.61.508.

Refusal of test—Admissibility as evidence: RCW 46.61.517.

46.20.3101 Implied consent—License sanctions, length of. Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within seven years, or for a first refusal where there has been one or more previous incidents within seven years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age twenty-one, whichever is longer.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.08 or more:

(a) For a first incident within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, suspension for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.02 or more:

(a) For a first incident within seven years, suspension or denial for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

(4) The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this section for a suspension, revocation, or denial imposed under RCW 46.61.5055 arising out of the same incident. [2004 c 95 § 4; 2004 c 68 § 3. Prior: 1998 c 213 § 2; 1998 c 209 § 2; 1998 c 207 § 8; 1995 c 332 § 3.]

Reviser's note: This section was amended by 2004 c 68 § 3 and by 2004 c 95 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—2004 c 68: See note following RCW 46.20.308.

Effective date—1998 c 213: See note following RCW 46.20.308.

Effective date—1998 c 209: See note following RCW 46.20.308.

Effective date—1998 c 207: See note following RCW 46.61.5055.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.20.311 Duration of license sanctions—Reissuance or renewal. (1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.267, 46.20.342, or other provision of law.

(b) Except for a suspension under RCW 46.20.267, 46.20.289, 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(c) If the suspension is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the alcohol or drug dependency agency required under RCW 46.61.524 and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an interlock required under RCW 46.20.720 is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(d) Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance

with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(e)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of seventy-five dollars.

(ii) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

(2)(a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of seventy-five dollars.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred fifty dollars. If the revocation is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the alcohol or drug dependency agency required under RCW 46.61.524 and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person applying for a new license. If, following issuance of a new license, the department determines, based upon notification from the interlock provider or otherwise, that an interlock required under RCW 46.20.720 is no longer functioning, the department shall suspend the person's license or privilege to drive until the department has received written verification from an interlock provider that a functioning interlock is installed.

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(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of seventy-five dollars.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars. [2006 c 73 § 15; 2005 c 314 § 308; 2004 c 95 § 3; 2003 c 366 § 2; 2001 c 325 § 2; 2000 c 115 § 7; 1998 c 212 § 1; 1997 c 58 § 807; 1995 c 332 § 11; 1994 c 275 § 27; 1993 c 501 § 5; 1990 c 250 § 45; 1988 c 148 § 9. Prior: 1985 c 407 § 4; 1985 c 211 § 1; 1984 c 258 § 325; 1983 c 165 § 18; 1983 c 165 § 17; 1982 c 212 § 5; 1981 c 91 § 1; 1979 ex.s. c 136 § 60; 1973 1st ex.s. c 36 § 1; 1969 c 1 § 2 (Initiative Measure No. 242, approved November 5, 1968); 1967 c 167 § 5; 1965 ex.s. c 121 § 27.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Severability—1990 c 250: See note following RCW 46.16.301.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

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

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

46.20.315 Surrender of license. The department upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the department. [1985 c 302 § 1; 1965 ex.s. c 121 § 28.]

46.20.317 Unlicensed drivers. The department is hereby authorized to place any unlicensed person into a suspended or revoked status under any circumstances which would have resulted in the suspension or revocation of the driver's license had that person been licensed. [1975-'76 2nd ex.s. c 29 § 2. Formerly RCW 46.20.414.]

46.20.320 Suspension, etc., effective although certificate not delivered. Any suspension, revocation, or cancellation of a vehicle driver's license shall be in effect notwithstanding the certificate itself is not delivered over or possession thereof obtained by a court, officer, or the director. [1967 c 32 § 30; 1961 c 12 § 46.20.320. Prior: 1957 c 273 § 10; prior: 1937 c 188 § 66, part; RRS § 6312-66, part; 1923 c 122 § 1, part; 1921 c 108 § 9, part; RRS § 6371, part.]

DRIVER IMPROVEMENT

46.20.322 Interview before suspension, etc.—Exceptions—Appearance of minor's parent or guardian. (1) Whenever the department proposes to suspend or revoke the driving privilege of any person or proposes to impose terms of probation on a person's driving privilege or proposes to refuse to renew a driver's license, notice and an opportunity for a driver improvement interview shall be given before taking such action, except as provided in RCW 46.20.324 and 46.20.325.

(2) Whenever the department proposes to suspend, revoke, restrict, or condition a minor driver's driving privilege the department may require the appearance of the minor's legal guardian or father or mother, otherwise the parent or guardian having custody of the minor. [1979 c 61 § 10; 1973 1st ex.s. c 154 § 88; 1967 c 167 § 6; 1965 ex.s. c 121 § 29.]

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

46.20.323 Notice of interview—Contents. The notice shall contain a statement setting forth the proposed action and the grounds therefor, and notify the person to appear for a driver improvement interview not less than ten days from the date notice is given. [1965 ex.s. c 121 § 30.]

46.20.324 Persons not entitled to interview or hearing. Unless otherwise provided by law, a person shall not be entitled to a driver improvement interview or formal hearing under the provisions of RCW 46.20.322 through 46.20.333 when the person:

(1) Has been granted the opportunity for an administrative review, informal settlement, or formal hearing under RCW 46.20.245, 46.20.308, 46.25.120, 46.25.125, 46.65.065, 74.20A.320, or by rule of the department; or

(2) Has refused or neglected to submit to an examination as required by RCW 46.20.305. [2005 c 288 § 6; 1965 ex.s. c 121 § 31.]

Effective date—2005 c 288: See note following RCW 46.20.245.

46.20.325 Suspension or probation before interview—Alternative procedure. In the alternative to the procedure set forth in RCW 46.20.322 and 46.20.323 the department, whenever it determines from its records or other sufficient evidence that the safety of persons upon the highways requires such action, shall forthwith and without a driver improvement interview suspend the privilege of a person to operate a motor vehicle or impose reasonable terms and conditions of probation consistent with the safe operation of a motor vehicle. The department shall in such case, immediately notify such licensee in writing and upon his request shall afford him an opportunity for a driver improvement interview as early as practical within not to exceed seven days after receipt of such request, or the department, at the time it gives notice may set the date of a driver improvement interview, giving not less than ten days' notice thereof. [1965 ex.s. c 121 § 32.]

46.20.326 Failure to appear or request interview constitutes waiver—Procedure. Failure to appear for a driver improvement interview at the time and place stated by the department in its notice as provided in RCW 46.20.322 and 46.20.323 or failure to request a driver improvement interview within ten days as provided in RCW 46.20.325 constitutes a waiver of a driver improvement interview, and the department may take action without such driver improvement interview, or the department may, upon request of the person whose privilege to drive may be affected, or at its own option, re-open the case, take evidence, change or set aside any order theretofore made, or grant a driver improvement interview. [1990 c 250 § 46; 1965 ex.s. c 121 § 33.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.20.327 Conduct of interview—Referee—Evidence—Not deemed hearing. A driver improvement interview shall be conducted in a completely informal manner before a driver improvement analyst sitting as a referee. The applicant or licensee shall have the right to make or file a written answer or statement in which he may controvert any point at issue, and present any evidence or arguments for the consideration of the department pertinent to the action taken or proposed to be taken or the grounds therefor. The department may consider its records relating to the applicant or licensee. The driver improvement interview shall not be deemed an agency hearing. [1965 ex.s. c 121 § 34.]

46.20.328 Findings and notification after interview—Request for formal hearing. Upon the conclusion of a driver improvement interview, the department's referee shall make findings on the matter under consideration and shall notify the person involved in writing by personal service of the findings. The referee's findings shall be final unless the person involved is notified to the contrary by personal service or by certified mail within fifteen days. The decision is effective upon notice. The person upon receiving such notice may,

in writing and within ten days, request a formal hearing. [1979 c 61 § 11; 1965 ex.s. c 121 § 35.]

Persons not entitled to formal hearing: RCW 46.20.324.

46.20.329 Formal hearing—Procedures, notice, stay.

Upon receiving a request for a formal hearing as provided in RCW 46.20.328, the department shall fix a time and place for hearing as early as may be arranged in the county where the applicant or licensee resides, and shall give ten days' notice of the hearing to the applicant or licensee, except that the hearing may be set for a different place with the concurrence of the applicant or licensee and the period of notice may be waived.

Any decision by the department suspending or revoking a person's driving privilege shall be stayed and shall not take effect while a formal hearing is pending as herein provided or during the pendency of a subsequent appeal to superior court: PROVIDED, That this stay shall be effective only so long as there is no conviction of a moving violation or a finding that the person has committed a traffic infraction which is a moving violation during pendency of hearing and appeal: PROVIDED FURTHER, That nothing in this section shall be construed as prohibiting the department from seeking an order setting aside the stay during the pendency of such appeal in those cases where the action of the department is based upon physical or mental incapacity, or a failure to successfully complete an examination required by this chapter.

A formal hearing shall be conducted by the director or by a person or persons appointed by the director from among the employees of the department. [1982 c 189 § 4; 1981 c 67 § 28; 1979 ex.s. c 136 § 61; 1972 ex.s. c 29 § 1; 1965 ex.s. c 121 § 36.]

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.20.331 Hearing and decision by director's designee. The director may appoint a designee, or designees, to preside over hearings in adjudicative proceedings that may result in the denial, restriction, suspension, or revocation of a driver's license or driving privilege, or in the imposition of requirements to be met prior to issuance or reissuance of a driver's license, under Title 46 RCW. The director may delegate to any such designees the authority to render the final decision of the department in such proceedings. Chapter 34.12 RCW shall not apply to such proceedings. [1989 c 175 § 111; 1982 c 189 § 3.]

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

Effective date—1982 c 189: See note following RCW 34.12.020.

46.20.332 Formal hearing—Evidence—Subpoenas—Reexamination—Findings and recommendations. At a formal hearing the department shall consider its records and may receive sworn testimony and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers in the manner and subject to the conditions provided in chapter 5.56 RCW relating to the issuance of subpoenas. In addition the department may require a reexamina-

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tion of the licensee or applicant. Proceedings at a formal hearing shall be recorded stenographically or by mechanical device. Upon the conclusion of a formal hearing, if not heard by the director or a person authorized by him to make final decisions regarding the issuance, denial, suspension or revocation of licenses, the referee or board shall make findings on the matters under consideration and may prepare and submit recommendations to the director or such person designated by the director who is authorized to make final decisions regarding the issuance, denial, suspension, or revocation of licenses. [1972 ex.s. c 29 § 2; 1965 ex.s. c 121 § 37.]

46.20.333 Decision after formal hearing. In all cases not heard by the director or a person authorized by him to make final decisions regarding the issuance, denial, suspension, or revocation of licenses the director, or a person so authorized shall review the records, evidence, and the findings after a formal hearing, and shall render a decision sustaining, modifying, or reversing the order of suspension or revocation or the refusal to grant, or renew a license or the order imposing terms or conditions of probation, or may set aside the prior action of the department and may direct that probation be granted to the applicant or licensee and in such case may fix the terms and conditions of the probation. [1972 ex.s. c 29 § 3; 1965 ex.s. c 121 § 38.]

46.20.334 Appeal to superior court. Unless otherwise provided by law, any person denied a license or a renewal of a license or whose license has been suspended or revoked by the department shall have the right within thirty days, after receiving notice of the decision following a formal hearing to file a notice of appeal in the superior court in the county of his residence. The hearing on the appeal hereunder shall be de novo. [2005 c 288 § 7; 1972 ex.s. c 29 § 4; 1965 ex.s. c 121 § 39.]

Effective date—2005 c 288: See note following RCW 46.20.245.

46.20.335 Probation in lieu of suspension or revocation. Whenever by any provision of this chapter the department has discretionary authority to suspend or revoke the privilege of a person to operate a motor vehicle, the department may in lieu of a suspension or revocation place the person on probation, the terms of which may include a suspension as a condition of probation, and upon such other reasonable terms and conditions as shall be deemed by the department to be appropriate. [1965 ex.s. c 121 § 40.]

DRIVING OR USING LICENSE WHILE SUSPENDED OR REVOKED

46.20.338 Display or possession of invalidated license or identicard. It is a traffic infraction for any person to display or cause or permit to be displayed or have in his or her possession any canceled, revoked, or suspended driver's license or identicard. [1990 c 210 § 4.]

46.20.342 Driving while license invalidated—Penalties—Extension of invalidation. (*Effective until January 1, 2009.*) (1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or

revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational or a temporary restricted driver's license;

(v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xv) A conviction of RCW 46.61.740, relating to theft of motor vehicle fuel;

(xvi) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xvii) An administrative action taken by the department under chapter 46.20 RCW; or

(xviii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers' licenses, or any combination of (i) through (vii), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this sec-

tion and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended. [2004 c 95 § 5; 2001 c 325 § 3; 2000 c 115 § 8; 1999 c 274 § 3; 1993 c 501 § 6; 1992 c 130 § 1; 1991 c 293 § 6. Prior: 1990 c 250 § 47; 1990 c 210 § 5; 1987 c 388 § 1; 1985 c 302 § 3; 1980 c 148 § 3; prior: 1979 ex.s. c 136 § 62; 1979 ex.s. c 74 § 1; 1969 c 27 § 2; prior: 1967 ex.s. c 145 § 52; 1967 c 167 § 7; 1965 ex.s. c 121 § 43.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Expiration date—1987 c 388: "Sections 1 through 8 of this act shall take effect on July 1, 1988. The director of licensing shall take such steps as are necessary to insure that this act is implemented on its effective date. Sections 2 through 7 of this act shall expire on July 1, 1993." [1987 c 388 § 13.]

Severability—1987 c 388: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 388 § 16.]

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Impoundment of vehicle: RCW 46.55.113.

46.20.342 Driving while license invalidated—Penalties—Extension of invalidation. (Effective January 1, 2009.) (1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies

when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license;

(v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xv) A conviction of RCW 46.61.740, relating to theft of motor vehicle fuel;

(xvi) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xvii) An administrative action taken by the department under chapter 46.20 RCW; or

(xviii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v) the person has committed an offense in another state that, if commit-

ted in this state, would not be grounds for the suspension or revocation of the person's driver's license, (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers' licenses, or any combination of (i) through (vii), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended. [2008 c 282 § 4; 2004 c 95 § 5; 2001 c 325 § 3; 2000 c 115 § 8; 1999 c 274 § 3; 1993 c 501 § 6; 1992 c 130 § 1; 1991 c 293 § 6. Prior: 1990 c 250 § 47; 1990 c 210 § 5; 1987 c 388 § 1; 1985 c 302 § 3; 1980 c 148 § 3; prior: 1979 ex.s. c 136 § 62; 1979 ex.s. c 74 § 1; 1969 c 27 § 2; prior: 1967 ex.s. c 145 § 52; 1967 c 167 § 7; 1965 ex.s. c 121 § 43.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2008 c 282: See note following RCW 46.20.308.

Finding—2000 c 115: See note following RCW 46.20.075.

Effective date—2000 c 115 §§ 1-10: See note following RCW 46.20.075.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective date—Expiration date—1987 c 388: "Sections 1 through 8 of this act shall take effect on July 1, 1988. The director of licensing shall take such steps as are necessary to insure that this act is implemented on its effective date. Sections 2 through 7 of this act shall expire on July 1, 1993." [1987 c 388 § 13.]

Severability—1987 c 388: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 388 § 16.]

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Impoundment of vehicle: RCW 46.55.113.

[Title 46 RCW—page 120]

46.20.345 Operation under other license or permit while license suspended or revoked—Penalty. Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this title shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter. A person who violates the provisions of this section is guilty of a gross misdemeanor. [1990 c 210 § 6; 1985 c 302 § 5; 1967 c 32 § 35; 1961 c 134 § 2. Formerly RCW 46.20.420.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.20.349 Stopping vehicle of suspended or revoked driver. Any police officer who has received notice of the suspension or revocation of a driver's license from the department of licensing, may, during the reported period of such suspension or revocation, stop any motor vehicle identified by its vehicle license number as being registered to the person whose driver's license has been suspended or revoked. The driver of such vehicle shall display his driver's license upon request of the police officer. [1979 c 158 § 152; 1965 ex.s. c 170 § 47. Formerly RCW 46.20.430.]

46.20.355 Alcohol violator—Probationary license. (1) Upon receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502 or 46.61.504, the department of licensing shall order the person to surrender any nonprobationary Washington state driver's license that may be in his or her possession. The department shall revoke the license, permit, or privilege to drive of any person who fails to surrender it as required by this section for one year, unless the license has been previously surrendered to the department, a law enforcement officer, or a court, or the person has completed an affidavit of lost, stolen, destroyed, or previously surrendered license, such revocation to take effect thirty days after notice is given of the requirement for license surrender.

(2) The department shall place a person's driving privilege in probationary status as required by RCW 10.05.060 or 46.61.5055 for a period of five years from the date the probationary status is required to go into effect.

(3) Following receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, or upon reinstatement or reissuance of a driver's license suspended or revoked as the result of a conviction of RCW 46.61.502 or 46.61.504, the department shall require the person to obtain a probationary license in order to operate a motor vehicle in the state of Washington, except as otherwise exempt under RCW 46.20.025. The department shall not issue the probationary license unless the person is otherwise qualified for licensing, and the person must renew the probationary license on the same cycle as the person's regular license would have been renewed until the expiration of the five-year probationary status period imposed under subsection (2) of this section.

(4) For each original issue or renewal of a probationary license under this section, the department shall charge a fee of fifty dollars in addition to any other licensing fees

required. Except for when renewing a probationary license, the department shall waive the requirement to obtain an additional probationary license and the fifty-dollar fee if the person has a probationary license in his or her possession at the time a new probationary license is required.

(5) A probationary license shall enable the department and law enforcement personnel to determine that the person is on probationary status. The fact that a person's driving privilege is in probationary status or that the person has been issued a probationary license shall not be a part of the person's record that is available to insurance companies. [1998 c 209 § 3; 1998 c 41 § 5; 1995 1st sp.s. c 17 § 1; 1995 c 332 § 4; 1994 c 275 § 8.]

Reviser's note: This section was amended by 1998 c 41 § 5 and by 1998 c 209 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 209: See note following RCW 46.20.308.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Effective date—1995 1st sp.s. c 17: "This act shall take effect September 1, 1995." [1995 1st sp.s. c 17 § 3.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

IGNITION INTERLOCK, TEMPORARY RESTRICTED, OCCUPATIONAL LICENSES

46.20.380 Fee. (Effective until January 1, 2009.) No person may file an application for an occupational or a temporary restricted driver's license as provided in RCW 46.20.391 unless he or she first pays to the director or other person authorized to accept applications and fees for driver's licenses a fee of one hundred dollars. The applicant shall receive upon payment an official receipt for the payment of such fee. All such fees shall be forwarded to the director who shall transmit such fees to the state treasurer in the same manner as other driver's license fees. [2004 c 95 § 6; 1985 ex.s. c 1 § 6; 1979 c 61 § 12; 1967 c 32 § 31; 1961 c 12 § 46.20.380. Prior: 1957 c 268 § 1.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.380 Fee. (Effective January 1, 2009.) No person may file an application for an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license as provided in RCW 46.20.391 and 46.20.385 unless he or she first pays to the director or other person authorized to accept applications and fees for driver's licenses a fee of one hundred dollars. The applicant shall receive upon payment an official receipt for the payment of such fee. All such fees shall be forwarded to the director who shall transmit such fees to the state treasurer in the same manner as other driver's license fees. [2008 c 282 § 5; 2004 c 95 § 6; 1985 ex.s. c 1 § 6; 1979 c 61 § 12; 1967 c 32 § 31; 1961 c 12 § 46.20.380. Prior: 1957 c 268 § 1.]

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

46.20.385 Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules. (1)(a) Beginning January 1, 2009, any person licensed under this chapter who is convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle in violation of RCW 46.61.502 or 46.61.504, other than vehicular homicide or vehicular assault, or who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied. A person receiving an ignition interlock driver's license waives his or her right to a hearing or appeal under RCW 46.20.308.

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. The installation of an ignition interlock device is not necessary on vehicles owned by a person's employer and driven as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer during working hours.

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 and 46.61.5055.

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if:

(a) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on

all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of a separate offense that under this chapter would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional twenty-dollar fee to the department.

(b) The department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate. [2008 c 282 § 9.]

46.20.391 Application—Eligibility—Restrictions—Cancellation. (*Effective until January 1, 2009.*) (1)(a) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, or who has had his or her license suspended, revoked, or denied under RCW 46.20.3101, may submit to the department an application for a temporary restricted driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue a temporary restricted driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the department shall not issue, a temporary restricted driver's license that is effective during the first thirty days of

any suspension or revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or, for a suspension, revocation, or denial imposed under RCW 46.20.3101, during the required minimum portion of the periods of suspension, revocation, or denial established under (c) of this subsection.

(b) An applicant under this subsection whose driver's license is suspended or revoked for an alcohol-related offense shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on a vehicle owned or operated by the person.

(i) The department shall require the person to maintain such a device on a vehicle owned or operated by the person and shall restrict the person to operating only vehicles equipped with such a device, for the remainder of the period of suspension, revocation, or denial.

(ii) Subject to any periodic renewal requirements established by the department pursuant to this section and subject to any applicable compliance requirements under this chapter or other law, a temporary restricted driver's license granted after a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 (1) and (2) (a), (b), and (c).

(c) The department shall provide by rule the minimum portions of the periods of suspension, revocation, or denial set forth in RCW 46.20.3101 after which a person may apply for a temporary restricted driver's license under this section. In establishing the minimum portions of the periods of suspension, revocation, or denial, the department shall consider the requirements of federal law regarding state eligibility for grants or other funding, and shall establish such periods so as to ensure that the state will maintain its eligibility, or establish eligibility, to obtain incentive grants or any other federal funding.

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to failure to appear or pay a traffic ticket under RCW 46.20.289; a violation of the financial responsibility laws under chapter 46.29 RCW; or for multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license.

(b) If the suspension is for failure to respond, pay, or comply with a notice of traffic infraction or conviction, the applicant must enter into a payment plan with the court.

(c) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation.

(3) An applicant for an occupational or temporary restricted driver's license who qualifies under subsection (1) or (2) of this section is eligible to receive such license only if:

(a) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant demonstrates that it is necessary for him or her to operate a motor vehicle because he or she:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, or welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first-class mail to the driver that the occupational driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection; and

(e) The department shall not issue an occupational driver's license under (b)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (b)(iv) of this subsection.

(4) A person aggrieved by the decision of the department on the application for an occupational or temporary restricted driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an occupational or temporary restricted driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of a separate offense that under chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title. [2004 c 95 § 7. Prior: 1999 c 274 § 4; 1999 c 272

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§ 1; prior: 1998 c 209 § 4; 1998 c 207 § 9; 1995 c 332 § 12; 1994 c 275 § 29; 1985 c 407 § 5; 1983 c 165 § 24; 1983 c 165 § 23; 1983 c 164 § 4; 1979 c 61 § 13; 1973 c 5 § 1.]

Effective date—1999 c 272: "This act takes effect January 1, 2000." [1999 c 272 § 3.]

Effective date—1998 c 209: See note following RCW 46.20.308.

Effective date—1998 c 207: See note following RCW 46.61.5055.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.20.391 Temporary restricted, occupational licenses—Application—Eligibility—Restrictions—Cancellation. (*Effective January 1, 2009.*) (1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide, vehicular assault, driving while under the influence of intoxicating liquor or any drug, or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, may submit to the department an application for a temporary restricted driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue a temporary restricted driver's license and may set definite restrictions as provided in RCW 46.20.394.

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to failure to appear or pay a traffic ticket under RCW 46.20.289; a violation of the financial responsibility laws under chapter 46.29 RCW; or for multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license.

(b) If the suspension is for failure to respond, pay, or comply with a notice of traffic infraction or conviction, the applicant must enter into a payment plan with the court.

(c) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation.

(3) An applicant for an occupational or temporary restricted driver's license who qualifies under subsection (1) or (2) of this section is eligible to receive such license only if:

(a) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant demonstrates that it is necessary for him or her to operate a motor vehicle because he or she:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, or welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first-class mail to the driver that the occupational driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection; and

(e) The department shall not issue an occupational driver's license under (b)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (b)(iv) of this subsection.

(4) A person aggrieved by the decision of the department on the application for an occupational or temporary restricted driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an occupational or temporary restricted driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of a separate offense that under chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title. [2008 c 282 § 6; 2004 c 95 § 7. Prior: 1999 c 274 § 4; 1999 c 272 § 1; prior: 1998 c 209 § 4; 1998 c 207 § 9; 1995 c 332 § 12; 1994 c 275 § 29; 1985 c 407 § 5; 1983 c 165 § 24; 1983 c 165 § 23; 1983 c 164 § 4; 1979 c 61 § 13; 1973 c 5 § 1.]

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—1999 c 272: "This act takes effect January 1, 2000." [1999 c 272 § 3.]

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Effective date—1998 c 209: See note following RCW 46.20.308.

Effective date—1998 c 207: See note following RCW 46.61.5055.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective dates—1985 c 407: See note following RCW 46.04.480.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.20.394 Detailed restrictions—Violation. In issuing an occupational or a temporary restricted driver's license under RCW 46.20.391, the department shall describe the type of qualifying circumstances for the license and shall set forth in detail the specific hours of the day during which the person may drive to and from his or her residence, which may not exceed twelve hours in any one day; the days of the week during which the license may be used; and the general routes over which the person may travel. In issuing an occupational or temporary restricted driver's license that meets the qualifying circumstance under RCW 46.20.391(3)(b)(iv), the department shall set forth in detail the specific hours during which the person may drive to and from substance abuse treatment or meetings of a twelve-step group such as alcoholics anonymous, the days of the week during which the license may be used, and the general routes over which the person may travel. These restrictions shall be prepared in written form by the department, which document shall be carried in the vehicle at all times and presented to a law enforcement officer under the same terms as the occupational or temporary restricted driver's license. Any violation of the restrictions constitutes a violation of RCW 46.20.342 and subjects the person to all procedures and penalties therefor. [2004 c 95 § 8; 1999 c 272 § 2; 1983 c 165 § 26.]

Effective date—1999 c 272: See note following RCW 46.20.391.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.20.400 Obtaining new driver's license—Surrender of order and current license. (Effective until January 1, 2009.) If an occupational or a temporary restricted driver's license is issued and is not revoked during the period for which issued the licensee may obtain a new driver's license at the end of such period, but no new driver's license may be issued to such person until he or she surrenders his or her occupational or temporary restricted driver's license and his or her copy of the order, and the director is satisfied that the person complies with all other provisions of law relative to the issuance of a driver's license. [2004 c 95 § 9; 1967 c 32 § 33; 1961 c 12 § 46.20.400. Prior: 1957 c 268 § 3.]

46.20.400 Obtaining new driver's license—Surrender of order and current license. (Effective January 1, 2009.) If an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license is issued and is not revoked during the period for which issued the licensee may obtain a new driver's license at the end of such period, but no new driver's license may be issued to such person until he or she surrenders his or her occupational driver's license, temporary restricted driver's license, or ignition interlock driver's license and his or her

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copy of the order, and the director is satisfied that the person complies with all other provisions of law relative to the issuance of a driver's license. [2008 c 282 § 7; 2004 c 95 § 9; 1967 c 32 § 33; 1961 c 12 § 46.20.400. Prior: 1957 c 268 § 3.]

Effective date—2008 c 282: See note following RCW 46.20.308.

46.20.410 Penalty. (Effective until January 1, 2009.)

Any person convicted for violation of any restriction of an occupational or a temporary restricted driver's license shall in addition to the immediate revocation of such license and any other penalties provided by law be fined not less than fifty nor more than two hundred dollars or imprisoned for not more than six months or both such fine and imprisonment. [2004 c 95 § 10; 1967 c 32 § 34; 1961 c 12 § 46.20.410. Prior: 1957 c 268 § 4.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.20.410 Penalty. (Effective January 1, 2009.)

Any person convicted for violation of any restriction of an occupational driver's license, a temporary restricted driver's license, or an ignition interlock driver's license shall in addition to the immediate revocation of such license and any other penalties provided by law be fined not less than fifty nor more than two hundred dollars or imprisoned for not more than six months or both such fine and imprisonment. [2008 c 282 § 8; 2004 c 95 § 10; 1967 c 32 § 34; 1961 c 12 § 46.20.410. Prior: 1957 c 268 § 4.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2008 c 282: See note following RCW 46.20.308.

MOTORCYCLES

46.20.500 Special endorsement—Exceptions. (1) No person may drive either a two-wheeled or a three-wheeled motorcycle, or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device or a power wheelchair.

(5) No driver's license is required to operate a motorized foot scooter. Motorized foot scooters may not be operated at any time from a half hour after sunset to a half hour before sunrise without reflectors of a type approved by the state patrol. [2003 c 353 § 9; 2003 c 141 § 7; 2003 c 41 § 1; 2002 c 247 § 6; 1999 c 274 § 8; 1997 c 328 § 3; 1982 c 77 § 1; 1979 ex.s. c 213 § 6; 1967 c 232 § 1.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2003 c 41 § 1, 2003 c 141 § 7, and by 2003 c 353 § 9, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

ments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Short title—2003 c 41: "This act shall be known as the Monty Lish Memorial Act." [2003 c 41 § 6.]

Effective date—2003 c 41: "This act takes effect January 1, 2004." [2003 c 41 § 7.]

Legislative review—2002 c 247: See note following RCW 46.04.1695.

Severability—1982 c 77: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 77 § 10.]

Mopeds

operation and safety standards: RCW 46.61.710, 46.61.720.

registration: RCW 46.16.630.

46.20.505 Special endorsement fees. Every person applying for a special endorsement of a driver's license authorizing such person to drive a two or three-wheeled motorcycle or a motor-driven cycle shall pay a fee of five dollars, which is not refundable. In addition, the endorsement fee for the initial motorcycle endorsement shall not exceed ten dollars, and the subsequent renewal endorsement fee shall not exceed twenty-five dollars, unless the endorsement is renewed or extended for a period other than five years, in which case the subsequent renewal endorsement fee shall not exceed five dollars for each year that the endorsement is renewed or extended. Fees collected under this section shall be deposited in the motorcycle safety education account of the highway safety fund. [2007 c 97 § 1; 2003 c 41 § 2; 2002 c 352 § 16; 2001 c 104 § 1. Prior: 1999 c 308 § 5; 1999 c 274 § 9; 1993 c 115 § 1; 1989 c 203 § 2; 1988 c 227 § 5; 1987 c 454 § 2; 1985 ex.s. c 1 § 8; 1982 c 77 § 2; 1979 c 158 § 153; 1967 ex.s. c 145 § 50.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1999 c 308: See note following RCW 46.20.120.

Severability—1988 c 227: See RCW 46.81A.900.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Motorcycle safety education account: RCW 46.68.065.

46.20.510 Instruction permit—Fee. (1) **Motorcycle instruction permit.** A person holding a valid driver's license who wishes to learn to ride a motorcycle may apply for a motorcycle instruction permit. The department may issue a motorcycle instruction permit after the applicant has successfully passed all parts of the motorcycle examination other than the driving test. The director shall collect a fee of fifteen dollars for the motorcycle instruction permit or renewal, and deposit the fee in the motorcycle safety education account of the highway safety fund.

(2) **Effect of motorcycle instruction permit.** A person holding a motorcycle instruction permit may drive a motorcycle upon the public highways if the person has immediate possession of the permit and a valid driver's license. An individual with a motorcyclist's instruction permit may not carry passengers and may not operate a motorcycle during the hours of darkness.

(3) **Term of motorcycle instruction permit.** A motorcycle instruction permit is valid for ninety days from the date of issue.

(a) The department may issue one additional ninety-day permit.

(b) The department may issue a third motorcycle instruction permit if it finds after an investigation that the permittee is diligently seeking to improve driving proficiency. [2002 c 352 § 17; 1999 c 274 § 10; 1999 c 6 § 25; 1989 c 337 § 9; 1985 ex.s. c 1 § 9; 1985 c 234 § 3; 1982 c 77 § 3.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Intent—1999 c 6: See note following RCW 46.04.168.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Severability—1982 c 77: See note following RCW 46.20.500.

46.20.515 Examination—Emphasis—Waiver. The motorcycle endorsement examination must emphasize maneuvers necessary for on-street operation, including emergency braking and turning as may be required to avoid an impending collision. The examination for a two-wheeled motorcycle endorsement and the examination for a three-wheeled motorcycle endorsement must be separate and distinct examinations emphasizing the skills and maneuvers necessary to operate each type of motorcycle. The department may waive all or part of the examination for persons who satisfactorily complete the voluntary motorcycle operator training and education program authorized under RCW 46.20.520 or who satisfactorily complete a private motorcycle skills education course that has been certified by the department under RCW 46.81A.020. [2003 c 41 § 3; 2002 c 197 § 1; 2001 c 104 § 2; 1999 c 274 § 11; 1982 c 77 § 4.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

Severability—1982 c 77: See note following RCW 46.20.500.

46.20.520 Training and education program—Advisory board. (1) The director of licensing shall use moneys designated for the motorcycle safety education account of the highway safety fund to implement by July 1, 1983, a voluntary motorcycle operator training and education program. The director may contract with public and private entities to implement this program.

(2) There is created a motorcycle safety education advisory board to assist the director of licensing in the development of a motorcycle operator training education program. The board shall monitor this program following implementation and report to the director of licensing as necessary with recommendations including, but not limited to, administration, application, and substance of the motorcycle operator training and education program.

The board shall consist of five members appointed by the director of licensing. Three members of the board, one of whom shall be appointed chairperson, shall be active motorcycle riders or members of nonprofit motorcycle organizations which actively support and promote motorcycle safety education. One member shall be a currently employed Washington state patrol motorcycle officer with at least five years experience and at least one year cumulative experience as a motorcycle officer. One member shall be a member of the public. The term of appointment shall be two years. The

board shall meet at the call of the director, but not less than two times annually and not less than five times during its term of appointment, and shall receive no compensation for services but shall be reimbursed for travel expenses while engaged in business of the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(3) The priorities of the program shall be in the following order of priority:

(a) Public awareness of motorcycle safety.

(b) Motorcycle safety education programs conducted by public and private entities.

(c) Classroom and on-cycle training.

(d) Improved motorcycle operator testing. [1998 c 245 § 89; 1987 c 454 § 3; 1982 c 77 § 5.]

Severability—1982 c 77: See note following RCW 46.20.500.

ALCOHOL DETECTION DEVICES

46.20.710 Legislative finding. The legislature finds and declares:

(1) There is a need to reduce the incidence of drivers on the highways and roads of this state who, because of their use, consumption, or possession of alcohol, pose a danger to the health and safety of other drivers;

(2) One method of dealing with the problem of drinking drivers is to discourage the use of motor vehicles by persons who possess or have consumed alcoholic beverages;

(3) The installation of an ignition interlock breath alcohol device or other biological or technical device will provide a means of deterring the use of motor vehicles by persons who have consumed alcoholic beverages;

(4) Ignition interlock and other biological and technical devices are designed to supplement other methods of punishment that prevent drivers from using a motor vehicle after using, possessing, or consuming alcohol;

(5) It is economically and technically feasible to have an ignition interlock or other biological or technical device installed in a motor vehicle in such a manner that the vehicle will not start if the operator has recently consumed alcohol. [1994 c 275 § 21; 1987 c 247 § 1.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.20.720 Drivers convicted of alcohol offenses. (Effective until January 1, 2009.) (1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from being started. The court shall also establish the period of time for which interlock use will be required.

(2) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of an alcohol-related violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance.

The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. The device is not necessary on vehicles owned by a person's employer and driven as a requirement of employment during working hours.

The ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. The period of time of the restriction will be as follows:

(a) For a person who has not previously been restricted under this section, a period of one year;

(b) For a person who has previously been restricted under (a) of this subsection, a period of five years;

(c) For a person who has previously been restricted under (b) of this subsection, a period of ten years. [2004 c 95 § 11; 2003 c 366 § 1; 2001 c 247 § 1; 1999 c 331 § 3; 1998 c 210 § 2; 1997 c 229 § 8; 1994 c 275 § 22; 1987 c 247 § 2.]

Effective date—1999 c 331: See note following RCW 9.94A.525.

Short title—1998 c 210: "This act may be known and cited as the Mary Johnsen Act." [1998 c 210 § 1.]

Finding—Intent—1998 c 210: "The legislature finds that driving is a privilege and that the state may restrict that privilege in the interests of public safety. One such reasonable restriction is requiring certain individuals, if they choose to drive, to drive only vehicles equipped with ignition interlock devices. The legislature further finds that the costs of these devices are minimal and are affordable. It is the intent of the legislature that these devices be paid for by the drivers using them and that neither the state nor entities of local government provide any public funding for this purpose." [1998 c 210 § 7.]

Effective date—1998 c 210: "This act takes effect January 1, 1999." [1998 c 210 § 9.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.20.720 Drivers convicted of alcohol offenses. (Effective January 1, 2009.)

(1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from being started. The court shall also establish the period of time for which interlock use will be required.

(2) Under RCW 46.61.5055, 10.05.020, or *section 18 of this act, the court shall order any person convicted of an alcohol-related violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance or participating in a deferred prosecution program under RCW 10.05.020 or *section 18 of this act for an alcohol-related violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an ignition interlock driver's license from the department under RCW 46.20.385 and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(3) The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock device if the person is convicted of an alcohol-related violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance.

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The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. The device is not necessary on vehicles owned by a person's employer and driven as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer during working hours.

The ignition interlock device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more. The period of time of the restriction will be as follows:

(a) For a person who has not previously been restricted under this section, a period of one year;

(b) For a person who has previously been restricted under (a) of this subsection, a period of five years;

(c) For a person who has previously been restricted under (b) of this subsection, a period of ten years. [2008 c 282 § 12; 2004 c 95 § 11; 2003 c 366 § 1; 2001 c 247 § 1; 1999 c 331 § 3; 1998 c 210 § 2; 1997 c 229 § 8; 1994 c 275 § 22; 1987 c 247 § 2.]

***Reviser's note:** Section 18 of this act was vetoed by the governor.

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—1999 c 331: See note following RCW 9.94A.525.

Short title—1998 c 210: "This act may be known and cited as the Mary Johnsen Act." [1998 c 210 § 1.]

Finding—Intent—1998 c 210: "The legislature finds that driving is a privilege and that the state may restrict that privilege in the interests of public safety. One such reasonable restriction is requiring certain individuals, if they choose to drive, to drive only vehicles equipped with ignition interlock devices. The legislature further finds that the costs of these devices are minimal and are affordable. It is the intent of the legislature that these devices be paid for by the drivers using them and that neither the state nor entities of local government provide any public funding for this purpose." [1998 c 210 § 7.]

Effective date—1998 c 210: "This act takes effect January 1, 1999." [1998 c 210 § 9.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.20.740 Notation on driving record—Verification of interlock—Penalty. (Effective until January 1, 2009.)

(1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720 stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device. The department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the

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state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(2) It is a misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped. [2004 c 95 § 12; 2001 c 55 § 1; 1997 c 229 § 10; 1994 c 275 § 24; 1987 c 247 § 4.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.20.740 Notation on driving record—Verification of interlock—Penalty. (Effective January 1, 2009.) (1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720 or 46.61.5055 stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device. The department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(2) It is a misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped. [2008 c 282 § 13; 2004 c 95 § 12; 2001 c 55 § 1; 1997 c 229 § 10; 1994 c 275 § 24; 1987 c 247 § 4.]

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—1997 c 229: See note following RCW 10.05.090.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.20.745 Ignition interlock device revolving account program—Pilot program. (1) The ignition interlock device revolving account program is created within the department to assist in covering the monetary costs of installing, removing, and leasing an ignition interlock device, and applicable licensing, for indigent persons who are required under *RCW 46.20.385 and 46.61.5055 to install an ignition interlock device in all vehicles owned or operated by the person. For purposes of this subsection, "indigent" has the same meaning as in RCW 10.101.010, as determined by the department.

(2) A pilot program is created within the ignition interlock device revolving account program for the purpose of monitoring compliance by persons required to use ignition interlock devices and by ignition interlock companies and vendors.

(3) The department, the state patrol, and the Washington traffic safety commission shall coordinate to establish a compliance pilot program that will target at least one county from eastern Washington and one county from western Washington, as determined by the department, state patrol, and Washington traffic safety commission.

(4) At a minimum, the compliance pilot program shall:

(a) Review the number of ignition interlock devices that are required to be installed in the targeted county and the number of ignition interlock devices actually installed;

(b) Work to identify those persons who are not complying with ignition interlock requirements or are repeatedly violating ignition interlock requirements; and

(c) Identify ways to track compliance and reduce non-compliance.

(5) As part of monitoring compliance, the Washington traffic safety commission shall also track recidivism for violations of RCW 46.61.502 and 46.61.504 by persons required to have an ignition interlock driver's license under *RCW 46.20.385. [2008 c 282 § 10.]

***Reviser's note:** The reference to RCW 46.20.385 appears to be erroneous. A reference to RCW 46.20.720 was apparently intended.

46.20.750 Circumventing ignition interlock—Penalty. (1) A person who is restricted to the use of a vehicle equipped with an ignition interlock device and who tampers with the device or directs, authorizes, or requests another to tamper with the device, in order to circumvent the device by modifying, detaching, disconnecting, or otherwise disabling it, is guilty of a gross misdemeanor.

(2) A person who knowingly assists another person who is restricted to the use of a vehicle equipped with an ignition interlock device to circumvent the device or to start and operate that vehicle in violation of a court order is guilty of a gross misdemeanor. The provisions of this subsection do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle. [2005 c 200 § 2; 1994 c 275 § 25; 1987 c 247 § 5.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

MISCELLANEOUS

46.20.900 Repeal and saving. Section 46.20.010, chapter 12, Laws of 1961 and RCW 46.20.010, section 46.20.020, chapter 12, Laws of 1961 as amended by section 1, chapter 134, Laws of 1961 and RCW 46.20.020, section 46.20.030, chapter 12, Laws of 1961 as amended by section 12, chapter 39, Laws of 1963 and RCW 46.20.030, section 46.20.060, chapter 12, Laws of 1961 and RCW 46.20.060, sections 46.20.080 through 46.20.090, chapter 12, Laws of 1961 and RCW 46.20.080 through 46.20.090, section 46.20.110, chapter 12, Laws of 1961 as last amended by section 10, chapter 39, Laws of 1963 and RCW 46.20.110, sections 46.20.140 through 46.20.180, chapter 12, Laws of 1961 and RCW 46.20.140 through 46.20.180, section 46.20.210, chapter 12, Laws of 1961 and RCW 46.20.210, sections 46.20.230 through 46.20.250, chapter 12, Laws of 1961 and RCW 46.20.230 through 46.20.250, section 46.20.280, chapter 12, Laws of 1961 and RCW 46.20.280, section 46.20.290, chapter 12, Laws of 1961 and RCW 46.20.290, section 46.20.310, chapter 12, Laws of 1961 and RCW 46.20.310, and section 46.20.330, chapter 12, Laws of 1961 and RCW 46.20.330; section 46.20.350, chapter 12, Laws of 1961 and

RCW 46.20.350; section 46.20.360, chapter 12, Laws of 1961 and RCW 46.20.360 are each hereby repealed. Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceedings instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder. [1965 ex.s. c 121 § 46.]

46.20.910 Severability—1965 ex.s. c 121. If any provision of this 1965 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1965 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 121 § 47.]

46.20.911 Severability, implied consent law—1969 c 1. If any provision of RCW 46.20.308, 46.20.311, and 46.61.506 or its application to any person or circumstance is held invalid, the remainder of RCW 46.20.308, 46.20.311, and 46.61.506, or the application of the provision to other persons or circumstances is not affected. [1990 c 250 § 49; 1969 c 1 § 6 (Initiative Measure No. 242, approved November 5, 1968).]

Severability—1990 c 250: See note following RCW 46.16.301.

Chapter 46.21 RCW

DRIVER LICENSE COMPACT

Sections

46.21.010	Compact enacted—Provisions.
46.21.020	"Licensing authority" defined—Duty to furnish information.
46.21.030	Expenses of compact administrator.
46.21.040	"Executive head" defined.

46.21.010 Compact enacted—Provisions. The driver license compact prepared pursuant to resolutions of the western governors' conference and the western interstate committee on highway policy problems of the council of state governments is hereby entered into and enacted into law, the terms and provisions of which shall be as follows:

DRIVER LICENSE COMPACT

ARTICLE I—Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2008 Ed.)

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—Definitions

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Vehicular homicide;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this Article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar

nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this Article.

ARTICLE V—Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a non-party state.

ARTICLE VII—Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—Entry into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1983 c 164 § 5; 1963 c 120 § 1.]

46.21.020 "Licensing authority" defined—Duty to furnish information. As used in the compact, the term "licensing authority" with reference to this state, shall mean the department of licensing. Said department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact. [1979 c 158 § 154; 1967 c 32 § 36; 1963 c 120 § 2.]

46.21.030 Expenses of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment. [1963 c 120 § 3.]

46.21.040 "Executive head" defined. As used in the compact, with reference to this state, the term "executive head" shall mean governor. [1963 c 120 § 4.]

Chapter 46.23 RCW

NONRESIDENT VIOLATOR COMPACT

Sections

46.23.010	Compact established—Provisions.
46.23.020	Reciprocal agreements authorized—Provisions.
46.23.050	Rules.

46.23.010 Compact established—Provisions. The nonresident violator compact, hereinafter called "the compact," is hereby established in the form substantially as follows, and the Washington state department of licensing is authorized to enter into such compact with all other jurisdictions legally joining therein:

NONRESIDENT VIOLATOR COMPACT

Article I — Findings, Declaration of Policy, and Purpose

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction: Must post collateral or bond to secure appearance for trial at a later date; or if unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to him [his] home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above, causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

Article II — Definitions

As used in the compact, the following words have the meaning indicated, unless the context requires otherwise.

(1) "Citation" means any summons, ticket, notice of infraction, or other official document issued by a police officer for a traffic offense containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic offense.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic offense.

(11) "Terms of the citation" means those options expressly stated upon the citation.

Article III — Procedure for Issuing Jurisdiction

(a) When issuing a citation for a traffic violation or infraction, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and insofar as practical shall contain information as specified in the compact manual as minimum requirements for effective processing by the home jurisdiction.

(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content substantially conforming to the compact manual.

(e) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

Article IV — Procedure for Home Jurisdiction

(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

Article V — Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

Article VI — Compact Administrator Procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(c) The board shall elect annually, from its membership, a chairman and a vice chairman.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and dispose of the same.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

Article VII — Entry into Compact and Withdrawal

(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

(b) Entry into the compact shall be made by a resolution of ratification executed by the department of licensing and submitted to the chairman of the board. The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(1) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(2) Agreement to comply with the terms and provisions of the compact.

(3) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(c) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(d) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

Article VIII — Exceptions

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

Article IX — Amendments to the Compact

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

Article X — Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, per-

son, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

Article XI — Title

This compact shall be known as the nonresident violator compact. [1982 c 212 § 1.]

46.23.020 Reciprocal agreements authorized—Provisions. (1) The Washington state department of licensing is authorized and encouraged to execute a reciprocal agreement with the Canadian province of British Columbia, and with any other state which is not a member of the nonresident violator compact, concerning the rendering of mutual assistance in the disposition of traffic infractions committed by persons licensed in one state or province while in the jurisdiction of the other.

(2) Such agreements shall provide that if a person licensed by either state or province is issued a citation by the other state or province for a moving traffic violation covered by the agreement, he shall not be detained or required to furnish bail or collateral, and that if he fails to comply with the terms of the citation, his license shall be suspended or renewal refused by the state or province that issued the license until the home jurisdiction is notified by the issuing jurisdiction that he has complied with the terms of the citation.

(3) Such agreement shall also provide such terms and procedures as are necessary and proper to facilitate its administration. [1982 c 212 § 2.]

46.23.050 Rules. The department shall adopt rules for the administration and enforcement of RCW 46.23.010 and 46.23.020 in accordance with chapter 34.05 RCW. [1982 c 212 § 6.]

Chapter 46.25 RCW

UNIFORM COMMERCIAL DRIVER'S LICENSE ACT

Sections

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46.25.170	Civil and criminal penalties.
46.25.900	Severability—1989 c 178.
46.25.901	Effective dates—1989 c 178.

46.25.001 Short title. This chapter may be cited as the Uniform Commercial Driver's License Act. [1989 c 178 § 1.]

46.25.005 Purpose—Construction. (1) The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Title XII, P.L. 99-570, and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

(a) Permitting commercial drivers to hold only one license;

(b) Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses;

(c) Strengthening licensing and testing standards.

(2) This chapter is a remedial law and shall be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver licensing provisions, this chapter prevails. Where this chapter is silent, the general driver licensing provisions apply. [1989 c 178 § 2.]

46.25.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); or

(b) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "United States" means the fifty states and the District of Columbia.

(23) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department

of transportation drug test under 49 C.F.R. 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter. [2006 c 327 § 2; 2006 c 50 § 1; 2005 c 325 § 2; 2004 c 187 § 2; 1996 c 30 § 1; 1989 c 178 § 3.]

Reviser's note: This section was amended by 2006 c 50 § 1 and by 2006 c 327 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2005 c 325: "It is the intent of the legislature to promote the safety of drivers and passengers on Washington roads and public transportation systems. To this end, Washington has established a reporting requirement for employers of commercial drivers who test positive for unlawful substances. The legislature recognizes that transit operators and their employers are an asset to the public transportation system and continuously strive to provide a safe and efficient mode of travel. In light of this, the legislature further intends that the inclusion of transit employers in the reporting requirements serve only to enhance the current efforts of these dedicated employers and employees as they continue to provide a safe public transportation system to the citizens of Washington." [2005 c 325 § 1.]

Effective date—1996 c 30: "This act takes effect October 1, 1996." [1996 c 30 § 5.]

46.25.020 One license limit. No person who drives a commercial motor vehicle may have more than one driver's license. [1989 c 178 § 4.]

46.25.030 Duties of driver—Notice to department and employer. (1)(a) A driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating a state law or local ordinance relating to motor vehicle traffic control, in any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the department in the manner specified by rule of the department within thirty days of the date of conviction.

(b) A driver of a commercial motor vehicle holding a driver's license issued by this state who is convicted of violating a state law or local ordinance relating to motor vehicle traffic control in this or any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(c) The notification requirements contained in (a) and (b) of this subsection as they relate to the federal, provincial, territorial, or municipal laws of Canada become effective only when the federal law or federal rules are changed to require the notification or a bilateral or multilateral agreement is entered into between the state of Washington and any Canadian province implementing essentially the same standards of regulation and penalties of all parties as encompassed in this chapter.

(2) A driver whose driver's license is suspended, revoked, or canceled by a state, who loses the privilege to drive a commercial motor vehicle in a state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(3) A person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

(a) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(b) The dates between which the applicant drove for each employer; and

(c) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information. [1989 c 178 § 5.]

46.25.040 Duties of employer. (1) An employer shall require the applicant to provide the information specified in RCW 46.25.030(3).

(2) No employer may knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

(a) In which the driver has a driver's license suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or

(b) In which the driver has more than one driver's license. [1989 c 178 § 6.]

46.25.050 Commercial driver's license required—Exceptions, restrictions, reciprocity. (1) Drivers of commercial motor vehicles shall obtain a commercial driver's license as required under this chapter. Except when driving under a commercial driver's instruction permit and a valid automobile or classified license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

(i) Controlled and operated by a farmer;

(ii) Used to transport either agricultural products, which in this section include Christmas trees and wood products harvested from private tree farms and transported by vehicles weighing no more than forty thousand pounds licensed gross vehicle weight, farm machinery, farm supplies, or any combination of those materials to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within one hundred fifty miles of the person's farm; or

(b) Who is a firefighter or law enforcement officer operating emergency equipment, and:

(i) The firefighter or law enforcement officer has successfully completed a driver training course approved by the director; and

(ii) The firefighter or law enforcement officer carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for noncommercial purposes. As used in this section, "recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose; or

(d) Who is operating a commercial motor vehicle for military purposes. This exemption is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1).

(3) The department shall to the extent possible enter into reciprocity agreements with adjoining states to allow the waivers described in subsection (1) of this section to apply to drivers holding commercial driver's licenses from those adjoining states. [2006 c 327 § 3; 1995 c 393 § 1; 1990 c 56 § 1; 1989 c 178 § 7.]

46.25.055 Medical examiner's certificate—Required.

A person may not drive a commercial motor vehicle unless he or she is physically qualified to do so and, except as provided in 49 C.F.R. Sec. 391.67, has on his or her person the original, or a photographic copy, of a medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle. [2003 c 195 § 3.]

Findings—2003 c 195: See note following RCW 46.25.070.

46.25.057 Medical examiner's certificate—Failure to carry—Penalty. (1) It is a traffic infraction for a licensee under this chapter to drive a commercial vehicle without having on his or her person the original, or a photographic copy, of a medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle.

(2) A person who violates this section is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he or she had, at the time the infraction took place, the medical examiner's certificate, the court shall reduce the penalty to fifty dollars. [2003 c 195 § 4.]

Findings—2003 c 195: See note following RCW 46.25.070.

46.25.060 Knowledge and skills test—Instruction permit. (1)(a) No person may be issued a commercial driver's license unless that person is a resident of this state, has successfully completed a course of instruction in the operation of a commercial motor vehicle that has been approved by the director or has been certified by an employer as having the skills and training necessary to operate a commercial motor vehicle safely, and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and

conducted by the department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than one hundred dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(b) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section under the following conditions:

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(c) If the applicant's primary use of a commercial driver's license is for any of the following, then the applicant shall pay a fee of no more than seventy-five dollars for each classified skill examination or combination of classified skill examinations whether conducted by the department or a third-party tester:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(4).

(2) The department shall work with the office of the superintendent of public instruction to develop modified P1 and P2 skill examinations that also include the skill examination components required to obtain an "S" endorsement. In no event may a new applicant for an "S" endorsement be required to take two separate examinations to obtain an "S" endorsement and either a P1 or P2 endorsement, unless that applicant is upgrading his or her existing commercial driver's license to include an "S" endorsement. The combined P1/S or P2/S skill examination must be offered to the applicant at the same cost as a regular P1 or P2 skill examination.

(3) The department may waive the skills test and the requirement for completion of a course of instruction in the operation of a commercial motor vehicle specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

(4) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

(5)(a) The department may issue a commercial driver's instruction permit to an applicant who is at least eighteen

years of age and holds a valid Washington state driver's license and who has submitted a proper application, passed the general knowledge examination required for issuance of a commercial driver's license under subsection (1) of this section, and paid the appropriate fee for the knowledge examination and an application fee of ten dollars.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period.

(c) The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The holder of a commercial driver's instruction permit is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(d) The department shall transmit the fees collected for commercial driver's instruction permits to the state treasurer. [2007 c 418 § 1; 2004 c 187 § 3; 2002 c 352 § 18; 1989 c 178 § 8.]

Effective date—2007 c 418: "This act takes effect January 15, 2008." [2007 c 418 § 2.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.25.070 Application—Change of address—Residency—Hazardous materials endorsement. (1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

(a) The full name and current mailing and residential address of the person;

(b) A physical description of the person, including sex, height, weight, and eye color;

(c) Date of birth;

(d) The applicant's Social Security number;

(e) The person's signature;

(f) Certifications including those required by 49 C.F.R. part 383.71(a);

(g) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years;

(h) Any other information required by the department; and

(i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) An applicant for a hazardous materials endorsement must submit an application and comply with federal transportation security administration requirements as specified in 49 C.F.R. part 1572, and meet the requirements specified in 49 C.F.R. 383.71(a)(9).

(3) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

(4) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction. [2004 c 187 § 4; 2003 c 195 § 2; 1991 c 73 § 2; 1989 c 178 § 9.]

Findings—2003 c 195: "The legislature finds that current economic conditions impose severe hardships on many commercial vehicle drivers.

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The legislature finds that commercial drivers who may not currently be working may not be able to afford the expense of a required physical in order to maintain their commercial driver's license. The legislature finds that Washington's commercial driver's license statutes should be harmonized with federal requirements, which require proof of a physical capacity to drive a commercial vehicle, along with a valid commercial driver's license, but do not link the two requirements. The legislature finds that allowing commercial drivers to delay getting a physical until they are actually driving a commercial vehicle will prevent the imposition of unnecessary expense and hardship on Washington's commercial vehicle drivers." [2003 c 195 § 1.]

46.25.080 License contents, classifications, endorsements, restrictions, expiration—Exchange of information.

(1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

(a) The name and residence address of the person;

(b) The person's color photograph;

(c) A physical description of the person including sex, height, weight, and eye color;

(d) Date of birth;

(e) The person's Social Security number or any number or identifier deemed appropriate by the department;

(f) The person's signature;

(g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;

(h) The name of the state; and

(i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle or vehicles being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; or

(B) Vehicles used in the transportation of hazardous materials.

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P1" authorizes driving all vehicles, other than school buses, carrying passengers.

(v) "P2" authorizes driving vehicles with a GVWR of less than 26,001 pounds, other than school buses, carrying sixteen or more passengers, including the driver.

(vi) "N" authorizes driving tank vehicles.

(vii) "X" represents a combination of hazardous materials and tank vehicle endorsements.

(viii) "S" authorizes driving school buses.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) All school bus drivers must have either a "P1" or "P2" endorsement depending on the GVWR of the school bus being driven.

(4) Before issuing a commercial driver's license, the department shall obtain driving record information:

(a) Through the commercial driver's license information system;

(b) Through the national driver register;

(c) From the current state of record; and

(d) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.

A check under (d) of this subsection need be done only once, either at the time of application for a new commercial driver's license, or upon application for a renewal of a commercial driver's license for the first time after July 1, 2005, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.

(5) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of that fact, and provide all information required to ensure identification of the person.

(6) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

(7) When applying for renewal of a commercial driver's license, the applicant shall:

(a) Complete the application form required by RCW 46.25.070(1), providing updated information and required certifications;

(b) Submit the application to the department in person; and

(c) If the applicant wishes to retain a hazardous materials endorsement, take and pass the written test for a hazardous materials endorsement. [2004 c 249 § 8; 2004 c 187 § 5; 1996 c 30 § 2; 1989 c 178 § 10.]

Reviser's note: This section was amended by 2004 c 187 § 5 and by 2004 c 249 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Effective date—1996 c 30: See note following RCW 46.25.010.

46.25.085 Hazardous materials endorsement. (1) The department may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a commercial driver's license to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless the federal transportation security administration has determined that the individual does not pose a security risk warranting denial of the endorsement.

(2) An individual who is prohibited from holding a commercial driver's license with a hazardous materials endorsement under 49 C.F.R. 1572.5 must surrender any hazardous materials endorsement in his or her possession to the department.

(3) The department may adopt such rules as may be necessary to comply with the provisions of 49 C.F.R. part 1572. [2004 c 187 § 6.]

46.25.090 Disqualification—Grounds for, period of—Records. (1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.20.308 or 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more, or driving a noncommercial motor vehicle while the alcohol concentration in the person's system is 0.08 or more, or is 0.02 or more if the person is under age twenty-one, as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a motor vehicle driven by the person;

(d) Using a motor vehicle in the commission of a felony;

(e) Refusing to submit to a test or tests to determine the driver's alcohol concentration or the presence of any drug while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting hazardous material, the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents.

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5)(a) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if:

(A) Convicted of or found to have committed a second serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(ii) Not less than one hundred twenty days if:

(A) Convicted of or found to have committed a third or subsequent serious traffic violation while driving a commercial motor vehicle; or

(B) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

(b) The disqualification period under (a)(ii) of this subsection must be in addition to any other previous period of disqualification.

(c) For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than ninety days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial motor vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial motor vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 C.F.R. 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment and/or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.25.100. The substance abuse pro-

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fessional shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

(i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;

(ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;

(iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously disqualified from driving a commercial motor vehicle under this subsection and under other provisions of this chapter, or under 49 C.F.R. 383.52, shall serve those disqualification periods concurrently.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action. [2006 c 327 § 4; 2005 c 325 § 5; 2004 c 187 § 7. Prior: 2002 c 272 § 3; 2002 c 193 § 1; 1996 c 30 § 3; 1989 c 178 § 11.]

Intent—2005 c 325: See note following RCW 46.25.010.

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Effective date—1996 c 30: See note following RCW 46.25.010.

46.25.100 Restoration after disqualification. When a person has been disqualified from operating a commercial motor vehicle, the person is not entitled to have the commercial driver's license restored until after the expiration of the appropriate disqualification period required under RCW 46.25.090 or until the department has received a drug and alcohol assessment and evidence is presented of satisfactory participation in or completion of any required drug or alcohol treatment program for ending the disqualification under RCW 46.25.090(7). After expiration of the appropriate period and upon payment of a requalification fee of twenty dollars, or one hundred fifty dollars if the person has been disqualified under RCW 46.25.090(7), the person may apply for a new, duplicate, or renewal commercial driver's license as provided by law. If the person has been disqualified for a period of one year or more, the person shall demonstrate that he or she meets the commercial driver's license qualification standards specified in RCW 46.25.060. [2002 c 272 § 4; 1989 c 178 § 12.]

46.25.110 Driving with alcohol in system. (1) Notwithstanding any other provision of Title 46 RCW, a person may not drive, operate, or be in physical control of a commercial motor vehicle while having alcohol in his or her system.

(2) Law enforcement or appropriate officials shall issue an out-of-service order valid for twenty-four hours against a person who drives, operates, or is in physical control of a commercial motor vehicle while having alcohol in his or her system or who refuses to take a test to determine his or her alcohol content as provided by RCW 46.25.120. [1989 c 178 § 13.]

46.25.120 Test for alcohol or drugs—Disqualification for refusal of test or positive test—Procedures. (1) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to RCW 46.61.506, to take a test or tests of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system or while under the influence of any drug.

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090.

(4) If the person refuses testing, or submits to a test that discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section and that the person refused to submit to testing, or submitted to a test that disclosed an alcohol concentration of 0.04 or more.

(5) Upon receipt of the sworn report of a law enforcement officer under subsection (4) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing

provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system or while under the influence of any drug, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, and, if the test was administered, whether the results indicated an alcohol concentration of 0.04 percent or more. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

(6) If a motor carrier or employer who is required to have a testing program under 49 C.F.R. 382 knows that a commercial driver in his or her employ has refused to submit to testing under this section and has not been disqualified from driving a commercial motor vehicle, the employer may notify law enforcement or his or her medical review officer or breath alcohol technician that the driver has refused to submit to the required testing.

(7) The hearing provisions of this section do not apply to those persons disqualified from driving a commercial motor vehicle under RCW 46.25.090(7). [2006 c 327 § 5; 2002 c 272 § 5; 1998 c 41 § 6; 1990 c 250 § 50; 1989 c 178 § 14.]

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Severability—1990 c 250: See note following RCW 46.16.301.

46.25.123 Mandatory reporting of positive test. (1) All medical review officers or breath alcohol technicians hired by or under contract to a motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40 or to a consortium the carrier or employer belongs to, as defined in 49 C.F.R. 40.3, shall report the finding of a commercial motor vehicle driver's verified positive drug test or positive alcohol confirmation test to the department of licensing on a form provided by the department. If the employer is required to have a testing program under 49 C.F.R. 655, a report of a verified positive drug test or positive alcohol confirmation test must not be forwarded to the department under this subsection unless the test is a preemployment drug test conducted under 49 C.F.R. 655.41 or a preemployment alcohol test conducted under 49 C.F.R. 655.42.

(2)(a) A motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40, or the consortium the carrier or employer belongs to, must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test, under circumstances that constitute the refusal of a test under 49 C.F.R. 40 and where such refusal has not been reported by a medical review officer or breath alcohol technician, to the department of licensing on a form provided by the department.

(b) An employer who is required to have a testing program under 49 C.F.R. 655 must report a commercial motor vehicle driver's verified positive drug test or a positive alcohol confirmation test when: (i) The driver's employment has been terminated or the driver has resigned; (ii) any grievance process, up to but not including arbitration, has been concluded; and (iii) at the time of termination or resignation the driver has not been cleared to return to safety-sensitive functions.

(3) Motor carriers, employers, or consortiums shall make it a written condition of their contract or agreement with a medical review officer or breath alcohol technician, regardless of the state where the medical review officer or breath alcohol technician is located, that the medical review officer or breath alcohol technician is required to report all Washington state licensed drivers who have a verified positive drug test or positive alcohol confirmation test to the department of licensing within three business days of the verification or confirmation. Failure to obtain this contractual condition or agreement with the medical review officer or breath alcohol technician by the motor carrier, employer, or consortium, or failure to report a refusal as required by subsection (2) of this section, will result in an administrative fine as provided in RCW 46.32.100 or 81.04.405.

(4) Substances obtained for testing may not be used for any purpose other than drug or alcohol testing under 49 C.F.R. 40. [2005 c 325 § 3; 2002 c 272 § 1.]

Intent—2005 c 325: See note following RCW 46.25.010.

46.25.125 Disqualification for positive test—Procedure. (1) When the department of licensing receives a report from a medical review officer, breath alcohol technician, employer, contractor, or consortium that a driver has a verified positive drug test or positive alcohol confirmation test, as part of the testing program conducted under 49 C.F.R. 40, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090(7) subject to a hearing as provided in this section. The department shall notify the person in writing of the disqualification by first-class mail. The notice must explain the procedure for the person to request a hearing.

(2) A person disqualified from driving a commercial motor vehicle for having a verified positive drug test or positive alcohol confirmation test may request a hearing to challenge the disqualification within twenty days from the date notice is given. If the request for a hearing is mailed, it must be postmarked within twenty days after the department has given notice of the disqualification.

(3) The hearing must be conducted in the county of the person's residence, except that the department may conduct all or part of the hearing by telephone or other electronic means.

(4) For the purposes of this section, or for the purpose of a hearing de novo in an appeal to superior court, the hearing must be limited to the following issues: (a) Whether the driver is the person who is the subject of the report; (b) whether the motor carrier, employer, or consortium has a program that is subject to the federal requirements under 49 C.F.R. 40; and (c) whether the medical review officer or breath alcohol technician making the report accurately followed the protocols established to verify or confirm the results, or if the driver refused a test, whether the circumstances constitute the refusal of a test under 49 C.F.R. 40. Evidence may be presented to demonstrate that the test results are a false positive. For the purpose of a hearing under this section, a copy of a positive test result with a declaration by the tester or medical review officer or breath alcohol technician stating the accuracy of the laboratory protocols followed to arrive at the test result is prima facie evidence:

(i) Of a verified positive drug test or positive alcohol confirmation test result;

(ii) That the motor carrier, employer, or consortium has a program that is subject to the federal requirements under 49 C.F.R. 40; and

(iii) That the medical review officer or breath alcohol technician making the report accurately followed the protocols for testing established to verify or confirm the results.

After the hearing, the department shall order the disqualification of the person either be rescinded or sustained.

(5) If the person does not request a hearing within the twenty-day time limit, or if the person fails to appear at a hearing, the person has waived the right to a hearing and the department shall sustain the disqualification.

(6) A decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation and the department receives no further report of a verified positive drug test or positive alcohol confirmation test during the pendency of the hearing and appeal. If the disqualification is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of his or her residence to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

(7) The department of licensing may adopt rules specifying further requirements for requesting and conducting a hearing under this section.

(8) The department of licensing is not civilly liable for damage resulting from disqualifying a driver based on a verified positive drug test or positive alcohol confirmation test result as required by this section or for damage resulting from release of this information that occurs in the normal course of business. [2005 c 325 § 4; 2002 c 272 § 2.]

Intent—2005 c 325: See note following RCW 46.25.010.

46.25.130 Report of violation, disqualification by nonresident. (1) Within ten days after receiving a report of the conviction of or finding that a traffic infraction has been committed by any nonresident holder of a commercial driver's license, or any nonresident operating a commercial motor vehicle, for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, the department shall notify the driver licensing authority in the licensing state of the conviction.

(2)(a) No later than ten days after disqualifying any nonresident holder of a commercial driver's license from operating a commercial motor vehicle, or revoking, suspending, or canceling the nonresident driving privileges of the nonresident holder of a commercial driver's license for at least sixty days, the department must notify the state that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record. [2004 c 187 § 8; 1989 c 178 § 15.]

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

46.25.140 Rules. The department may adopt rules necessary to carry out this chapter. [1989 c 178 § 16.]

46.25.150 Agreements to carry out chapter. The department may enter into or make agreements, arrangements, or declarations to carry out this chapter. [1989 c 178 § 17.]

46.25.160 Licenses issued by other jurisdictions. Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license or commercial driver's instruction permit issued by any state or jurisdiction in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses or permits, if the person's license or permit is not suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle or is subject to an out-of-service order. [2004 c 187 § 9; 1989 c 178 § 18.]

46.25.170 Civil and criminal penalties. (1) A person subject to RCW 81.04.405 who is determined by the utilities and transportation commission, after notice, to have committed an act that is in violation of RCW 46.25.020, 46.25.030, 46.25.040, 46.25.050, or 46.25.110 is liable to Washington state for the civil penalties provided for in RCW 81.04.405.

(2) A person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of RCW 46.25.020, 46.25.030, 46.25.040, 46.25.050, or 46.25.110 is guilty of a gross misdemeanor. [1989 c 178 § 19.]

46.25.900 Severability—1989 c 178. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1989 c 178 § 30.]

46.25.901 Effective dates—1989 c 178. Sections 25, 26, 28, and 32 of this act shall take effect on April 1, 1992. The remainder of this act shall take effect on October 1, 1989. The director of licensing may immediately take such steps as are necessary to insure that all sections of this act are implemented on their respective effective dates. [1989 c 178 § 33.]

Chapter 46.29 RCW FINANCIAL RESPONSIBILITY

Sections

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ADMINISTRATION

46.29.010 Purpose. It is the purpose of this chapter to adopt in substance the provisions of the uniform vehicle code relating to financial responsibility in order to achieve greater uniformity with the laws of other states and thereby reduce the conflicts in laws confronting motorists as they travel between states. [1963 c 169 § 1.]

46.29.020 Definitions. (1) The term "owner" as used in this chapter shall mean registered owner as defined in RCW 46.04.460.

(2) The term "registration" as used in this chapter shall mean the certificate of license registration issued under the laws of this state. [1963 c 169 § 2.]

46.29.030 Director to administer chapter. (1) The director shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration.

(2) The director shall prescribe and provide suitable forms requisite or deemed necessary for the purposes of this chapter. [1963 c 169 § 3.]

46.29.040 Court review. Any order of the director under the provisions of this chapter shall be subject to review, at the instance of any party in interest, by appeal to the superior court of Thurston county, or at his option to the superior court of the county of his residence. The scope of such review shall be limited to that prescribed by RCW 7.16.120 governing review by certiorari. Notice of appeal must be filed within thirty days after service of the notice of such order. The court shall determine whether the filing of the appeal shall operate as a stay of any such order of the director. Upon the filing of the notice of appeal the court shall issue an order to the director to show cause why the order should not be reversed or modified. The order to show cause shall be returnable not less than ten nor more than thirty days after the date of service thereof upon the director. The court after hearing the matter may modify, affirm or reverse the order of the director in whole or in part. [1998 c 41 § 7; 1963 c 169 § 4.]

(2008 Ed.)

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

46.29.050 Furnishing driving record and evidence of ability to respond in damages—Fees. (1) The department shall upon request furnish any person or his attorney a certified abstract of his driving record, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved. Such abstract shall (a) indicate the total number of vehicles involved, whether the vehicles were legally parked or moving, and whether the vehicles were occupied at the time of the accident; and (b) contain reference to any convictions of the person for violation of the motor vehicle laws as reported to the department, reference to any findings that the person has committed a traffic infraction which have been reported to the department, and a record of any vehicles registered in the name of the person. The department shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

(2) The department shall upon request furnish any person who may have been injured in person or property by any motor vehicle, with an abstract of all information of record in the department pertaining to the evidence of the ability of any driver or owner of any motor vehicle to respond in damages. The department shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038. [2007 c 424 § 2; 2002 c 352 § 19; 1987 1st ex.s. c 9 § 1; 1985 ex.s. c 1 § 10; 1979 ex.s. c 136 § 63; 1969 ex.s. c 40 § 1; 1967 c 174 § 1; 1963 c 169 § 5.]

Effective date—2007 c 424: See note following RCW 46.20.293.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Severability—1987 1st ex.s. c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 9 § 11.]

Effective date—1987 1st ex.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 1st ex.s. c 9 § 12.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: "Sections 1, 2, 3 and 4 of this amendatory act shall become effective July 1, 1967." [1967 c 174 § 7.]

Abstract of driving record furnished to insurance company: RCW 46.52.130.

SECURITY FOLLOWING ACCIDENT

46.29.060 Application of sections requiring deposit of security and suspensions for failure to deposit security. The provisions of this chapter, requiring deposit of security and suspensions for failure to deposit security, subject to certain exemptions, shall apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of this state which is in any manner involved in an accident within this state, which accident has resulted in bodily injury or death of any person or damage to the property of any one person to an apparent extent equal to or

greater than the minimum amount established by rule adopted by the director. The director shall adopt rules establishing the property damage threshold at which the provisions of this chapter apply with respect to the deposit of security and suspensions for failure to deposit security. Beginning October 1, 1987, the property damage threshold shall be five hundred dollars. The thresholds shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision and by the threshold established by the chief of the Washington state patrol for the filing of accident reports as provided in RCW 46.52.030. [1987 c 463 § 1; 1977 ex.s. c 369 § 1; 1971 ex.s. c 22 § 2; 1963 c 169 § 6.]

46.29.070 Department to determine amount of security required—Notices. (1) The department, not less than twenty days after receipt of a report of an accident as described in the preceding section, shall determine the amount of security which shall be sufficient in its judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each driver or owner. Such determination shall not be made with respect to drivers or owners who are exempt under succeeding sections of this chapter from the requirements as to security and suspension.

(2) The department shall determine the amount of security deposit required of any person upon the basis of the reports or other information submitted. In the event a person involved in an accident as described in this chapter fails to make a report or submit information indicating the extent of his injuries or the damage to his property within one hundred eighty days after the accident and the department does not have sufficient information on which to base an evaluation of such injuries or damage, then the department after reasonable notice to such person, if it is possible to give such notice, otherwise without such notice, shall not require any deposit of security for the benefit or protection of such person.

(3) The department after receipt of report of any accident referred to herein and upon determining the amount of security to be required of any person involved in such accident or to be required of the owner of any vehicle involved in such accident shall give written notice to every such person of the amount of security required to be deposited by him and that an order of suspension will be made as hereinafter provided not less than twenty days and not more than sixty days after the sending of such notice unless within said time security be deposited as required by said notice. [1981 c 309 § 1; 1979 c 78 § 1; 1963 c 169 § 7.]

Proof of financial security for the future required in addition to security after accident: RCW 46.29.420.

46.29.080 Exceptions as to requirement of security. The requirements as to security and suspension in this chapter shall not apply:

(1) To the driver or owner if the owner had in effect at the time of the accident an automobile liability policy or bond with respect to the vehicle involved in the accident, except that a driver shall not be exempt under this subsection if at the

time of the accident the vehicle was being operated without the owner's permission, express or implied;

(2) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond with respect to his driving of vehicles not owned by him;

(3) To the driver, if not the owner of the vehicle involved in the accident, if there was in effect at the time of the accident an automobile liability policy or bond as to which there is a bona fide dispute concerning coverage of such driver as evidenced by the pendency of litigation seeking a declaration of said driver's coverage under such policy or bond;

(4) To the driver, whether or not the owner, if there is a bona fide claim on the part of the driver that there was in effect at the time of the accident, an automobile liability policy or bond insuring or covering such driver;

(5) To any person qualifying as a self-insurer under RCW 46.29.630 or to any person operating a vehicle for such self-insurer;

(6) To the driver or the owner of a vehicle involved in an accident wherein no injury or damage was caused to the person or property of anyone other than such driver or owner;

(7) To the driver or owner of a vehicle which at the time of the accident was parked, unless such vehicle was parked at a place where parking was at the time of the accident prohibited under any applicable law or ordinance;

(8) To the owner of a vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such vehicle without such permission, except if the vehicle was operated by his minor child or spouse;

(9) To the owner of a vehicle involved in an accident if at the time of the accident such vehicle was owned by or leased to the United States, this state or any political subdivision of this state or a municipality thereof, or to the driver of such vehicle if operating such vehicle with permission; or

(10) To the driver or the owner of a vehicle in the event at the time of the accident the vehicle was being operated by or under the direction of a police officer who, in the performance of his duties, shall have assumed custody of such vehicle. [1965 c 124 § 1; 1963 c 169 § 8.]

46.29.090 Requirements as to policy or bond. (1) No policy or bond is effective under RCW 46.29.080 unless issued by an insurance company or surety company authorized to do business in this state, except as provided in subsection (2) of this section, nor unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of, property to a limit of not less than ten thousand dollars because of injury to or destruction of property of others in any one accident.

(2) No policy or bond is effective under RCW 46.29.080 with respect to any vehicle which was not registered in this state or was a vehicle which was registered elsewhere than in this state at the effective date of the policy or bond or the

most recent renewal thereof, unless the insurance company or surety company issuing such policy or bond is authorized to do business in this state, or if said company is not authorized to do business in this state, unless it executes a power of attorney authorizing the director of licensing to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident.

(3) The department may rely upon the accuracy of the information in a required report of an accident as to the existence of insurance or a bond unless and until the department has reason to believe that the information is erroneous. [1980 c 117 § 3; 1979 c 158 § 155; 1967 ex.s. c 3 § 1; 1963 c 169 § 9.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: "This amendatory act shall take effect on July 1, 1968." [1967 ex.s. c 3 § 6.]

46.29.100 Form and amount of security. (1) The security required under this chapter shall be in such form and in such amount as the department may require, but in no case in excess of the limits specified in RCW 46.29.090 in reference to the acceptable limits of a policy or bond.

(2) Every depositor of security shall designate in writing every person in whose name such deposit is made and may at any time change such designation, but any single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. [1963 c 169 § 10.]

46.29.110 Failure to deposit security—Suspensions. If a person required to deposit security under this chapter fails to deposit such security within sixty days after the department has sent the notice as hereinbefore provided, the department shall thereupon suspend:

(1) The driver's license of each driver in any manner involved in the accident;

(2) The driver's license of the owner of each vehicle of a type subject to registration under the laws of this state involved in the accident;

(3) If the driver or owner is a nonresident, the privilege of operating within this state a vehicle of a type subject to registration under the laws of this state.

Such suspensions shall be made in respect to persons required by the department to deposit security who fail to deposit such security except as otherwise provided under succeeding sections of this chapter. [1990 c 250 § 51; 1987 c 378 § 1; 1967 c 32 § 37; 1963 c 169 § 11.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.120 Release from liability. (1) A person shall be relieved from the requirement for deposit of security for the benefit or protection of another person injured or damaged in the accident in the event he is released from liability by such other person.

(2) In the event the department has evaluated the injuries or damage to any minor the department may accept, for the purposes of this chapter only, evidence of a release from liability executed by a natural guardian or a legal guardian on behalf of such minor without the approval of any court or judge. [1965 c 124 § 2; 1963 c 169 § 12.]

(2008 Ed.)

46.29.130 Adjudication of nonliability. A person shall be relieved from the requirement for deposit of security in respect to a claim for injury or damage arising out of the accident in the event such person has been finally adjudicated not to be liable in respect to such claim. [1963 c 169 § 13.]

46.29.140 Agreements for payment of damages. (1) Any two or more of the persons involved in or affected by an accident as described in RCW 46.29.060 may at any time enter into a written agreement for the payment of an agreed amount with respect to all claims of any of such persons because of bodily injury to or death or property damage arising from such accident, which agreement may provide for payment in installments, and may file a signed copy thereof with the department.

(2) The department, to the extent provided by any such written agreement filed with it, shall not require the deposit of security and shall terminate any prior order of suspension, or, if security has previously been deposited, the department shall immediately return such security to the depositor or his personal representative.

(3) In the event of a default in any payment under such agreement and upon notice of such default the department shall take action suspending the license of such person in default as would be appropriate in the event of failure of such person to deposit security when required under this chapter.

(4) Such suspension shall remain in effect and such license shall not be restored unless and until:

(a) Security is deposited as required under this chapter in such amount as the department may then determine,

(b) When, following any such default and suspension, the person in default has paid the balance of the agreed amount,

(c) When, following any such default and suspension, the person in default has resumed installment payments under an agreement acceptable to the creditor, or

(d) Three years have elapsed following the accident and evidence satisfactory to the department has been filed with it that during such period no action at law upon such agreement has been instituted and is pending. [1981 c 309 § 2; 1963 c 169 § 14.]

46.29.150 Payment upon judgment. The payment of a judgment arising out of an accident or the payment upon such judgment of an amount equal to the maximum amount which could be required for deposit under this chapter shall, for the purposes of this chapter, release the judgment debtor from the liability evidenced by such judgment. [1963 c 169 § 15.]

46.29.160 Termination of security requirement. The department, if satisfied as to the existence of any fact which under RCW 46.29.120, 46.29.130, 46.29.140 or 46.29.150 would entitle a person to be relieved from the security requirements of this chapter, shall not require the deposit of security by the person so relieved from such requirement, or if security has previously been deposited by such person, the department shall immediately return such deposit to such person or to his personal representative. [1963 c 169 § 16.]

46.29.170 Duration of suspension. Unless a suspension is terminated under other provisions of this chapter, any order of suspension by the department under this chapter shall remain in effect and no license shall be renewed for or issued to any person whose license is so suspended until:

(1) Such person shall deposit or there shall be deposited on his behalf the security required under this chapter, or

(2) Three years have elapsed following the date of the accident resulting in such suspension and evidence satisfactory to the department has been filed with it that during such period no action for damages arising out of the accident resulting in such suspension has been instituted.

An affidavit of the applicant that no action at law for damages arising out of the accident has been filed against him or, if filed, that it is not still pending shall be prima facie evidence of that fact. The department may take whatever steps are necessary to verify the statement set forth in any said affidavit. [1981 c 309 § 3; 1963 c 169 § 17.]

46.29.180 Application to nonresidents, unlicensed drivers, unregistered vehicles, and accidents in other states. (1) In case the driver or the owner of a vehicle of a type subject to registration under the laws of this state involved in an accident within this state has no driver's license in this state, then such driver shall not be allowed a driver's license until he has complied with the requirements of this chapter to the same extent that would be necessary if, at the time of the accident, he had held a license or been the owner of a vehicle registered in this state.

(2) When a nonresident's driving privilege is suspended pursuant to RCW 46.29.110, the department shall transmit a certified copy of the record or abstract of such action to the official in charge of the issuance of licenses and registration certificates in the state in which such nonresident resides, if the law of such other state provided for action in relation thereto similar to that provided for in subsection (3) of this section.

(3) Upon receipt of such certification that the driving privilege of a resident of this state has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the department to suspend a nonresident's driving privilege had the accident occurred in this state, the department shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security. [1967 c 32 § 38; 1963 c 169 § 18.]

46.29.190 Authority of department to decrease amount of security. The department may reduce the amount of security ordered in any case if in its judgment the amount ordered is excessive. In case the security originally ordered has been deposited, the excess deposit over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith. [1965 c 124 § 3; 1963 c 169 § 19.]

46.29.200 Correction of action by department. Whenever the department has taken any action or has failed

to take any action under this chapter by reason of having received erroneous information, then upon receiving correct information within three years after the date of an accident the department shall take appropriate action to carry out the purposes and effect of this chapter. The foregoing, however, shall not be deemed to require the department to reevaluate the amount of any deposit required under this chapter. [1967 c 61 § 1; 1965 c 124 § 4; 1963 c 169 § 20.]

46.29.210 Custody of security. The department shall place any security deposited with it under this chapter in the custody of the state treasurer. [1963 c 169 § 21.]

46.29.220 Disposition of security. (1) Such security shall be applicable and available only:

(a) For the payment of any settlement agreement covering any claim arising out of the accident upon instruction of the person who made the deposit, or

(b) For the payment of a judgment or judgments, rendered against the person required to make the deposit, for damages arising out of the accident in an action at law begun not later than three years after the date of the accident.

(2) Every distribution of funds from the security deposits shall be subject to the limits of the department's evaluation on behalf of a claimant. [1981 c 309 § 4; 1963 c 169 § 22.]

46.29.230 Return of deposit. Upon the expiration of three years from the date of the accident resulting in the security requirement, any security remaining on deposit shall be returned to the person who made such deposit or to his personal representative if an affidavit or other evidence satisfactory to the department has been filed with it:

(1) That no action for damages arising out of the accident for which deposit was made is pending against any person on whose behalf the deposit was made, and

(2) That there does not exist any unpaid judgment rendered against any such person in such an action.

The foregoing provisions of this section shall not be construed to limit the return of any deposit of security under any other provision of this chapter authorizing such return. [1981 c 309 § 5; 1963 c 169 § 23.]

46.29.240 Certain matters not evidence in civil suits. The report required following an accident, the action taken by the department pursuant to this chapter, the findings, if any, of the department upon which such action is based, and the security filed as provided in this chapter, shall not be referred to in any way, and shall not be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. [1963 c 169 § 24.]

PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

46.29.250 Application of sections requiring deposit of proof of financial responsibility for the future. The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor

vehicle laws, or who have failed to pay judgments upon causes of action arising out of ownership, maintenance or use of vehicles of a type subject to registration under the laws of this state, or who having driven or owned a vehicle involved in an accident are required to deposit security under the provisions of RCW 46.29.070. [1963 c 169 § 25.]

46.29.260 "Proof of financial responsibility for the future" defined. The term "proof of financial responsibility for the future" as used in this chapter means: Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a vehicle of a type subject to registration under the laws of this state, in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and in the amount of ten thousand dollars because of injury to or destruction of property of others in any one accident. Wherever used in this chapter the terms "proof of financial responsibility" or "proof" shall be synonymous with the term "proof of financial responsibility for the future." [1980 c 117 § 4; 1967 ex.s. c 3 § 2; 1963 c 169 § 26.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.270 "Judgment," "state" defined. The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section.

(1) The term "judgment" shall mean: Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any vehicle of a type subject to registration under the laws of this state, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages. The first page of a judgment must include a judgment summary that states damages are awarded under this section and the clerk of the court must give notice as outlined in RCW 46.29.310.

(2) The term "state" shall mean: Any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. [1999 c 296 § 2; 1963 c 169 § 27.]

46.29.280 Suspension continues until proof furnished. Whenever, under any law of this state, the license of any person is suspended or revoked by reason of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed, the suspension or revocation hereinbefore required shall remain in effect and the department shall not issue to such person any new or renewal of license until per-

mitted under the motor vehicle laws of this state, and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. Upon receiving notice of the termination or cancellation of proof of financial responsibility for the future, the department shall resuspend or revoke the person's driving privilege until the person again gives and thereafter maintains proof of financial responsibility for the future. [1985 c 157 § 1; 1979 ex.s. c 136 § 64; 1963 c 169 § 28.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.29.290 Action in respect to unlicensed person. If a person has no license, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, no license shall be thereafter issued to such person unless he shall give and thereafter maintain proof of financial responsibility for the future. [1965 c 124 § 5; 1963 c 169 § 29.]

46.29.300 Action in respect to nonresidents. Whenever the department suspends or revokes a nonresident's driving privilege by reason of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future. [1979 ex.s. c 136 § 65; 1967 c 32 § 39; 1963 c 169 § 30.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.29.310 When courts to report nonpayment of judgments. Whenever any person fails within thirty days to satisfy any judgment, then it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward immediately to the department the following:

- (1) A certified copy or abstract of such judgment;
- (2) A certificate of facts relative to such judgment;
- (3) Where the judgment is by default, a certified copy or abstract of that portion of the record which indicates the manner in which service of summons was effectuated and all the measures taken to provide the defendant with timely and actual notice of the suit against him. [1969 ex.s. c 44 § 1; 1963 c 169 § 31.]

46.29.320 Further action with respect to nonresidents. If the defendant named in any certified copy or abstract of a judgment reported to the department is a nonresident, the department shall transmit those certificates furnished to it under RCW 46.29.310 to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident. [1969 ex.s. c 44 § 2; 1963 c 169 § 32.]

46.29.330 Suspension for nonpayment of judgments. The department upon receipt of the certificates provided for by RCW 46.29.310, on a form provided by the department,

shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, except as otherwise provided in this chapter. [1990 c 250 § 52; 1969 ex.s. c 44 § 3; 1967 c 32 § 40; 1963 c 169 § 33.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.340 Exception in relation to government vehicles. The provisions of RCW 46.29.330 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation, with permission, of a vehicle owned or leased to the United States, this state or any political subdivision of this state or a municipality thereof. [1963 c 169 § 34.]

46.29.350 Exception when consent granted by judgment creditor. If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed a license or nonresident's driving privilege, the same may be allowed by the department, in its discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in RCW 46.29.400, provided the judgment debtor furnishes proof of financial responsibility. [1967 c 32 § 41; 1963 c 169 § 35.]

46.29.360 Exception when insurer liable. No license or nonresident's driving privilege of any person shall be suspended under the provisions of this chapter if the department shall find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the department that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. If the department finds that no insurer is obligated to pay such a judgment, the judgment debtor may file with the department a written notice of his intention to contest such finding by an action in the superior court. In such a case the license or the nonresident's driving privilege of such judgment debtor shall not be suspended by the department under the provisions of this chapter for thirty days from the receipt of such notice nor during the pendency of any judicial proceedings brought in good faith to determine the liability of an insurer so long as the proceedings are being diligently prosecuted to final judgment by such judgment debtor. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the department, notwithstanding any contrary finding theretofore made by it, shall forthwith suspend the license and any nonresident's driving privilege of any person against whom such judgment was rendered, as provided in RCW 46.29.330. [1967 c 32 § 42; 1963 c 169 § 36.]

46.29.370 Suspension continues until judgments paid and proof given. Such license and nonresident's driving privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of

such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in RCW 46.29.350, 46.29.360 and 46.29.400. [1967 c 32 § 43; 1963 c 169 § 37.]

46.29.390 Payments sufficient to satisfy requirements. (1) Judgments herein referred to are, for the purpose of this chapter only, deemed satisfied:

(a) When twenty-five thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(b) When, subject to such limit of twenty-five thousand dollars because of bodily injury to or death of one person, the sum of fifty thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) When ten thousand dollars has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(2) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section. [1980 c 117 § 5; 1979 c 61 § 14; 1967 ex.s. c 3 § 3; 1963 c 169 § 39.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.400 Installment payment of judgments—Default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license or nonresident's driving privilege, and shall restore any license or nonresident's driving privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtain such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default. [1967 c 32 § 44; 1963 c 169 § 40.]

46.29.410 Action if breach of agreement. In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license or nonresident's driving privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter. [1967 c 32 § 45; 1963 c 169 § 41.]

46.29.420 Proof required in addition to deposit of security after accident. Any person required to deposit security under RCW 46.29.070, for the benefit or protection

of another person injured or damaged in an accident, shall in addition be required to give proof of financial responsibility for the future. The department shall give written notice of such additional requirement to every such person at the time and in the manner provided in RCW 46.29.070 for giving notice of the requirement for security. [1963 c 169 § 42.]

46.29.430 Additional proof required—Suspension or revocation for failure to give proof. If a person required to give proof of financial responsibility under RCW 46.29.420 fails to give such proof within sixty days after the department has sent notice as hereinbefore provided, the department shall suspend, or continue in effect any existing suspension or revocation of, the license or any nonresident's driving privilege of the person. [1990 c 250 § 53; 1987 c 371 § 1; 1967 c 32 § 46; 1963 c 169 § 43.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.440 Additional proof required—Suspension to continue until proof given and maintained. Such license or nonresident's driving privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until such person shall give and thereafter maintain proof of financial responsibility for the future. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The department shall endorse appropriate restrictions on the license held by such person or may issue a new license containing such restrictions. [1967 c 32 § 47; 1965 c 124 § 6; 1963 c 169 § 44.]

46.29.450 Alternate methods of giving proof. Proof of financial responsibility when required under this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle, may be given by filing:

(1) A certificate of insurance as provided in RCW 46.29.460 or 46.29.470;

(2) A bond as provided in RCW 46.29.520;

(3) A certificate of deposit of money or securities as provided in RCW 46.29.550; or

(4) A certificate of self-insurance, as provided in RCW 46.29.630, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer. [1963 c 169 § 45.]

46.29.460 Certificate of insurance as proof. Proof of financial responsibility for the future may be furnished by filing with the department the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all vehicles covered thereby, unless the policy is issued to a per-

son who is not the owner of a motor vehicle. [1963 c 169 § 46.]

46.29.470 Certificate furnished by nonresident as proof. A nonresident may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the vehicle, or vehicles, owned by such nonresident is registered, or in the state in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the department shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state;

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued therein. [1963 c 169 § 47.]

46.29.480 Default by nonresident insurer. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the department shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues. [1963 c 169 § 48.]

46.29.490 "Motor vehicle liability policy" defined.

(1) Certification. A "motor vehicle liability policy" as said term is used in this chapter means an "owner's policy" or an "operator's policy" of liability insurance, certified as provided in RCW 46.29.460 or 46.29.470 as proof of financial responsibility for the future, and issued, except as otherwise provided in RCW 46.29.470, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named in the policy as insured.

(2) Owner's policy. Such owner's policy of liability insurance:

(a) Shall designate by explicit description or by appropriate reference all vehicles with respect to which coverage is to be granted by the policy; and

(b) Shall insure the person named therein and any other person, as insured, using any such vehicle or vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of such vehicle or vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such vehicle as follows: Twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

(3) Operator's policy. Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(4) Required statements in policies. Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided under the policy in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

(5) Policy need not insure workers' compensation, etc. Such motor vehicle liability policy need not insure any liability under any workers' compensation law nor any liability on account of bodily injury or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) Provisions incorporated in policy. Every motor vehicle liability policy is subject to the following provisions which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy defeats or voids said policy.

(b) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage.

(c) The insurance carrier may settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof is deductible from the limits of liability specified in subdivision (b) of subsection (2) of this section.

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this chapter constitutes the entire contract between the parties.

(7) Excess or additional coverage. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and such excess or additional coverage is not subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(8) Reimbursement provision permitted. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insur-

ance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

(9) Proration of insurance permitted. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(10) Multiple policies. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carrier which policies together meet such requirements.

(11) Binders. Any binder issued pending the issuance of a motor vehicle liability policy is deemed to fulfill the requirements for such a policy. [1980 c 117 § 6; 1967 ex.s. c 3 § 4; 1963 c 169 § 49.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.500 Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under RCW 46.29.460 or 46.29.470 the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified shall be filed in the department, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any vehicle designated in both certificates. [1963 c 169 § 50.]

46.29.510 Chapter not to affect other policies. (1) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform with the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

(2) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured. [1963 c 169 § 51.]

46.29.520 Bond as proof. Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties each owning real estate within this state, and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge of the superior court, which said bond shall be conditioned for payment of the amounts specified in RCW 46.29.260. Such bond shall be filed with the department and shall not be cancellable except after ten days written notice to the department. [1963 c 169 § 52.]

46.29.530 When bond constitutes a lien. Before a bond with individual sureties is accepted by the department it shall be recorded as other instruments affecting real property in the county or counties wherein any real estate scheduled in such bond is located. Such bond shall constitute a lien from the date of such recording in favor of the state upon the real

estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damage because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of this state after such bond was filed. [1963 c 169 § 53.]

46.29.540 Action on bond. If a judgment, rendered against the principal on any bond described in RCW 46.29.520, shall not be satisfied within thirty days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. Such an action to foreclose a lien shall be prosecuted in the same manner as an action to foreclose a mortgage on real estate. [1963 c 169 § 54.]

46.29.550 Money or securities as proof. Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him sixty thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of sixty thousand dollars. The state treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides. [1980 c 117 § 7; 1967 ex.s. c 3 § 5; 1963 c 169 § 55.]

Effective date—1980 c 117: See note following RCW 48.22.030.

Effective date—1967 ex.s. c 3: See note following RCW 46.29.090.

46.29.560 Application of deposit. Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a vehicle of a type subject to registration under the laws of this state after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid. Any interest or other income accruing to such money or securities, so deposited, shall be paid by the state treasurer to the depositor, or his order, as received. [1963 c 169 § 56.]

46.29.570 Owner may give proof for others. The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such

proof. The department shall endorse appropriate restrictions on the license held by such person, or may issue a new license containing such restrictions. [1963 c 169 § 57.]

46.29.580 Substitution of proof. The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter. [1963 c 169 § 58.]

46.29.590 Other proof required, when. Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the department shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration pending the filing of such other proof. [1963 c 169 § 59.]

46.29.600 Duration of proof—When proof may be canceled or returned. (1) The department shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the department shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the department shall waive the requirement of filing proof, in any of the following events:

(a) At any time after three years from the date such proof was required when, during the three-year period preceding the request, the department has not received record of a conviction, forfeiture of bail, or finding that a traffic infraction has been committed which would require or permit the suspension or revocation of the license of the person by or for whom such proof was furnished; or

(b) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) In the event the person who has given proof surrenders his license to the department;

(2) Provided, however, that the department shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed such bond or deposited such money or securities has within one year immediately preceding such request been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subdivision (1)(c) of this section applies for a license within a period of three years from the date proof was originally required, any such application shall be refused

unless the applicant shall reestablish such proof for the remainder of such three-year period. [1979 ex.s. c 136 § 66; 1963 c 169 § 60.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

VIOLATIONS

46.29.605 Suspension of registration, notice—Surrender of license plates—Penalties. (1) Whenever the involvement in a motor vehicle accident in this state results in the driving privilege of a person being suspended for failure to pay a judgment or deposit security, the department shall suspend the Washington registration of the motor vehicle if the person driving at the time of the accident was also the registered owner of the motor vehicle.

(2) A notice of suspension shall be mailed by first-class mail to the owner's last known address of record in the department and shall be effective notwithstanding the owner's failure to receive the notice.

(3) Upon suspension of the registration of a motor vehicle, the registered owner shall surrender all vehicle license plates registered to the vehicle. The department shall destroy the license plates and, upon reinstatement of the registration, shall issue new vehicle license plates as provided in RCW 46.16.270.

(4) Failure to surrender license plates under subsection (3) of this section is a misdemeanor punishable by imprisonment for not less than one day nor more than five days and by a fine of not less than fifty dollars nor more than two hundred fifty dollars.

(5) No vehicle license plates or certificate of ownership or registration for a motor vehicle may be issued and no vehicle license may be renewed during the time the registration of the motor vehicle is suspended.

(6) Any person who operates a vehicle in this state while the registration of the vehicle is suspended is guilty of a gross misdemeanor and upon conviction thereof shall be imprisoned for not less than two days nor more than five days and fined not less than one hundred dollars nor more than five hundred dollars. [1981 c 309 § 6.]

46.29.610 Surrender of license—Penalty. (1) Any person whose license shall have been suspended under any provision of this chapter, or whose policy of insurance or bond, when required under this chapter, shall have been canceled or terminated, shall immediately return the license to the department.

(2) Any person willfully failing to return a license as required in subsection (1) of this section is guilty of a misdemeanor. [1990 c 250 § 54; 1963 c 169 § 61.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—1990 c 250: See note following RCW 46.16.301.

46.29.620 Forged proof—Penalty. Any person who shall forge, or, without authority, sign any evidence of proof of financial responsibility for the future, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be guilty of a gross misdemeanor. [1963 c 169 § 62.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

MISCELLANEOUS

46.29.630 Self-insurers. (1) Any person in whose name more than twenty-five vehicles are registered in this state may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection (2) of this section.

(2) The department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgment obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both.

(3) Upon not less than five days' notice and a hearing pursuant to such notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. [1963 c 169 § 63.]

46.29.640 Chapter not to prevent other process. Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. [1963 c 169 § 64.]

46.29.900 Construction—1963 c 169. RCW 46.29.010 through 46.29.640 shall be codified as a single chapter of the Revised Code of Washington. RCW 46.29.010 through 46.29.050 shall be captioned "ADMINISTRATION." RCW 46.29.060 through 46.29.240 shall be captioned "SECURITY FOLLOWING ACCIDENT." RCW 46.29.250 through 46.29.600 shall be captioned "PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE." RCW 46.29.610 through 46.29.620 shall be captioned "VIOLATIONS OF THIS CHAPTER." RCW 46.29.630 through 46.29.640 shall be captioned "MISCELLANEOUS PROVISIONS RELATING TO FINANCIAL RESPONSIBILITY." Such captions and subsection headings, as used in this chapter, do not constitute any part of the law. [1963 c 169 § 67.]

46.29.910 Severability—1963 c 169. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 169 § 68.]

46.29.920 Repeals and saving. Sections 46.24.010 through 46.24.910 and sections 46.28.010 through 46.28.200, chapter 12, Laws of 1961 and RCW 46.24.010 through 46.24.910 and RCW 46.28.010 through 46.28.200 are each repealed.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder. [1963 c 169 § 69.]

Chapter 46.30 RCW

MANDATORY LIABILITY INSURANCE

Sections

46.30.010	Legislative intent.
46.30.020	Liability insurance or other financial responsibility required—Violations—Exceptions.
46.30.030	Insurance identification card.
46.30.040	Providing false evidence of financial responsibility—Penalty.
46.30.900	Severability—1989 c 353.
46.30.901	Effective date—1989 c 353.

46.30.010 Legislative intent. It is a privilege granted by the state to operate a motor vehicle upon the highways of this state. The legislature recognizes the threat that uninsured drivers are to the people of the state. In order to alleviate the threat posed by uninsured drivers it is the intent of the legislature to require that all persons driving vehicles registered in this state satisfy the financial responsibility requirements of this chapter. By enactment of this chapter it is not the intent of the legislature to modify, amend, or invalidate existing insurance contract terms, conditions, limitations, or exclusions or to preclude insurance companies from using similar terms, conditions, limitations, or exclusions in future contracts. [1989 c 353 § 1.]

46.30.020 Liability insurance or other financial responsibility required—Violations—Exceptions. (1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16 RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. Written proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) When asked to do so by a law enforcement officer, failure to display an insurance identification card as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community restitution.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court or a violations bureau and provides written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed and the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal. In lieu of personal appearance, a person cited for a violation of subsection (1) of this

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section may, before the date scheduled for the person's appearance before the court or violations bureau, submit by mail to the court or violations bureau written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.16.305(1), governed by RCW 46.16.020, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW. [2003 c 221 § 1; 2002 c 175 § 35; 1991 sp.s. c 25 § 1; 1991 c 339 § 24; 1989 c 353 § 2.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Notice of liability insurance requirement: RCW 46.16.212.

46.30.030 Insurance identification card. (1) Whenever an insurance company issues or renews a motor vehicle liability insurance policy, the company shall provide the policyholder with an identification card as specified by the department of licensing. At the policyholder's request, the insurer shall provide the policyholder a card for each vehicle covered under the policy.

(2) The department of licensing shall adopt rules specifying the type, style, and content of insurance identification cards to be used for proof of compliance with RCW 46.30.020, including the method for issuance of such identification cards by persons or organizations providing proof of compliance through self-insurance, certificate of deposit, or bond. In adopting such rules the department shall consider the guidelines for insurance identification cards developed by the insurance industry committee on motor vehicle administration. [1989 c 353 § 3.]

46.30.040 Providing false evidence of financial responsibility—Penalty. Any person who knowingly provides false evidence of financial responsibility to a law enforcement officer or to a court, including an expired or canceled insurance policy, bond, or certificate of deposit is guilty of a misdemeanor. [1991 sp.s. c 25 § 2; 1989 c 353 § 4.]

46.30.900 Severability—1989 c 353. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 353 § 12.]

46.30.901 Effective date—1989 c 353. This act shall take effect January 1, 1990. The director of the department of licensing may immediately take such steps as are necessary

to ensure that this act is implemented on its effective date. [1989 c 353 § 13.]

Chapter 46.32 RCW VEHICLE INSPECTION

Sections

46.32.005	Definitions.
46.32.010	Types of inspection authorized—Duties of state patrol—Penalties.
46.32.020	Rules—Supplies—Assistants—Prioritization of higher risk motor carriers.
46.32.040	Frequency of inspection—High-risk carrier compliance review fee.
46.32.050	Prohibited practices—Penalty.
46.32.060	Moving defective vehicle unlawful—Impounding authorized.
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46.32.005 Definitions. For the purpose of this chapter "commercial motor vehicle" means a self-propelled or towed vehicle used on a highway in interstate or intrastate commerce to transport passengers or property, when the vehicle:

(1) Has a gross vehicle weight rating or gross combination weight rating or gross weight or gross combination weight of 4,536 kilograms or more (10,001 pounds or more); or

(2) Is designed or used to transport more than eight passengers, including the driver, for compensation; or

(3) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting materials found by the secretary of transportation to be hazardous under 49 U.S.C. Sec. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 C.F.R., subtitle B, Chapter I, subchapter C.

A recreational vehicle used for noncommercial purposes is not considered a commercial motor vehicle. "Recreational vehicle" includes a vehicle towing a horse trailer for a non-commercial purpose. [2006 c 50 § 2; 1993 c 403 § 1.]

46.32.010 Types of inspection authorized—Duties of state patrol—Penalties. (1) The chief of the Washington state patrol may operate, maintain, or designate, throughout the state of Washington, stations for the inspection of commercial motor vehicles, school buses, and private carrier buses, with respect to vehicle equipment, drivers' qualifications, and hours of service and to set reasonable times when inspection of vehicles shall be performed.

(2) The state patrol may inspect a commercial motor vehicle while the vehicle is operating on the public highways of this state with respect to vehicle equipment, hours of service, and driver qualifications.

(3) It is unlawful for any vehicle required to be inspected to be operated over the public highways of this state unless and until it has been approved periodically as to equipment.

(4) Inspections shall be performed by a responsible employee of the chief of the Washington state patrol, who

shall be duly authorized and who shall have authority to secure and withhold, with written notice to the director of licensing, the certificate of license registration and license plates of any vehicle found to be defective in equipment so as to be unsafe or unfit to be operated upon the highways of this state, and it shall be unlawful for any person to operate a vehicle placed out of service by an officer unless and until it has been placed in a condition satisfactory to pass a subsequent equipment inspection. The officer in charge of such vehicle equipment inspection shall grant to the operator of such defective vehicle the privilege to move such vehicle to a place for repair under such restrictions as may be reasonably necessary.

(5) In the event any insignia, sticker, or other marker is adopted to be displayed upon vehicles in connection with the inspection of vehicle equipment, it shall be displayed as required by the rules of the chief of the Washington state patrol, and it is a traffic infraction for any person to mutilate, destroy, remove, or otherwise interfere with the display thereof.

(6) It is a traffic infraction for any person to refuse to have his motor vehicle examined as required by the chief of the Washington state patrol, or, after having had it examined, to refuse to place an insignia, sticker, or other marker, if issued, upon the vehicle, or fraudulently to obtain any such insignia, sticker, or other marker, or to refuse to place his motor vehicle in proper condition after having had it examined, or in any manner, to fail to conform to the provisions of this chapter.

(7) It is a traffic infraction for any person to perform false or improvised repairs, or repairs in any manner not in accordance with acceptable and customary repair practices, upon a motor vehicle. [2007 c 419 § 7; 1993 c 403 § 2; 1986 c 123 § 1; 1979 ex.s. c 136 § 67; 1979 c 158 § 156; 1967 c 32 § 48; 1961 c 12 § 46.32.010. Prior: 1947 c 267 § 1; 1945 c 44 § 1; 1937 c 189 § 7; Rem. Supp. 1947 § 6360-7.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.32.020 Rules—Supplies—Assistants—Prioritization of higher risk motor carriers. (1)(a) The chief of the Washington state patrol may adopt reasonable rules regarding types of vehicles to be inspected, inspection criteria, times for the inspection of vehicle equipment, drivers' qualifications, hours of service, and all other matters with respect to the conduct of vehicle equipment and driver inspections.

(b) The chief of the Washington state patrol shall prepare and furnish such stickers, tags, record and report forms, stationery, and other supplies as shall be deemed necessary. The chief of the Washington state patrol is empowered to appoint and employ such assistants as he may consider necessary and to fix hours of employment and compensation.

(2) The chief of the Washington state patrol shall use data-driven analysis to prioritize for inspections and compliance reviews those motor carriers whose relative safety fitness identify them as higher risk motor carriers. [2007 c 419 § 8; 1993 c 403 § 3; 1986 c 123 § 2; 1961 c 12 § 46.32.020. Prior: 1945 c 44 § 2; 1937 c 189 § 8; Rem. Supp. 1945 § 6360-8.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.32.040 Frequency of inspection—High-risk carrier compliance review fee. (1) Except as provided in subsection (2) of this section, vehicle equipment inspection shall be at such intervals as required by the chief of the Washington state patrol and shall be made without charge.

(2) When a motor carrier is identified as a high-risk carrier through a data-driven analysis due to formerly or recently identified deficiencies or violations, the fee for each motor carrier compliance review follow-up to ensure those deficiencies or violations have been corrected is two hundred fifty dollars. The fee shall be collected by the Washington state patrol and shall be deposited into the state patrol highway account. This fee applies to motor carriers already identified as a high-risk carrier or a motor carrier that has been reclassified as a high-risk carrier due to recently identified deficiencies or violations. [2007 c 419 § 9; 1986 c 123 § 3; 1961 c 12 § 46.32.040. Prior: 1945 c 44 § 4; 1937 c 189 § 10; Rem. Supp. 1945 § 6360-10.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.32.050 Prohibited practices—Penalty. It shall be unlawful for any person employed by the chief of the Washington state patrol at any vehicle equipment inspection station, to order, direct, recommend, or influence the correction of vehicle equipment defects by any person or persons whomsoever.

It shall be unlawful for any person employed by the chief of the Washington state patrol while in or about any vehicle equipment inspection station, to perform any repair or adjustment upon any vehicle or any equipment or appliance of any vehicle whatsoever.

It shall be unlawful for any person to solicit in any manner the repair to any vehicle or the adjustment of any equipment or appliance of any vehicle, upon the property of any vehicle equipment inspection station or upon any public highway adjacent thereto.

Violation of the provisions of this section is a traffic infraction. [1986 c 123 § 4; 1979 ex.s. c 136 § 68; 1961 c 12 § 46.32.050. Prior: 1945 c 44 § 5; 1937 c 189 § 11; Rem. Supp. 1945 § 6360-11.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.32.060 Moving defective vehicle unlawful—Impounding authorized. It shall be unlawful for any person to operate or move, or for any owner to cause or permit to be operated or moved upon any public highway, any vehicle or combination of vehicles, which is not at all times equipped in the manner required by this title, or the equipment of which is not in a proper condition and adjustment as required by this title or rules adopted by the chief of the Washington state patrol.

Any vehicle operating upon the public highways of this state and at any time found to be defective in equipment in such a manner that it may be considered unsafe shall be an unlawful vehicle and may be prevented from further operation until such equipment defect is corrected and any peace

officer is empowered to impound such vehicle until the same has been placed in a condition satisfactory to vehicle inspection. The necessary cost of impounding any such unlawful vehicle and any cost for the storage and keeping thereof shall be paid by the owner thereof. The impounding of any such vehicle shall be in addition to any penalties for such unlawful operation.

The provisions of this section shall not be construed to prevent the operation of any such defective vehicle to a place for correction of equipment defect in the manner directed by any peace officer or representative of the state patrol. [1987 c 330 § 705; 1986 c 123 § 5; 1961 c 12 § 46.32.060. Prior: 1937 c 189 § 12; RRS § 6360-12.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Moving unsafe or noncomplying vehicle: RCW 46.37.010.

46.32.070 Inspection of damaged vehicle. If a vehicle required to be inspected becomes damaged or deteriorated in such a manner that such vehicle has become unsafe for operation upon the public highways of this state, it is unlawful for the owner or operator thereof to cause such vehicle to be operated upon a public highway upon its return to service unless such owner or operator presents such vehicle for inspection of equipment within twenty-four hours after its return to service. [1986 c 123 § 6; 1961 c 12 § 46.32.070. Prior: 1937 c 189 § 13; RRS § 6360-13.]

46.32.080 Commercial motor vehicle safety enforcement—Application for department of transportation number. (1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor vehicles including, but not limited to, safety audits and compliance reviews. Those motor carriers that have operations in this state are subject to the patrol's safety audits and compliance review programs. Compliance reviews may result in the initiation of an enforcement action, which may include monetary penalties.

(2) Motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, or dairy, must have a department of transportation number, as defined in RCW 46.16.004, but are exempt from safety audits and compliance reviews.

(3) All records and documents required of motor carriers with operations in this state must be available for review and inspection during normal business hours. Duly authorized agents of the state patrol conducting safety audits and compliance reviews may enter the motor carrier's place of business, or any location where records or equipment are located, at reasonable times and without advanced notice. Motor carriers who do not permit duly authorized agents to enter their place of business, or any location where records or equipment are located, for safety audits and compliance reviews are subject to enforcement action, including a monetary penalty.

(4)(a) All motor carriers with a commercial motor vehicle, as defined in RCW 46.16.004, that operate in this state must apply for a department of transportation number, as defined in RCW 46.16.004, by January 1, 2008.

(b) All motor carriers operating in this state who (i) have not applied under (a) of this subsection for a department of transportation number, as defined in RCW 46.16.004, and (ii) have a commercial motor vehicle that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more, must apply for a department of transportation number by January 1, 2011.

(c) The state patrol may deny an application if the motor carrier does not meet the requirements and standards under this chapter. The state patrol shall not issue a department of transportation number to a motor carrier who at the time of application has been placed out of service by the federal motor carrier safety administration. Commercial motor vehicles must be marked as prescribed by the state patrol. Those motor carriers with a current United States department of transportation number are exempt from applying for a department of transportation number.

(d) The state patrol may (i) place a motor carrier out of service or (ii) refuse to issue or recognize as valid a department of transportation number to a motor carrier who: (A) Formerly held a department of transportation number that was placed out of service for cause, and where cause has not been removed; (B) is a subterfuge for the real party in interest whose department of transportation number was placed out of service for cause, and where cause has not been removed; (C) as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, had a department of transportation number and was placed out of service for cause, and where cause has not been removed; or (D) has an unsatisfied debt to the state assessed under this chapter.

(e) Upon a finding by the chief of the state patrol or the chief's designee that a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the state patrol shall notify the department, and the department shall revoke the registrations for all commercial motor vehicles that are owned by the motor carrier subject to RCW 46.32.080. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief or the chief's designee shall consider safety factors. [2007 c 419 § 10; 1995 c 272 § 1.]

Effective date—2007 c 419 § 10: "Section 10 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 419 § 19.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Transfer of powers, duties, and functions: "(1) All powers, duties, and functions of the utilities and transportation commission pertaining to safety inspections of commercial vehicles, including but not limited to terminal safety audits, except for those carriers subject to the economic regulation of the commission, are transferred to the Washington state patrol.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the Washington state patrol. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the Washington state patrol. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the Washington state patrol.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on January 1, 1996, be transferred and credited to the Washington state patrol.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the utilities and transportation commission engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the Washington state patrol. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the Washington state patrol to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service. These employees will only be transferred upon successful completion of the Washington state patrol background investigation.

(4) All rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the Washington state patrol. All existing contracts and obligations remain in full force and shall be performed by the Washington state patrol.

(5) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before January 1, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section alters an existing collective bargaining unit or the provisions of an existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law." [1995 c 272 § 4.]

Effective dates—1995 c 272: See note following RCW 46.32.090.

46.32.085 Rules to regulate commercial motor vehicle safety requirements. The Washington state patrol, in consultation with the department of licensing, shall adopt rules consistent with this chapter to regulate vehicle safety requirements for motor carriers who own, control, manage, or operate a commercial motor vehicle within this state. Except as otherwise provided in this chapter, the rules adopted by the state patrol under this section must be as rigorous as federal regulations governing certain interstate motor carriers at 49 C.F.R. Parts 40 and 380 through 397, which cover the areas of commercial motor carrier driver training, controlled substance and alcohol use and testing, compliance with the federal driver's license requirements and penalties, vehicle equipment and safety standards, hazardous material practices, financial responsibility, driver qualifications, hours of service, vehicle inspection and corrective actions, and assessed penalties for noncompliance. The state patrol shall amend these rules periodically to maintain, to the extent permissible under this chapter, standards as rigorous as the federal regulations governing certain interstate motor carriers. The state patrol shall submit a report to the legislature by December 31st of each year that outlines new rules or rule changes and explains how the state rules compare to the federal regulations. [2007 c 419 § 14.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.32.090 Fees. The department shall collect a fee of sixteen dollars, in addition to all other fees and taxes, for each motor vehicle base plated in the state of Washington that is subject to highway inspections and compliance reviews under RCW 46.32.080, at the time of registration and renewal

of registration under chapter 46.16 or 46.87 RCW, or the international registration plan if base plated in a foreign jurisdiction. The fee must be apportioned for those vehicles operating interstate and registered under the international registration plan. This fee does not apply to nonmotor-powered vehicles, including trailers. Refunds will not be provided for fees paid under this section when the vehicle is no longer subject to RCW 46.32.080. The department may deduct an amount equal to the cost of administering the program. All remaining fees shall be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund. [2007 c 419 § 11; 1996 c 86 § 1; 1995 c 272 § 2.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective date—1996 c 86: "Section 1 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1997." [1996 c 86 § 2.]

Effective dates—1995 c 272: "Section 2 of this act becomes effective with motor vehicle registration fees due or to become due January 1, 1996. Sections 1 and 3 through 6 of this act take effect January 1, 1996." [1995 c 272 § 7.]

46.32.100 Violations—Penalties—Out-of-service orders. (1)(a) In addition to all other penalties provided by law, a commercial motor vehicle that is subject to compliance reviews under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation, except for each violation of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the out of service defects have been satisfactorily repaired, for which the person is liable for a penalty of five hundred dollars. The driver of a commercial motor vehicle who violates an out-of-service order is liable for a penalty of at least one thousand one hundred dollars but not more than two thousand seven hundred fifty dollars. An employer who allows a driver to operate a commercial motor vehicle when there is an out-of-service order is liable for a penalty of at least two thousand seven hundred fifty dollars but not more than eleven thousand dollars. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(b) In addition to all other penalties provided by law, any motor carrier, company, or any officer or agent of a motor carrier or company operating a commercial motor vehicle subject to compliance reviews under this chapter who refuses entry or to make the required records, documents, and vehicles available to a duly authorized agent of the state patrol is liable for a penalty of at least five thousand dollars as well as an out-of-service order being placed on the department of transportation number, as defined in RCW 46.16.004, and vehicle registration to operate. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(c) A motor carrier operating a commercial motor vehicle after receiving a final unsatisfactory rating or being placed out of service is liable for a penalty of not more than

eleven thousand dollars. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(2) The Washington state patrol may place an out-of-service order on a department of transportation number, as defined in RCW 46.16.004, for violations of this chapter or for nonpayment of any monetary penalties assessed by the state patrol or the utilities and transportation commission, as a result of compliance reviews, or for violations of cease and desist orders issued by the utilities and transportation commission. The state patrol shall notify the department of licensing when an out-of-service order has been placed on a motor carrier's department of transportation number. The state patrol shall notify the motor carrier when there has been an out-of-service order placed on the motor carrier's department of transportation number and the vehicle registrations have been revoked by sending a notice by first-class mail using the last known address for the registered or legal owner or owners, and recording the transmittal on an affidavit of first-class mail. Notices under this section fulfill the requirements of RCW 46.12.160. Motor carriers may not be eligible for a new department of transportation number, vehicle registration, or temporary permits to operate unless the violations that resulted in the out-of-service order have been corrected.

(3) Any penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. If the amount of the penalty is not paid to the state patrol within twenty days after the later of (a) receipt of the notice imposing the penalty, or (b) disposition of an adjudicative proceeding regarding the penalty, the state patrol may commence an adjudicative proceeding under chapter 34.05 RCW in the name of the state of Washington to confirm the violation and recover the penalty. In all such proceedings the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund. [2007 c 419 § 12; 2005 c 444 § 1; 1998 c 172 § 1; 1995 c 272 § 3.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Effective dates—1995 c 272: See note following RCW 46.32.090.

46.32.110 Controlled substances, alcohol. A person or employer operating as a motor carrier shall comply with the requirements of the United States department of transportation federal motor carrier safety regulations as contained in Title 49 C.F.R. Part 382, controlled substances and alcohol use and testing. A person or employer who begins or conducts commercial motor vehicle operations without having a controlled substance and alcohol testing program that is in compliance with the requirements of Title 49 C.F.R. Part 382 is subject to a penalty, under the process set forth in RCW 46.32.100, of up to one thousand five hundred dollars and up to an additional five hundred dollars for each motor vehicle driver employed by the person or employer who is not in compliance with the motor vehicle driver testing requirements. A person or employer having actual knowledge that a driver has tested positive for controlled substances or alcohol who allows a positively tested person to continue to perform

a safety-sensitive function is subject to a penalty, under the process set forth in RCW 46.32.100, of one thousand five hundred dollars. [1999 c 351 § 5.]

Chapter 46.37 RCW

VEHICLE LIGHTING AND OTHER EQUIPMENT

Sections

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Moving defective vehicle: RCW 46.32.060.

46.37.005 State patrol—Additional powers and duties. In addition to those powers and duties elsewhere granted, the chief of the Washington state patrol shall have the power and the duty to adopt, apply, and enforce such reasonable rules and regulations (1) relating to proper types of vehicles or combinations thereof for hauling passengers, commodities, freight, and supplies, (2) relating to vehicle equipment, and (3) relating to the enforcement of the provi-

sions of this title with regard to vehicle equipment, as may be deemed necessary for the public welfare and safety in addition to but not inconsistent with the provisions of this title.

The chief of the Washington state patrol is authorized to adopt by regulation, federal standards relating to motor vehicles and vehicle equipment, issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, or any amendment to said act, notwithstanding any provision in Title 46 RCW inconsistent with such standards. Federal standards adopted pursuant to this section shall be applicable only to vehicles manufactured in a model year following the adoption of such standards. [1987 c 330 § 706; 1985 c 165 § 1; 1982 c 106 § 1; 1967 ex.s. c 145 § 56; 1967 c 32 § 49; 1961 c 12 § 46.37.005. Prior: 1943 c 133 § 1; 1937 c 189 § 6; Rem. Supp. 1943 § 6360-6; 1927 c 309 § 14, part; RRS § 6362-14, part. Formerly RCW 46.36.010.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

Towing operators, appointment of: RCW 46.55.115.

46.37.010 Scope and effect of regulations—General penalty. (1) It is a traffic infraction for any person to drive or move, or for a vehicle owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles that:

(a) Is in such unsafe condition as to endanger any person;
 (b) Is not at all times equipped with such lamps and other equipment in proper working condition and adjustment as required by this chapter or by rules issued by the Washington state patrol;

(c) Contains any parts in violation of this chapter or rules issued by the Washington state patrol.

(2) It is a traffic infraction for any person to do any act forbidden or fail to perform any act required under this chapter or rules issued by the Washington state patrol.

(3) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(4) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(5) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(6) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(7) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(8) This chapter does not apply to off-road vehicles used on nonhighway roads or used on streets, roads, or highways as authorized under RCW 46.09.180.

(9) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park

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maintenance and operations upon public highways within state parks.

(10) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(11) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(12) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee. [2006 c 306 § 1; 2006 c 212 § 5; 2005 c 213 § 7; 1997 c 241 § 14; 1989 c 178 § 22; 1987 c 330 § 707; 1979 ex.s. c 136 § 69; 1977 ex.s. c 355 § 1; 1963 c 154 § 1; 1961 c 12 § 46.37.010. Prior: 1955 c 269 § 1; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2006 c 212 § 5 and by 2006 c 306 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Construction—Effective date—2005 c 213: See notes following RCW 46.09.010.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 355: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 355 § 57.]

Effective date—1963 c 154: "This act shall take effect on January 1, 1964." [1963 c 154 § 32.]

Moving defective vehicle: RCW 46.32.060.

46.37.020 When lighted lamps and signaling devices are required. Every vehicle upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise and at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles on the highway are not clearly discernible at a distance of one thousand feet ahead shall display lighted headlights, other lights, and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles, and such stop lights, turn signals, and other signaling devices shall be lighted as prescribed for the use of such devices. [1977 ex.s. c 355 § 2; 1974 ex.s. c 124 § 2; 1963 c 154 § 2; 1961 c 12 §

46.37.020. Prior: 1955 c 269 § 2; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

Local twenty-four hour headlight policy: RCW 47.04.180.

Motorcycles and motor-driven cycles—When headlamps and tail lamps to be lighted: RCW 46.37.522.

46.37.030 Visibility distance and mounted height of lamps. (1) Whenever requirement is hereinafter declared as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in RCW 46.37.020 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(2) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

(3) No additional lamp, reflective device, or other motor vehicle equipment shall be added which impairs the effectiveness of this standard. [1977 ex.s. c 355 § 3; 1961 c 12 § 46.37.030. Prior: 1955 c 269 § 3; prior: 1937 c 189 § 14, part; RRS § 6360-14, part; RCW 46.40.010, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.040 Head lamps on motor vehicles. (1) Every motor vehicle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this chapter.

(2) Every head lamp upon every motor vehicle shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches to be measured as set forth in RCW 46.37.030(2). [1977 ex.s. c 355 § 4; 1961 c 12 § 46.37.040. Prior: 1955 c 269 § 4; prior: 1937 c 189 § 15; RRS § 6360-15; RCW 46.40.020; 1933 c 156 § 1, part; 1929 c 178 § 3, part; 1927 c 309 §§ 20, part, 24; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS §§ 6362-20, part, 6362-24.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.050 Tail lamps. (1) After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole trailer, and any other vehicle which is being drawn at the end of a combination of vehicles, shall be equipped with at least two tail lamps mounted on the rear, which, when lighted as required in RCW 46.37.020, shall emit a red light plainly visible from a distance of one thousand feet to the rear, except that passenger cars manufactured or assembled prior to January 1, 1939, shall have at least one tail lamp. On a combination of vehicles only the tail lamps on the rearmost vehicle need actually be seen from the distance specified. On vehicles equipped with

more than one tail lamp, the lamps shall be mounted on the same level and as widely spaced laterally as practicable.

(2) Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two inches nor less than fifty-two inches.

(3) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted. [1977 ex.s. c 355 § 5; 1963 c 154 § 3; 1961 c 12 § 46.37.050. Prior: 1955 c 269 § 5; prior: 1947 c 267 § 2, part; 1937 c 189 § 16, part; Rem. Supp. 1947 § 6360-16, part; RCW 46.40.030, part; 1929 c 178 § 7; 1927 c 309 § 27; RRS § 6362-27; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.060 Reflectors. (1) Every motor vehicle, trailer, semitrailer, and pole trailer shall carry on the rear, either as a part of the tail lamps or separately, two or more red reflectors meeting the requirements of this section: PROVIDED, HOWEVER, That vehicles of the types mentioned in RCW 46.37.090 shall be equipped with reflectors meeting the requirements of RCW 46.37.110 and 46.37.120.

(2) Every such reflector shall be mounted on the vehicle at a height not less than fifteen inches nor more than seventy-two inches measured as set forth in RCW 46.37.030(2), and shall be of such size and characteristics and so mounted as to be visible at night from all distances within six hundred feet to one hundred feet from such vehicle when directly in front of lawful upper beams of head lamps, except that reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be visible at night from all distances within three hundred and fifty feet to one hundred feet when directly in front of lawful upper beams of head lamps. [1977 ex.s. c 355 § 6; 1963 c 154 § 4; 1961 c 12 § 46.37.060. Prior: 1955 c 269 § 6; prior: 1947 c 267 § 2, part; 1937 c 189 § 16, part; Rem. Supp. 1947 § 6360-16, part; RCW 46.40.030, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.070 Stop lamps and electric turn signals required. (1) After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole trailer shall be equipped with two or more stop lamps meeting the requirements of RCW 46.37.200, except that passenger cars manufactured or assembled prior to January 1, 1964, shall be equipped with at least one such stop lamp. On a combination of vehicles, only the stop lamps on the rearmost vehicle need actually be seen from the distance specified in RCW 46.37.200(1).

(2) After January 1, 1960, every motor vehicle, trailer, semitrailer and pole trailer shall be equipped with electric turn signal lamps meeting the requirements of RCW 46.37.200(2), except that passenger cars, trailers, semitrailers, pole trailers, and trucks less than eighty inches in width,

manufactured or assembled prior to January 1, 1953, need not be equipped with electric turn signal lamps.

(3) Every passenger car manufactured or assembled after September 1, 1985; and every passenger truck, passenger van, or passenger sports utility vehicle manufactured or assembled after September 1, 1993, must be equipped with a rear center high-mounted stop lamp meeting the requirements of RCW 46.37.200(3). [2006 c 306 § 2; 1977 ex.s. c 355 § 7; 1963 c 154 § 5; 1961 c 12 § 46.37.070. Prior: 1959 c 319 § 32; 1955 c 269 § 7; prior: 1953 c 248 § 2, part; 1947 c 267 § 4, part; 1937 c 189 § 23, part; Rem. Supp. 1947 § 6360-23, part; RCW 46.40.090, part; 1929 c 178 § 1, part; 1927 c 309 § 15, part; RRS § 6362-15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.080 Application of succeeding sections. Those sections of this chapter which follow immediately, including RCW 46.37.090, 46.37.100, 46.37.110, 46.37.120, and 46.37.130, relating to clearance lamps, marker lamps, and reflectors, shall apply as stated in said sections to vehicles of the type therein enumerated, namely buses, trucks, truck tractors, and trailers, semitrailers, and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in RCW 46.37.020. For purposes of the sections enumerated above, a camper, when mounted upon a motor vehicle, shall be considered part of the permanent structure of that motor vehicle. [1977 ex.s. c 355 § 8; 1963 c 154 § 6; 1961 c 12 § 46.37.080. Prior: 1955 c 269 § 8; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.090 Additional equipment required on certain vehicles. In addition to other equipment required in RCW 46.37.040, 46.37.050, 46.37.060, and 46.37.070, the following vehicles shall be equipped as herein stated under the conditions stated in RCW 46.37.080, and in addition, the reflectors elsewhere enumerated for such vehicles shall conform to the requirements of RCW 46.37.120(1).

(1) Buses, trucks, motor homes, and motor vehicles with mounted campers eighty inches or more in over-all width:

(a) On the front, two clearance lamps, one at each side, and on vehicles manufactured or assembled after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section;

(b) On the rear, two clearance lamps, one at each side, and after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section;

(c) On each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) On each side, two reflectors, one at or near the front and one at or near the rear.

(2) Trailers and semitrailers eighty inches or more in over-all width:

(a) On the front, two clearance lamps, one at each side;

(b) On the rear, two clearance lamps, one at each side, and after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section;

(c) On each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) On each side, two reflectors, one at or near the front and one at or near the rear: PROVIDED, That a mobile home as defined by RCW 46.04.302 need not be equipped with two side marker lamps or two side reflectors as required by subsection (2) (c) and (d) of this section while operated under the terms of a special permit authorized by RCW 46.44.090.

(3) Truck tractors:

On the front, two cab clearance lamps, one at each side, and on vehicles manufactured or assembled after January 1, 1964, three identification lamps meeting the specifications of subdivision (6) [(7)] of this section.

(4) Trailers, semitrailers, and pole trailers thirty feet or more in over-all length:

On each side, one amber side marker lamp and one amber reflector, centrally located with respect to the length of the vehicle: PROVIDED, That a mobile home as defined by RCW 46.04.302 need not be equipped with such side marker lamp or reflector while operated under the terms of a special permit authorized by RCW 46.44.090.

(5) Pole trailers:

(a) On each side, one amber side marker lamp at or near the front of the load;

(b) One amber reflector at or near the front of the load;

(c) On the rearmost support for the load, one combination marker lamp showing amber to the front and red to the rear and side, mounted to indicate maximum width of the pole trailer.

(6) Boat trailers eighty inches or more in overall width:

(a) One on each side, at or near the midpoint, one clearance lamp performing the function of both a front and rear clearance lamp;

(b) On the rear, after June 1, 1978, three identification lamps meeting the specifications of subsection (7) of this section;

(c) One on each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) On each side, two reflectors, one at or near the front and one at or near the rear.

(7) Whenever required or permitted by this chapter, identification lamps shall be grouped in a horizontal row, with lamp centers spaced not less than six nor more than twelve inches apart, and mounted on the permanent structure of the vehicle as close as practicable to the vertical centerline: PROVIDED, HOWEVER, That where the cab of a vehicle is not more than forty-two inches wide at the front roof line, a single identification lamp at the center of the cab shall be deemed to comply with the requirements for front identification lamps. [1977 ex.s. c 355 § 9; 1963 c 154 § 7; 1961 c 12 § 46.37.090. Prior: 1955 c 269 § 9; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.100 Color of clearance lamps, side marker lamps, back-up lamps, and reflectors. (1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop lamp or other signal device, which may be red, amber, or yellow, and except that on any vehicle forty or more years old, or on any motorcycle regardless of age, the taillight may also contain a blue or purple insert of not more than one inch in diameter, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber. [2002 c 196 § 1; 1992 c 46 § 1; 1961 c 12 § 46.37.100. Prior: 1955 c 269 § 10; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part.]

46.37.110 Mounting of reflectors, clearance lamps, identification lamps, and side marker lamps. (1) Reflectors when required by RCW 46.37.090 shall be mounted at a height not less than twenty-four inches and not higher than sixty inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this chapter.

(2) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate the extreme height and width of the vehicle. When rear identification lamps are required and are mounted as high as is practicable, rear clearance lamps may be mounted at optional height, and when the mounting of front clearance lamps results in such lamps failing to indicate the extreme width of the trailer, such lamps may be mounted at optional height but must indicate, as near as practicable, the extreme width of the trailer. Clearance lamps on truck tractors shall be located so as to indicate the extreme width of the truck tractor cab. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both: PROVIDED, That no rear clearance lamp may be combined in any shell or housing with any tail lamp or identification lamp. [1977 ex.s. c 355 § 10; 1961 c 12 § 46.37.110. Prior: 1955 c 269 § 11; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.120 Visibility of reflectors, clearance lamps, identification lamps, and side marker lamps. (1) Every reflector upon any vehicle referred to in RCW 46.37.090 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within six hundred feet to one hundred feet from the vehicle when directly in front of lawful lower beams of head lamps, except that the visibility for reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be measured in front of the lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred feet and fifty feet from the front and rear, respectively, of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between five hundred feet and fifty feet from the side of the vehicle on which mounted. [1977 ex.s. c 355 § 11; 1963 c 154 § 8; 1961 c 12 § 46.37.120. Prior: 1955 c 269 § 12; prior: 1947 c 267 § 3, part; 1937 c 189 § 17, part; Rem. Supp. 1947 § 6360-17, part; RCW 46.40.040, part; 1933 c 156 §§ 5, part, 6, part; 1929 c 178 §§ 7, part, 8, part; 1927 c 309 §§ 27, part, 28, part; RRS §§ 6362-27, part, 6362-28, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.130 Obstructed lights not required. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted. [1961 c 12 § 46.37.130. Prior: 1955 c 269 § 13.]

46.37.140 Lamps, reflectors, and flags on projecting load. Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in RCW 46.37.020, two red lamps, visible from a distance of at least five hundred feet to the rear, two red reflectors visible at night from all distances within six hundred feet to one hundred feet to the rear when directly in front of lawful lower beams of headlamps, and located so as to indicate maximum width, and on each side one red lamp, visible from a distance of at least five hundred feet to the side, located so as to indicate maximum overhang. There shall be displayed at all other times on any vehicle having a load which extends beyond its sides or more than four feet beyond

its rear, red flags, not less than twelve inches square, marking the extremities of such loads, at each point where a lamp would otherwise be required by this section, under RCW 46.37.020. [1977 ex.s. c 355 § 12; 1963 c 154 § 9; 1961 c 12 § 46.37.140. Prior: 1955 c 269 § 14; prior: 1937 c 189 § 18; RRS § 6360-18; RCW 46.40.050; 1929 c 178 § 11, part; 1927 c 309 § 32, part, RRS § 6362-32, part; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.150 Lamps on vehicles—Parked or stopped vehicles, lighting requirements. (1) Every vehicle shall be equipped with one or more lamps, which, when lighted, shall display a white or amber light visible from a distance of one thousand feet to the front of the vehicle, and a red light visible from a distance of one thousand feet to the rear of the vehicle. The location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic.

(2) Whenever a vehicle is lawfully parked upon a street or highway during the hours between a half hour after sunset and a half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of one thousand feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(3) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, outside an incorporated city or town, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and there is insufficient light to reveal any person or object within a distance of one thousand feet upon such highway, such vehicle so parked or stopped shall be equipped with and shall display lamps meeting the requirements of subsection (1) of this section.

(4) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. [1977 ex.s. c 355 § 13; 1963 c 154 § 10; 1961 c 12 § 46.37.150. Prior: 1955 c 269 § 15; prior: 1937 c 189 § 19; RRS § 6360-19; RCW 46.40.060; 1933 c 156 § 8; 1929 c 178 § 10; 1927 c 309 § 31; RRS § 6362-31.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.160 Hazard warning lights and reflectors on farm equipment—Slow-moving vehicle emblem. (1) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1970, shall be equipped with vehicular hazard warning lights of the type described in RCW 46.37.215 visible from a distance of not less than one thousand feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

(2) Every self-propelled unit of farm equipment or implement of husbandry manufactured or assembled after January 1, 1970, shall at all times, and every other motor vehicle shall at times mentioned in RCW 46.37.020, be equipped with lamps and reflectors as follows:

(a) At least two headlamps meeting the requirements of RCW 46.37.220, 46.37.240, or 46.37.260;

(b) At least one red lamp visible when lighted from a distance of not less than one thousand feet to the rear mounted as far to the left of center of vehicle as practicable;

(c) At least two red reflectors visible from all distances within six hundred to one hundred feet to the rear when directly in front of lawful lower beams of headlamps.

(3) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in RCW 46.37.020 be equipped with lamps and reflectors as follows:

(a) The farm tractor element of every such combination shall be equipped as required in subsections (1) and (2) of this section;

(b) The towed unit of farm equipment or implement of husbandry element of such combination shall be equipped on the rear with two red lamps visible when lighted from a distance of not less than one thousand feet to the rear, and two red reflectors visible to the rear from all distances within six hundred feet to one hundred feet to the rear when directly in front of lawful upper beams of head lamps. One reflector shall be so positioned to indicate, as nearly as practicable, the extreme left projection of the towed unit;

(c) If the towed unit or its load obscures either of the vehicle hazard warning lights on the tractor, the towed unit shall be equipped with vehicle hazard warning lights described in subsection (1) of this section.

(4) The two red lamps and the two red reflectors required in the foregoing subsections of this section on a self-propelled unit of farm equipment or implement of husbandry or combination of farm tractor and towed farm equipment shall be so positioned as to show from the rear as nearly as practicable the extreme width of the vehicle or combination carrying them: PROVIDED, That if all other requirements are met, reflective tape or paint may be used in lieu of reflectors required by subsection (3) of this section.

(5) After January 1, 1970, every farm tractor and every self-propelled unit of farm equipment or implement of husbandry designed for operation at speeds not in excess of twenty-five miles per hour shall at all times be equipped with a slow moving vehicle emblem mounted on the rear except as provided in subsection (6) of this section.

(6) After January 1, 1970, every combination of farm tractor and towed farm equipment or towed implement of husbandry normally operating at speeds not in excess of twenty-five miles per hour shall at all times be equipped with a slow moving vehicle emblem as follows:

(a) Where the towed unit is sufficiently large to obscure the slow moving vehicle emblem on the farm tractor, the towed unit shall be equipped with a slow moving vehicle emblem. In such cases, the towing vehicle need not display the emblem;

(b) Where the slow moving vehicle emblem on the farm tractor unit is not obscured by the towed unit, then either or both may be equipped with the required emblem but it shall be sufficient if either has it.

(7) The emblem required by subsections (5) and (6) of this section shall comply with current standards and specifications as promulgated by the Washington state patrol. [1987 c 330 § 708; 1977 ex.s. c 355 § 14; 1969 ex.s. c 281 § 22;

1963 c 154 § 11; 1961 c 12 § 46.37.160. Prior: 1955 c 269 § 16.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.170 Lamps and reflectors on other vehicles and equipment—Slow-moving vehicle emblem on animal-drawn vehicles. (1) Every vehicle, including animal-drawn vehicles and vehicles referred to in *RCW 46.37.010(3), not specifically required by the provisions of RCW 46.37.020 through 46.37.330 to be equipped with lamps, or other lighting devices, shall at all times specified in RCW 46.37.020 be equipped with at least one lamp displaying a white light visible from a distance of not less than one thousand feet to the front of said vehicle, and shall also be equipped with two lamps displaying red light visible from a distance of not less than one thousand feet to the rear of said vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than one thousand feet to the rear and two red reflectors visible from all distances of six hundred to one hundred feet to the rear when illuminated by the lawful lower beams of head lamps.

(2) After June 1, 1978, every animal-drawn vehicle shall at all times be equipped with a slow-moving vehicle emblem complying with RCW 46.37.160(7). [1977 ex.s. c 355 § 15; 1963 c 154 § 12; 1961 c 12 § 46.37.170. Prior: 1955 c 269 § 17; prior: 1937 c 189 § 21; RRS § 6360-21; RCW 46.40.080; 1927 c 309 § 34; 1921 c 96 § 22, part; 1917 c 40 § 1; RRS § 6362-34.]

***Reviser's note:** RCW 46.37.010 was amended by 2006 c 306 § 1, changing subsection (3) to subsection (4).

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.180 Spot lamps and auxiliary lamps. (1) Spot lamps. Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be so aimed and used that no part of the high intensity portion of the beam will strike the windshield, or any windows, mirror, or occupant of another vehicle in use.

(2) Fog lamps. Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height of not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head lamp beams as specified in RCW 46.37.220.

(3) Auxiliary passing lamps. Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of RCW 46.37.220 shall apply to any combinations of head lamps and auxiliary passing lamps.

(4) Auxiliary driving lamps. Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands. The provisions of RCW 46.37.220 shall apply to any combination of head lamps and auxiliary driving lamps. [1963 c 154 § 13; 1961 c 12 § 46.37.180. Prior: 1955 c 269 § 18; prior: 1949 c 157 § 1; Rem. Supp. 1949 § 6360-22a; RCW 46.40.110, 46.40.120.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.184 Red flashing lights on fire department vehicles. All fire department vehicles in service shall be identified by red lights of an intermittent flashing type, visible from both front and rear for a distance of five hundred feet under normal atmospheric conditions. Such red flashing lights shall be well separated from the headlights so that they will not black out when headlights are on. Such red flashing lights shall be in operation at all times when such vehicle is on emergency status. [1961 c 12 § 46.37.184. Prior: 1953 c 161 § 1. Formerly RCW 46.40.220.]

46.37.185 Green light on firefighters' private cars. Firefighters, when approved by the chief of their respective service, shall be authorized to use a green light on the front of their private cars when on emergency duty only. Such green light shall be visible for a distance of two hundred feet under normal atmospheric conditions and shall be of a type and mounting approved by the Washington state patrol. The use of the green light shall only be for the purpose of identification and the operator of a vehicle so equipped shall not be entitled to any of the privileges provided in RCW 46.61.035 for the operators of authorized emergency vehicles. [2007 c 218 § 73; 1987 c 330 § 709; 1971 ex.s. c 92 § 3; 1961 c 12 § 46.37.185. Prior: 1953 c 161 § 2. Formerly RCW 46.40.230.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.186 Fire department sign or plate on private car. (1) No private vehicle, bearing a sign or plate indicating a fire department connection, shall be driven or operated on any public highway, except when the owner thereof is a bona fide member of a fire department.

(2) Any sign or plate indicating fire department connection on a private car of any member of a fire department shall include the name of the municipality or fire department organization to which the owner belongs. [1961 c 12 § 46.37.186. Prior: 1953 c 161 § 3. Formerly RCW 46.40.240.]

46.37.187 Green light, sign or plate—Identification card required. Any individual displaying a green light as authorized in RCW 46.37.185, or a sign or plate as authorized in RCW 46.37.186, shall also carry attached to a convenient location on the private vehicle to which the green light or sign or plate is attached, an identification card showing the name of the owner of said vehicle, the organization to which he or she belongs and bearing the signature of the chief of the ser-

vice involved. [1971 ex.s. c 92 § 2; 1961 c 12 § 46.37.187. Prior: 1953 c 161 § 4. Formerly RCW 46.40.250.]

46.37.188 Penalty for violation of RCW 46.37.184 through 46.37.188. Every violation of RCW 46.37.184, 46.37.185, 46.37.186, or 46.37.187 is a traffic infraction. [1979 ex.s. c 136 § 70; 1961 c 12 § 46.37.188. Prior: 1953 c 161 § 5. Formerly RCW 46.40.260.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.37.190 Warning devices on vehicles—Other drivers yield and stop. (1) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive marking required by this chapter, be equipped with at least one lamp capable of displaying a red light visible from at least five hundred feet in normal sunlight and a siren capable of giving an audible signal.

(2) Every school bus and private carrier bus shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a "stop" signal upon a background not less than fourteen by eighteen inches displaying the word "stop" in letters of distinctly contrasting colors not less than eight inches high, and shall further be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level and these lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight.

(3) Vehicles operated by public agencies whose law enforcement duties include the authority to stop and detain motor vehicles on the public highways of the state may be equipped with a siren and lights of a color and type designated by the state patrol for that purpose. The state patrol may prohibit the use of these sirens and lights on vehicles other than the vehicles described in this subsection.

(4) The lights described in this section shall not be mounted nor used on any vehicle other than a school bus, a private carrier bus, or an authorized emergency or law enforcement vehicle.

(5) The use of the signal equipment described in this section and RCW 46.37.670, except the signal preemption devices used by public transit vehicles and department of transportation, city, or county maintenance vehicles that are not used in conjunction with emergency equipment, shall impose upon drivers of other vehicles the obligation to yield right-of-way and stop as prescribed in RCW 46.61.210, 46.61.370, and 46.61.350. [2005 c 183 § 8; 1993 c 401 § 2; 1987 c 330 § 710; 1985 c 331 § 1; 1982 c 101 § 1; 1971 ex.s. c 92 § 1; 1970 ex.s. c 100 § 5; 1965 ex.s. c 155 § 53; 1963 c 154 § 14; 1961 c 12 § 46.37.190. Prior: 1957 c 66 § 1; 1955 c 269 § 19.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.191 Implementing rules. The state patrol shall adopt rules to implement RCW 46.37.190. [1993 c 401 § 3.]

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46.37.193 Signs on buses. Every school bus and private carrier bus, in addition to any other equipment or distinctive markings required by this chapter, shall bear upon the front and rear thereof, above the windows thereof, plainly visible signs containing only the words "school bus" on a school bus and only the words "private carrier bus" on a private carrier bus in letters not less than eight inches in height, and in addition shall be equipped with visual signals meeting the requirements of RCW 46.37.190. School districts may affix signs designed according to RCW 46.61.380 informing motorists of the monetary penalty for failure to stop for a school bus when the visual signals are activated.

However, a private carrier bus that regularly transports children to and from a private school or in connection with school activities may display the words "school bus" in a manner provided in this section and need not comply with the requirements set forth in the most recent edition of "Specifications for School Buses" published by the superintendent of public instruction. [1997 c 80 § 3; 1995 c 141 § 2; 1990 c 241 § 10.]

School bus markings: RCW 46.61.380.

46.37.194 Authorized emergency vehicles—State patrol authority, maintenance, and applicant and driver screening. The state patrol may make rules and regulations relating to authorized emergency vehicles and shall test and approve sirens and emergency vehicle lamps to be used on such vehicles. The equipment and standards review unit shall require a record check of all applicants and drivers for an authorized emergency vehicle permit through the Washington state patrol criminal identification section pursuant to RCW 10.97.050 and through the federal bureau of investigation before issuing an authorized emergency vehicle permit. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. When necessary, applicants and drivers may be employed on a conditional basis pending completion of the investigation. Pursuant to RCW 43.43.742, the applicant, driver, or employer shall pay costs associated with the record check. [2006 c 27 § 1; 1987 c 330 § 711; 1961 c 12 § 46.37.194. Prior: 1957 c 66 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.195 Sale of emergency vehicle lighting equipment restricted. A public agency shall not sell or give emergency vehicle lighting equipment or other equipment to a person who may not lawfully operate the lighting equipment or other equipment on the public streets and highways. [1990 c 94 § 2.]

Legislative finding—1990 c 94: "The legislature declares that public agencies should not engage in activity that leads or abets a person to engage in conduct that is not lawful. The legislature finds that some public agencies sell emergency vehicle lighting equipment at public auctions to persons who may not lawfully use the equipment. The legislature further finds that this practice misleads well-intentioned citizens and also benefits malevolent individuals." [1990 c 94 § 1.]

46.37.196 Red lights on emergency tow trucks. All emergency tow trucks shall be identified by an intermittent or revolving red light capable of 360° visibility at a distance of five hundred feet under normal atmospheric conditions. This

intermittent or revolving red light shall be used only at the scene of an emergency or accident, and it will be unlawful to use such light while traveling to or from an emergency or accident, or for any other purposes. [1977 ex.s. c 355 § 16.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.200 Stop lamps and electric turn signals displayed. (1) Any vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred feet and on any vehicle manufactured or assembled after January 1, 1964, three hundred feet to the rear in normal sunlight, and which shall be actuated upon application of a service brake, and which may but need not be incorporated with one or more other rear lamps.

(2) Any vehicle may be equipped and when required under RCW 46.37.070(2) shall be equipped with electric turn signals which shall indicate an intention to turn by flashing lights showing to the front and rear of a vehicle or on a combination of vehicles on the side of the vehicle or combination toward which the turn is to be made. The lamps showing to the front shall be mounted on the same level and as widely spaced laterally as practicable and, when signaling, shall emit amber light: PROVIDED, That on any vehicle manufactured prior to January 1, 1969, the lamps showing to the front may emit white or amber light, or any shade of light between white and amber. The lamp showing to the rear shall be mounted on the same level and as widely spaced laterally as practicable, and, when signaling, shall emit a red or amber light, or any shade of color between red and amber. Turn signal lamps shall be visible from a distance of not less than five hundred feet to the front and rear in normal sunlight. Turn signal lamps may, but need not be, incorporated in other lamps on the vehicle.

(3) Any vehicle may be equipped and when required under this chapter shall be equipped with a center high-mounted stop lamp mounted on the center line of the rear of the vehicle. These stop lamps shall display a red light visible from a distance of not less than three hundred feet to the rear in normal sunlight, and shall be actuated upon application of a service brake, and may not be incorporated with any other rear lamps. [2006 c 306 § 3; 1977 ex.s. c 355 § 17; 1963 c 154 § 15; 1961 c 12 § 46.37.200. Prior: 1955 c 269 § 20; prior: 1953 c 248 § 2, part; 1947 c 267 § 4, part; 1937 c 189 § 23, part; Rem. Supp. 1947 § 6360-23, part; RCW 46.40.090, part; 1929 c 178 § 1, part; 1927 c 309 § 15, part; RRS § 6362-15.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.210 Additional lighting equipment. (1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with one or more back-up lamps either separately or in combination with other lamps, but any such back-up lamp or lamps shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle may be equipped with one or more side marker lamps, and any such lamp may be flashed in conjunction with turn or vehicular hazard warning signals. Side marker lamps located toward the front of a vehicle shall be amber, and side marker lamps located toward the rear shall be red.

(5) Any vehicle eighty inches or more in over-all width, if not otherwise required by RCW 46.37.090, may be equipped with not more than three identification lamps showing to the front which shall emit an amber light without glare and not more than three identification lamps showing to the rear which shall emit a red light without glare. Such lamps shall be mounted as specified in RCW 46.37.090(7).

(6)(a) Every motor vehicle, trailer, semitrailer, truck tractor, and pole trailer used in the state of Washington may be equipped with an auxiliary lighting system consisting of:

(i) One green light to be activated when the accelerator of the motor vehicle is depressed;

(ii) Not more than two amber lights to be activated when the motor vehicle is moving forward, or standing and idling, but is not under the power of the engine.

(b) Such auxiliary system shall not interfere with the operation of vehicle stop lamps or turn signals, as required by RCW 46.37.070. Such system, however, may operate in conjunction with such stop lamps or turn signals.

(c) Only one color of the system may be illuminated at any one time, and at all times either the green light, or amber light or lights shall be illuminated when the stop lamps of the vehicle are not illuminated.

(d) The green light, and the amber light or lights, when illuminated shall be plainly visible at a distance of one thousand feet to the rear.

(e) Only one such system may be mounted on a motor vehicle, trailer, semitrailer, truck tractor, or pole trailer; and such system shall be rear mounted in a horizontal fashion, at a height of not more than seventy-two inches, nor less than twenty inches, as provided by RCW 46.37.050.

(f) On a combination of vehicles, only the lights of the rearmost vehicle need actually be seen and distinguished as provided in subparagraph (d) of this subsection.

(g) Each manufacturer's model of such a system as described in this subsection shall be approved by the state patrol as provided for in RCW 46.37.005 and 46.37.320, before it may be sold or offered for sale in the state of Washington. [1987 c 330 § 712; 1977 ex.s. c 355 § 18; 1975 1st ex.s. c 242 § 1; 1963 c 154 § 16; 1961 c 12 § 46.37.210. Prior: 1955 c 269 § 21; prior: 1937 c 189 § 24; RRS § 6360-24; RCW 46.40.100.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.215 Hazard warning lamps. (1) Any vehicle may be equipped with lamps for the purpose of warning other operators of other vehicles of the presence of a vehicular traf-

fic hazard requiring the exercise of unusual care in approaching, overtaking, or passing.

(2) After June 1, 1978, every motor home, bus, truck, truck tractor, trailer, semitrailer, or pole trailer eighty inches or more in overall width or thirty feet or more in overall length shall be equipped with lamps meeting the requirements of this section.

(3) Vehicular hazard warning signal lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing amber light: PROVIDED, That on any vehicle manufactured prior to January 1, 1969, the lamps showing to the front may display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than five hundred feet in normal sunlight. [1977 ex.s. c 355 § 19.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.220 Multiple-beam road-lighting equipment.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles shall be so arranged that the driver may select at will between distributions of light projected to different elevations, and such lamps may be so arranged that such selection can be made automatically subject to the following limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of four hundred fifty feet ahead for all conditions of loading;

(2) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of one hundred fifty feet ahead; and on a straight level road under any conditions of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver;

(3) Every new motor vehicle registered in this state after January 1, 1948, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. [1977 ex.s. c 355 § 20; 1961 c 12 § 46.37.220. Prior: 1955 c 269 § 22; prior: 1947 c 267 § 5, part; Rem. Supp. 1947 § 6360-25a, part; RCW 46.40.140, part; 1933 c 156 § 3, part; 1929 c 178 § 5, part; 1927 c 309 § 22, part; RRS § 6362-22, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.230 Use of multiple-beam road-lighting equipment. (1) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in RCW 46.37.020, the driver shall use a distribution of light, or composite beam, directed high enough and of suffi-

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cient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(2) Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in RCW 46.37.220(2) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(3) Whenever the driver of a vehicle approaches another vehicle from the rear within three hundred feet such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in RCW 46.37.220(1). [1963 c 154 § 17; 1961 c 12 § 46.37.230. Prior: 1955 c 269 § 23; prior: 1947 c 267 § 5, part; Rem. Supp. 1947 § 6360-25a, part; RCW 46.40.140, part; 1933 c 156 § 3, part; 1929 c 178 § 5, part; 1927 c 309 § 22, part; RRS § 6362-22, part.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.240 Single-beam road-lighting equipment.

Head lamp systems which provide only a single distribution of light shall be permitted on all farm tractors regardless of date of manufacture, and on all other motor vehicles manufactured and sold prior to one year after March 18, 1955, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The head lamps shall be so aimed that when the vehicle is not loaded none of the high intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead;

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet. [1977 ex.s. c 355 § 21; 1963 c 154 § 18; 1961 c 12 § 46.37.240. Prior: 1955 c 269 § 24; prior: 1947 c 267 § 5, part; Rem. Supp. 1947 § 6360-25a, part; RCW 46.40.140, part; 1933 c 156 § 3, part; 1929 c 178 § 5, part; 1927 c 309 § 22, part; RRS § 6362-22, part.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.260 Alternate road lighting equipment. Any motor vehicle may be operated under the conditions specified in RCW 46.37.020 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects one hundred feet ahead in lieu of lamps required in RCW 46.37.220 or 46.37.240: PROVIDED, HOWEVER, That at no time shall it be operated at a speed in excess of twenty miles per hour. [1977 ex.s. c 355 § 22; 1961 c 12 § 46.37.260. Prior: 1955 c 269 § 26; prior: 1937 c 189 § 27; RRS § 6360-27; RCW 46.40.150.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.270 Number of lamps required—Number of additional lamps permitted. (1) At all times specified in RCW 46.37.020, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than three hundred candlepower, not more than a total of two of any such additional lamps on the front of a vehicle shall be lighted at any one time when upon a highway. [1977 ex.s. c 355 § 23; 1961 c 12 § 46.37.270. Prior: 1955 c 269 § 27; prior: 1937 c 189 § 28; RRS § 6360-28; RCW 46.40.160; 1929 c 178 § 2; 1927 c 309 § 19; 1921 c 96 § 22, part; 1919 c 59 § 10, part; 1917 c 155 § 15, part; 1915 c 142 § 21, part; RRS § 6362-19.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.280 Special restrictions on lamps. (1) During the times specified in RCW 46.37.020, any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps, warning lamps authorized by the state patrol and school bus warning lamps, which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(2) Except as required in RCW 46.37.190 no person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof.

(3) Flashing lights are prohibited except as required in RCW 46.37.190, 46.37.200, 46.37.210, 46.37.215, and 46.37.300, warning lamps authorized by the state patrol, and light-emitting diode flashing taillights on bicycles. [1998 c 165 § 16; 1987 c 330 § 713; 1977 ex.s. c 355 § 24; 1963 c 154 § 19; 1961 c 12 § 46.37.280. Prior: 1955 c 269 § 28; prior: 1949 c 157 § 2; 1947 c 267 § 6; 1947 c 200 § 2; 1937 c 189 § 29; Rem. Supp. 1949 § 6360-29; RCW 46.40.170; 1927 c 309 § 33; RRS § 6362-33.]

Short title—1998 c 165: See note following RCW 43.59.010.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.290 Special lighting equipment on school buses and private carrier buses. The chief of the Washington state patrol is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses and private carrier buses consistent with the provisions of this chapter, but supplemental thereto. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers. [1987 c 330 § 714; 1977 c 45 § 1; 1970 ex.s. c 100 § 6; 1961 c 12 § 46.37.290. Prior: 1955 c 269 § 29; prior:

1937 c 189 § 25, part; RRS § 6360-25, part; RCW 46.40.130, part; 1929 c 178 § 3, part; 1927 c 309 § 20, part; RRS § 6362-20, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

School buses—Crossing arms: RCW 46.37.620.

46.37.300 Standards for lights on snow-removal or highway maintenance and service equipment. (1) The state patrol shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow-removal and other highway maintenance and service equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal and other highway maintenance and service equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those approved by the American association of state highway officials.

(2) It shall be unlawful to operate any snow-removal and other highway maintenance and service equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section. [1987 c 330 § 715; 1963 c 154 § 20; 1961 c 12 § 46.37.300. Prior: 1955 c 269 § 30.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.310 Selling or using lamps or equipment. (1) No person may have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any such vehicle any head lamp, auxiliary or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required under this chapter, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the state patrol and conforming to rules adopted by it.

(2) No person may have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer any lamp or device mentioned in this section conforming to rules adopted by the state patrol unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(3) No person may use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless the lamps are mounted, adjusted, and aimed in accordance with instructions of the state patrol. [1987 c 330 § 716; 1986 c 113 § 1; 1961 c 12 § 46.37.310. Prior: 1955 c 269 § 31; prior: 1937 c 189 § 30; RRS § 6360-30; RCW 46.40.180; 1929 c 178 § 12; 1927 c 309 § 35; RRS § 6362-35.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.320 Authority of state patrol regarding lighting devices or other safety equipment. (1) The chief of the state patrol is hereby authorized to adopt and enforce rules

establishing standards and specifications governing the performance of lighting devices and their installation, adjustment, and aiming, when in use on motor vehicles, and other safety equipment, components, or assemblies of a type for which regulation is required in this chapter or in rules adopted by the state patrol. Such rules shall correlate with and, so far as practicable, conform to federal motor vehicle safety standards adopted pursuant to the national traffic and motor vehicle safety act of 1966 (15 U.S.C. Sec. 1381 et seq.) covering the same aspect of performance, or in the absence of such federal standards, to the then current standards and specifications of the society of automotive engineers applicable to such equipment: PROVIDED, That the sale, installation, and use of any headlamp meeting the standards of either the society of automotive engineers or the United Nations agreement concerning motor vehicle equipment and parts done at Geneva on March 20, 1958, or as amended and adopted by the Canadian standards association (CSA standard D106.2), as amended, shall be lawful in this state.

(2) Every manufacturer who sells or offers for sale lighting devices or other safety equipment subject to requirements established by the state patrol shall, if the lighting device or safety equipment is not in conformance with applicable federal motor vehicle safety standards, provide for submission of such lighting device or safety equipment to any recognized organization or agency such as, but not limited to, the American national standards institute, the society of automotive engineers, or the American association of motor vehicle administrators, as the agent of the state patrol. Issuance of a certificate of compliance for any lighting device or item of safety equipment by that agent is deemed to comply with the standards set forth by the state patrol. Such certificate shall be issued by the agent of the state before sale of the product within the state.

(3) The state patrol may at any time request from the manufacturer a copy of the test data showing proof of compliance of any device with the requirements established by the state patrol and additional evidence that due care was exercised in maintaining compliance during production. If the manufacturer fails to provide such proof of compliance within sixty days of notice from the state patrol, the state patrol may prohibit the sale of the device in this state until acceptable proof of compliance is received by the state patrol.

(4) The state patrol or its agent may purchase any lighting device or other safety equipment, component, or assembly subject to this chapter or rules adopted by the state patrol under this chapter, for purposes of testing or retesting the equipment as to its compliance with applicable standards or specifications. [1987 c 330 § 717; 1986 c 113 § 2. Prior: 1977 ex.s. c 355 § 25; 1977 ex.s. c 20 § 1; 1961 c 12 § 46.37.320; prior: 1955 c 269 § 32; prior: 1937 c 189 § 31; RRS § 6360-31; RCW 46.40.190; 1933 c 156 § 4, part; 1929 c 178 § 6, part; 1927 c 309 § 23, part; RRS § 6362-23, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.330 Revocation of certificate of approval on devices—Reapproval, conditions. (1) When the state patrol has reason to believe that an approved device does not comply with the requirements of this chapter or regulations issued

by the state patrol, it may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the state patrol shall determine whether said approved device meets the requirements of this chapter and regulations issued by the state patrol. If said device does not meet the requirements of this chapter or the state patrol's regulations it shall give notice to the one to whom the certificate of approval has been issued of the state patrol's intention to suspend or revoke the certificate of approval for such device in this state.

(2) If at the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the state patrol that said approved device as thereafter to be sold or offered for sale meets the requirements of this chapter or the state patrol's regulations, the state patrol shall suspend or revoke the approval issued therefor and shall require the withdrawal of all such devices from the market and may require that all said devices sold since the notification be replaced with devices that do comply.

(3) When a certificate of approval has been suspended or revoked pursuant to this chapter or regulations by the state patrol, the device shall not be again approved unless and until it has been submitted for reapproval and it has been demonstrated, in the same manner as in an application for an original approval, that the device fully meets the requirements of this chapter or regulations issued by the state patrol. The state patrol may require that all previously approved items are being effectively recalled and removed from the market as a condition of reapproval. [1987 c 330 § 718; 1977 ex.s. c 355 § 26; 1961 c 12 § 46.37.330. Prior: 1955 c 269 § 33; prior: 1937 c 189 § 32; RRS § 6360-32; RCW 46.40.200; 1933 c 156 § 4, part; 1929 c 178 § 6, part; 1927 c 309 § 23, part; RRS § 6362-23, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.340 Braking equipment required. Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicle operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(1) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in RCW 46.04.552, shall be equipped with service brakes complying with the performance requirements of RCW 46.37.351 and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(2) Parking brakes—adequacy. Every such vehicle and combination of vehicles shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking

brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors, and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(3) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

(a) Trailers, semitrailers, or pole trailers of a gross weight not exceeding three thousand pounds, provided that:

(i) The total weight on and including the wheels of the trailer or trailers shall not exceed forty percent of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(ii) The combination of vehicles consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of RCW 46.37.351;

(b) Trailers, semitrailers, or pole trailers manufactured and assembled prior to July 1, 1965, shall not be required to be equipped with brakes when the total weight on and including the wheels of the trailer or trailers does not exceed two thousand pounds;

(c) Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of RCW 46.37.351;

(d) Trucks and truck tractors manufactured before July 25, 1980, and having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. Trucks and truck tractors manufactured on or after July 25, 1980, and having three or more axles are required to have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. Such trucks and truck tractors may be equipped with an automatic device to reduce the front-wheel braking effort by up to fifty percent of the normal braking force, regardless of whether or not antilock system failure has occurred on any axle, and:

(i) Must not be operable by the driver except upon application of the control that activates the braking system; and

(ii) Must not be operable when the pressure that transmits brake control application force exceeds eighty-five pounds per square inch (psi) on air-mechanical braking systems, or eighty-five percent of the maximum system pressure in vehicles utilizing other than compressed air.

All trucks and truck tractors having three or more axles must be capable of complying with the performance requirements of RCW 46.37.351;

(e) Special mobile equipment as defined in RCW 46.04.552 and all vehicles designed primarily for off-highway use with braking systems which work within the power train rather than directly at each wheel;

(f) Vehicles manufactured prior to January 1, 1930, may have brakes operating on only two wheels.

(g) For a forklift manufactured after January 1, 1970, and being towed, wheels need not have brakes except for those on the rearmost axle so long as such brakes, together with the brakes on the towing vehicle, shall be adequate to stop the combination within the stopping distance requirements of RCW 46.37.351.

(4) Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of three thousand pounds, manufactured or assembled after January 1, 1964, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen minutes, upon breakaway from the towing vehicle.

(5) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1964, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(6) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1964, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(7) Two means of emergency brake operation.

(a) Air brakes. After January 1, 1964, every towing vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, and all other vehicles equipped with air controlled brakes, shall be equipped with two means for emergency application of the brakes. One of these means shall apply the brakes automatically in the event of a reduction of the vehicle's air supply to a fixed pressure which shall be not lower than twenty pounds per square inch nor higher than forty-five pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(b) Vacuum brakes. After January 1, 1964, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (8) of this section, a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(8) Single control to operate all brakes. After January 1, 1964, every motor vehicle, trailer, semitrailer, and pole

trailer, and every combination of such vehicles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control in the towing vehicle.

(9) Reservoir capacity and check valve.

(a) Air brakes. Every bus, truck, or truck tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty percent. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(b) Vacuum brakes. After January 1, 1964, every truck with three or more axles equipped with vacuum assistor type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty percent.

(c) Reservoir safeguarded. All motor vehicles, trailers, semitrailers, and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(10) Warning devices.

(a) Air brakes. Every bus, truck, or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the primary supply air reservoir pressure of the vehicle is below fifty percent of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(b) Vacuum brakes. After January 1, 1964, every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight inches of mercury.

(c) Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges

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indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement. [1989 c 221 § 1; 1979 c 11 § 1. Prior: 1977 ex.s. c 355 § 27; 1977 ex.s. c 148 § 2; 1965 ex.s. c 170 § 49; 1963 c 154 § 21; 1961 c 12 § 46.37.340; prior: 1955 c 269 § 34; prior: 1937 c 189 § 34, part; RRS § 6360-34, part; RCW 46.36.020, 46.36.030, part; 1929 c 180 § 6; 1927 c 309 § 16; 1923 c 181 § 5; 1921 c 96 § 23; 1915 c 142 § 22; RRS § 6362-16.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.351 Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brakes, shall be capable of:

- (1) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,
- (2) Decelerating to a stop from not more than twenty miles per hour at not less than the feet per second per second tabulated herein for its classification, and
- (3) Stopping from a speed of twenty miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one percent grade), dry, smooth, hard surface that is free from loose material.

Classification of vehicles	Braking force as a percentage of gross vehicle or combination weight	Brake system application and braking distance in feet from an initial speed of 20 m.p.h.	
		Deceleration in feet per second per second	Stopping distance in feet from an initial speed of 20 m.p.h.
A Passenger vehicles with a seating capacity of 10 people or less including driver, not having a manufacturer's gross vehicle weight rating	52.8%	17	25
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of 10,000 pounds or less	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than 10,000 pounds	43.5%	14	40

C-2	Combinations of a two-axle towing vehicle and a trailer with a gross trailer weight of 3,000 pounds or less . . .	43.5%	14	40
C-3	Buses, regardless of the number of axles, not having a manufacturer's gross weight rating . . .	43.5%	14	40
C-4	All combinations of vehicles in driveaway-towaway operations . . .	43.5%	14	40
D	All other vehicles and combinations of vehicles	43.5%	14	50

[1963 c 154 § 22.]

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.360 Maintenance of brakes—Brake system failure indicator. (1) All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the front and back wheels and to wheels on opposite sides of the vehicle.

(2) All passenger cars manufactured on or after January 1, 1968, and other types of vehicles manufactured on or after September 1, 1975, shall be equipped with brake system failure indicator lamps which shall be maintained in good working order. The brake system shall demonstrate good working order and integrity by the application of a force of one hundred twenty-five pounds to the brake pedal for ten seconds without the occurrence of any of the following:

- (i) Illumination of the brake system failure indicator lamp;
 - (ii) A decrease of more than eighty percent of service brake pedal height as measured from its free position to the floorboard or any other object which restricts service brake pedal travel;
 - (iii) Failure of any hydraulic line or other part.
- (3) Brake hoses shall not be mounted so as to contact the vehicle body or chassis. In addition, brake hoses shall not be cracked, chafed, flattened, abraded, or visibly leaking. Protection devices such as "rub rings" shall not be considered part of the hose or tubing.

(4) Disc and drum condition. If the drum is embossed with a maximum safe diameter dimension or the rotor is embossed with a minimum safety thickness dimension, the drum or disc shall be within the appropriate specifications. These dimensions will be found on motor vehicles manufactured since January 1, 1971, and may be found on vehicles manufactured for several years prior to that time. If the drums and discs are not embossed, the drums and discs shall be within the manufacturer's specifications.

(5) Friction materials. On each brake the thickness of the lining or pad shall not be less than one thirty-second of an inch over the rivet heads, or the brake shoe on bonded linings or pads. Brake linings and pads shall not have cracks or breaks that extend to rivet holes except minor cracks that do not impair attachment. Drum brake linings shall be securely attached to brake shoes. Disc brake pads shall be securely attached to shoe plates.

(6) Backing plates and caliper assemblies shall not be deformed or cracked. System parts shall not be broken, misaligned, missing, binding, or show evidence of severe wear. Automatic adjusters and other parts shall be assembled and installed correctly. [1977 ex.s. c 355 § 28; 1961 c 12 § 46.37.360. Prior: 1955 c 269 § 36; prior: 1951 c 56 § 2, part; 1937 c 189 § 34, part; RRS § 6360-34, part; RCW 46.36.020, 46.36.030, part; 1929 c 180 § 6; 1927 c 309 § 16; 1923 c 181 § 5; 1921 c 96 § 23; 1915 c 142 § 22; RRS § 6362-16.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.365 Hydraulic brake fluid—Defined—Standards and specifications. (1) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(2) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(3) The chief of the Washington state patrol shall, in compliance with the provisions of chapter 34.05 RCW, the administrative procedure act, which govern the adoption of rules, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(4) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section and the standard specifications adopted by the state patrol. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section and the standards and specifications adopted by the state patrol.

(5) Subsections (3) and (4) of this section shall not apply to petroleum base fluids in vehicles with brake systems designed to use them. [1987 c 330 § 719; 1977 ex.s. c 355 § 29; 1963 c 154 § 24.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

46.37.369 Wheels and front suspension. (1) No vehicle shall be equipped with wheel nuts, hub caps, or wheel discs extending outside the body of the vehicle when viewed from directly above which:

- (a) Incorporate winged projections; or
- (b) Constitute a hazard to pedestrians and cyclists.

For the purposes of this section, a wheel nut is defined as an exposed nut which is mounted at the center or hub of a wheel, and is not one of the ordinary hexagonal nuts which secure a wheel to an axle and are normally covered by a hub cap or wheel disc.

(2) Tire rims and wheel discs shall have no visible cracks, elongated bolt holes, or indications of repair by welding. In addition, the lateral and radial runout of each rim bead area shall not exceed one-eighth of an inch of total indicated runout.

(3) King pins or ball joints shall not be worn to the extent that front wheels tip in or out more than one-quarter of an inch at the lower edge of the tire. [1977 ex.s. c 355 § 30.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Lowering vehicle below legal clearance: RCW 46.61.680.

46.37.375 Steering and suspension systems. (1) Construction of steering control system. The steering control system shall be constructed and maintained so that no components or attachments, including horn activating mechanism and trim hardware, can catch the driver's clothing or jewelry during normal driving maneuvers.

(2) Maintenance of steering control system. System play, lash, or free play in the steering system shall not exceed the values tabulated herein.

Steering wheel diameter (inches)	Lash (inches)
16 or less	2
18	2-1/4
20	2-1/2
22	2-3/4

(3) Linkage play. Free play in the steering linkage shall not exceed one-quarter of an inch.

(4) Other components of the steering system such as the power steering belt, tie rods, or idler arms or Pitman arms shall not be broken, worn out, or show signs of breakage.

(5) Suspension condition. Ball joint seals shall not be cut or cracked. Structural parts shall not be bent or damaged. Stabilizer bars shall be connected. Springs shall not be broken, or extended by spacers. Shock absorber mountings, shackles, and U-bolts shall be securely attached. Rubber bushings shall not be cracked, or extruded out or missing from suspension joints. Radius rods shall not be missing or damaged.

(6) Shock absorber system. Shock absorbers shall not be loose from mountings, leak, or be inoperative.

(7) Alignment. Toe-in and toe-out measurements shall not be greater than one and one-half times the value listed in the vehicle manufacturer's service specification for alignment setting. [1977 ex.s. c 355 § 31.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Lowering vehicle below legal clearance: RCW 46.61.680.

46.37.380 Horns, warning devices, and theft alarms.

(1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device may emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(2) No vehicle may be equipped with nor may any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(3) It is permissible for any vehicle to be equipped with a theft alarm signal device so long as it is so arranged that it cannot be used by the driver as an ordinary warning signal.

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Such a theft alarm signal device may use a whistle, bell, horn, or other audible signal but shall not use a siren.

(4) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type conforming to rules adopted by the state patrol, but the siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which latter events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of its approach. [1987 c 330 § 720; 1986 c 113 § 3; 1977 ex.s. c 355 § 32; 1961 c 12 § 46.37.380. Prior: 1955 c 269 § 38; prior: 1937 c 189 § 35; RRS § 6360-35; RCW 46.36.040.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.390 Mufflers required—Smoke and air contaminant standards—Definitions—Penalty, exception.

(1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cut-out, bypass, or similar device upon a motor vehicle on a highway.

(2)(a) No motor vehicle first sold and registered as a new motor vehicle on or after January 1, 1971, shall discharge into the atmosphere at elevations of less than three thousand feet any air contaminant for a period of more than ten seconds which is:

(i) As dark as or darker than the shade designated as No. 1 on the Ringelmann chart, as published by the United States bureau of mines; or

(ii) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (a)(i) above.

(b) No motor vehicle first sold and registered prior to January 1, 1971, shall discharge into the atmosphere at elevations of less than three thousand feet any air contaminant for a period of more than ten seconds which is:

(i) As dark as or darker than the shade designated as No. 2 on the Ringelmann chart, as published by the United States bureau of mines; or

(ii) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in subsection (b)(i) above.

(c) For the purposes of this subsection the following definitions shall apply:

(i) "Opacity" means the degree to which an emission reduces the transmission of light and obscures the view of an object in the background;

(ii) "Ringelmann chart" means the Ringelmann smoke chart with instructions for use as published by the United States bureau of mines in May 1967 and as thereafter amended, information circular 7718.

(3) No person shall modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the engine of such vehicle above that emit-

ted by the muffler originally installed on the vehicle, and it shall be unlawful for any person to operate a motor vehicle not equipped as required by this subsection, or which has been amplified as prohibited by this subsection. A court may dismiss an infraction notice for a violation of this subsection if there is reasonable grounds to believe that the vehicle was not operated in violation of this subsection.

This subsection (3) does not apply to vehicles twenty-five or more years old or to passenger vehicles being operated off the highways in an organized racing or competitive event conducted by a recognized sanctioning body. [2006 c 306 § 4; 2001 c 293 § 1; 1977 ex.s. c 355 § 33; 1972 ex.s. c 135 § 1; 1967 c 232 § 3; 1961 c 12 § 46.37.390. Prior: 1955 c 269 § 39; prior: 1937 c 189 § 36; RRS § 6360-36; RCW 46.36.050; 1927 c 309 § 17; 1921 c 96 § 21; 1915 c 142 § 20; RRS § 6362-17.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.395 Compression brakes (Jake brakes). (1)

This section applies to all motor vehicles with a gross vehicle weight rating of 4,536 kilograms or more (10,001 pounds or more), registered and domiciled in Washington state, operated on public roads and equipped with engine compression brake devices. An engine compression brake device is any device that uses the engine and transmission to impede the forward motion of the motor vehicle by compression of the engine.

(2) The driver of a motor vehicle equipped with a device that uses the compression of the motor vehicle engine shall not use the device unless: The motor vehicle is equipped with an operational muffler and exhaust system to prevent excess noise. A muffler is part of an engine exhaust system which acts as a noise dissipative device. A turbocharger is not permitted to be used as a muffler or a noise dissipative device.

(3) The monetary penalty for violating subsection (2) of this section is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

(4) All medium and heavy trucks must comply with federal code 205 - transportation equipment noise emission controls, subpart B.

(5) Nothing in this section prohibits a local jurisdiction from implementing an ordinance that is more restrictive than the state law and Washington state patrol rules regarding the use of compression brakes. [2006 c 50 § 3; 2005 c 320 § 1.]

46.37.400 Mirrors, backup devices. (1) Every motor vehicle shall be equipped with a mirror mounted on the left side of the vehicle and so located to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

(2) Every motor vehicle shall be equipped with an additional mirror mounted either inside the vehicle approximately in the center or outside the vehicle on the right side and so located as to reflect to the driver a view of the highway for a

distance of at least two hundred feet to the rear of such vehicle.

(3) Every truck registered or based in Washington that is equipped with a cube-style, walk-in cargo box up to eighteen feet long used in the commercial delivery of goods and services must be equipped with a rear crossview mirror or backup device to alert the driver that a person or object is behind the truck.

(4) All mirrors and backup devices required by this section shall be maintained in good condition. Rear crossview mirrors and backup devices will be of a type approved by the Washington state patrol. [1998 c 2 § 1; 1977 ex.s. c 355 § 34; 1963 c 154 § 25; 1961 c 12 § 46.37.400. Prior: 1955 c 269 § 40; prior: 1937 c 189 § 37; RRS § 6360-37; RCW 46.36.060.]

Effective date—1998 c 2: "This act takes effect September 30, 1998." [1998 c 2 § 2.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1963 c 154: See note following RCW 46.37.010.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.410 Windshields required, exception—Must be unobstructed and equipped with wipers. (1)

All motor vehicles operated on the public highways of this state shall be equipped with a front windshield manufactured of safety glazing materials for use in motor vehicles in accordance with RCW 46.37.430, except, however, on such vehicles not so equipped or where windshields are not in use, the operators of such vehicles shall wear glasses, goggles, or face shields pursuant to RCW 46.37.530(1)(b).

(2) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(3) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle. After January 1, 1938, it shall be unlawful for any person to operate a new motor vehicle first sold or delivered after that date which is not equipped with such device or devices in good working order capable of cleaning the windshield thereof over two separate arcs, one each on the left and right side of the windshield, each capable of cleaning a surface of not less than one hundred twenty square inches, or other device or devices capable of accomplishing substantially the same result.

(4) Every windshield wiper upon a motor vehicle shall be maintained in good working order. [1977 ex.s. c 355 § 35; 1961 c 12 § 46.37.410. Prior: 1955 c 269 § 41; prior: (i) 1937 c 189 § 38; RRS § 6360-38; RCW 46.36.070. (ii) 1937 c 189 § 39; RRS § 6360-39; RCW 46.36.080.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.420 Tires—Restrictions. (1) It is unlawful to operate a vehicle upon the public highways of this state unless it is completely equipped with pneumatic rubber tires except vehicles equipped with temporary-use spare tires that

meet federal standards that are installed and used in accordance with the manufacturer's instructions.

(2) No tire on a vehicle moved on a highway may have on its periphery any block, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery equipped with pneumatic tires or solid rubber tracks having protuberances that will not injure the highway, and except also that it is permissible to use tire chains or metal studs imbedded within the tire of reasonable proportions and of a type conforming to rules adopted by the state patrol, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. It is unlawful to use metal studs imbedded within the tire between April 1st and November 1st, except that a vehicle may be equipped year-round with tires that have retractable studs if: (a) The studs retract pneumatically or mechanically to below the wear bar of the tire when not in use; and (b) the retractable studs are engaged only between November 1st and April 1st. Retractable studs may be made of metal or other material and are not subject to the lightweight stud weight requirements under RCW 46.04.272. The state department of transportation may, from time to time, determine additional periods in which the use of tires with metal studs imbedded therein is lawful.

(3) The state department of transportation and local authorities in their respective jurisdictions may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this section.

(4) Tires with metal studs imbedded therein may be used between November 1st and April 1st upon school buses and fire department vehicles, any law or regulation to the contrary notwithstanding. [2007 c 140 § 2; 1999 c 208 § 1; 1990 c 105 § 1; 1987 c 330 § 721; 1986 c 113 § 4; 1984 c 7 § 50; 1971 ex.s. c 32 § 1; 1969 ex.s. c 7 § 1; 1961 c 12 § 46.37.420. Prior: 1955 c 269 § 42; prior: (i) 1937 c 189 § 41; RRS § 6360-41; RCW 46.36.100. (ii) 1937 c 189 § 42; RRS § 6360-42; RCW 46.36.120; 1929 c 180 § 7; 1927 c 309 § 46; RRS § 6362-46.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1984 c 7: See note following RCW 47.01.141.

Dangerous road conditions requiring special tires, chains, metal studs: RCW 47.36.250.

Motorcycles and motor-driven cycles—Additional requirements and limitations: RCW 46.37.539.

46.37.4215 Lightweight and retractable studs—Certification by sellers. Beginning January 1, 2000, a person offering to sell to a tire dealer conducting business in the state of Washington, a metal flange or cleat intended for installation as a stud in a vehicle tire shall certify that the studs are: (1) Lightweight studs as defined in RCW 46.04.272; or (2) retractable studs that are exempt from the requirements of RCW 46.04.272. Certification must be accomplished by clearly marking the boxes or containers used to ship and store

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studs with the designation "lightweight." This section does not apply to tires or studs in a wholesaler's existing inventory as of January 1, 2000. [2007 c 140 § 3; 1999 c 219 § 2.]

46.37.4216 Lightweight and retractable studs—Sale of tires containing. Beginning July 1, 2001, a person may not sell a studded tire or sell a stud for installation in a tire unless the stud qualifies as a: (1) Lightweight stud under RCW 46.04.272; or (2) retractable stud that is exempt from the requirements of RCW 46.04.272. [2007 c 140 § 4; 1999 c 219 § 3.]

46.37.423 Pneumatic passenger car tires—Standards—Exception for off-highway use—Penalty. No person, firm, or corporation shall sell or offer for sale for use on the public highways of this state any new pneumatic passenger car tire which does not meet the standards established by federal motor vehicle safety standard No. 109, as promulgated by the United States department of transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407).

The applicable standard shall be the version of standard No. 109 in effect at the time of manufacture of the tire.

It is a traffic infraction for any person, firm, or corporation to sell or offer for sale any new pneumatic passenger car tire which does not meet the standards prescribed in this section unless such tires are sold for off-highway use, as evidenced by a statement signed by the purchaser at the time of sale certifying that he is not purchasing such tires for use on the public highways of this state. [1979 ex.s. c 136 § 71; 1971 c 77 § 1.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.37.424 Regrooved tires—Standards—Exception for off-highway use—Penalty. No person, firm, or corporation shall sell or offer for sale any regrooved tire or shall regroove any tire for use on the public highways of this state which does not meet the standard established by federal motor vehicle standard part 569—regrooved tires, as promulgated by the United States department of transportation under authority of the National Traffic and Motor Vehicle Safety Act of 1966 (80 Stat. 719, 728; 15 U.S.C. 1392, 1407).

The applicable standard shall be the version of the federal regrooved tire standard in effect at the time of regrooving.

It is a traffic infraction for any person, firm, or corporation to sell or offer for sale any regrooved tire or shall regroove any tire which does not meet the standards prescribed in this section unless such tires are sold or regrooved for off-highway use, as evidenced by a statement signed by the purchaser or regroover at the time of sale or regrooving certifying that he is not purchasing or regrooving such tires for use on the public highways of this state. [1979 ex.s. c 136 § 72; 1977 ex.s. c 355 § 36; 1971 c 77 § 2.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.425 Tires—Unsafe—State patrol's authority—Penalty. No person shall drive or move or cause to be driven or moved any vehicle, the tires of which have contact with the driving surface of the road, subject to registration in this state, upon the public highways of this state unless such vehicle is equipped with tires in safe operating condition in accordance with requirements established by this section or by the state patrol.

The state patrol shall promulgate rules and regulations setting forth requirements of safe operating condition of tires capable of being employed by a law enforcement officer by visual inspection of tires mounted on vehicles including visual comparison with simple measuring gauges. These rules shall include effects of tread wear and depth of tread.

A tire shall be considered unsafe if it has:

(1) Any ply or cord exposed either to the naked eye or when cuts or abrasions on the tire are probed; or

(2) Any bump, bulge, or knot, affecting the tire structure; or

(3) Any break repaired with a boot; or

(4) A tread depth of less than $\frac{2}{32}$ of an inch measured in any two major tread grooves at three locations equally spaced around the circumference of the tire, or for those tires with tread wear indicators, a tire shall be considered unsafe if it is worn to the point that the tread wear indicators contact the road in any two major tread grooves at three locations equally spaced around the circumference of the tire; or

(5) A legend which indicates the tire is not intended for use on public highways such as, "not for highway use" or "for racing purposes only"; or

(6) Such condition as may be reasonably demonstrated to render it unsafe; or

(7) If not matched in tire size designation, construction, and profile to the other tire and/or tires on the same axle, except for temporary-use spare tires that meet federal standards that are installed and used in accordance with the manufacturer's instructions.

No person, firm, or corporation shall sell any vehicle for use on the public highways of this state unless the vehicle is equipped with tires that are in compliance with the provisions of this section. If the tires are found to be in violation of the provisions of this section, the person, firm, or corporation selling the vehicle shall cause such tires to be removed from the vehicle and shall equip the vehicle with tires that are in compliance with the provisions of this section.

It is a traffic infraction for any person to operate a vehicle on the public highways of this state, or to sell a vehicle for use on the public highways of this state, which is equipped with a tire or tires in violation of the provisions of this section or the rules and regulations promulgated by the state patrol hereunder: PROVIDED, HOWEVER, That if the violation relates to items (1) to (7) inclusive of this section then the condition or defect must be such that it can be detected by a visual inspection of tires mounted on vehicles, including visual comparison with simple measuring gauges. [1990 c 105 § 2; 1987 c 330 § 722; 1979 ex.s. c 136 § 73; 1977 ex.s. c 355 § 37; 1971 c 77 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Effective date—1971 c 77: "The provisions of RCW 46.37.425 shall have an effective date of January 1, 1972, but the state commission on equipment shall have the authority to proceed with the promulgation of the rules and regulations provided for in RCW 46.37.425 so the rules and regulations may have an effective date of January 1, 1972." [1971 c 77 § 4.]

46.37.430 Safety glazing—Sunscreening or coloring.

(1) No person may sell any new motor vehicle as specified in this title, nor may any new motor vehicle as specified in this title be registered unless such vehicle is equipped with safety glazing material of a type that meets or exceeds federal standards, or if there are none, standards approved by the Washington state patrol. The foregoing provisions apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of such vehicles except as provided by subsection (4) of this section.

(2) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The director of licensing shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and he or she shall suspend the registration of any motor vehicle so subject to this section which the director finds is not so equipped until it is made to conform to the requirements of this section.

(4) No person may sell or offer for sale, nor may any person operate a motor vehicle registered in this state which is equipped with, any camper manufactured after May 23, 1969, unless such camper is equipped with safety glazing material of a type conforming to rules adopted by the state patrol wherever glazing materials are used in outside windows and doors.

(5) No film sunscreening or coloring material that reduces light transmittance to any degree may be applied to the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material:

(a) The maximum level of film sunscreening material to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, plus or minus three percent, and a light transmission of thirty-five percent or more, plus or minus three percent, when measured against clear glass resulting in a minimum of twenty-four percent light transmission on AS-2 glazing where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film sunscreening material to any window is prohibited. The same maximum levels of film sunscreen material may be applied to windows to the immediate right and left of the driver on limousines and passenger buses used to transport persons for compensation and vehicles identified by the manufacturer as multi-use, multipurpose, or other similar designation. All windows to the rear of the driver on such vehicles may have film sunscreening material applied that has less than thirty-

five percent light transmittance, if the light reflectance is thirty-five percent or less and the vehicle is equipped with outside rearview mirrors on both the right and left. A person or business tinting windows for profit who tints windows within restricted areas of the glazing system shall supply a sticker to be affixed to the driver's door post, in the area adjacent to the manufacturer's identification tag. Installation of this sticker certifies that the glazing application meets this chapter's standards for light transmission, reflectance, and placement requirements. Stickers must be no smaller than three-quarters of an inch by one and one-half inches, and no larger than two inches by two and one-half inches. The stickers must be of sufficient quality to endure exposure to harsh climate conditions. The business name and state tax identification number of the installer must be clearly visible on the sticker.

(b) A greater degree of light reduction is permitted on all windows and the top six inches of windshields of a vehicle operated by or carrying as a passenger a person who possesses a written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons.

(c) Windshield application. A greater degree of light reduction is permitted on the top six-inch area of a vehicle's windshield. Clear film sunscreening material that reduces or eliminates ultraviolet light may be applied to windshields.

(d) When film sunscreening material is applied to any window except the windshield, outside mirrors on both the left and right sides shall be located so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

(e) The following types of film sunscreening material are not permitted:

- (i) Mirror finish products;
- (ii) Red, gold, yellow, or black material; or
- (iii) Film sunscreening material that is in liquid preapplication form and brushed or sprayed on.

Nothing in this section prohibits the use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which meet federal standards and the standards of the state patrol for such safety glazing materials.

(6) It is a traffic infraction for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with film sunscreening or coloring material in violation of this section.

(7) Owners of vehicles with film sunscreening material applied to windows to the rear of the driver, prior to June 7, 1990, must comply with the requirements of this section and RCW 46.37.435 by July 1, 1993.

(8) The side and rear windows of law enforcement vehicles are exempt from the requirements of subsection (5) of this section. However, when law enforcement vehicles are sold to private individuals the film sunscreening or coloring material must comply with the requirements of subsection (5) of this section or documentation must be provided to the buyer stating that the vehicle windows must comply with the requirements of subsection (5) of this section before operation of the vehicle. [2007 c 168 § 1; 1993 c 384 § 1; 1990 c 95 § 1; 1989 c 210 § 1; 1987 c 330 § 723; 1986 c 113 § 5;

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1985 c 304 § 1; 1979 c 158 § 157; 1969 ex.s. c 281 § 47; 1961 c 12 § 46.37.430. Prior: 1955 c 269 § 43; prior: 1947 c 220 § 1; 1937 c 189 § 40; Rem. Supp. 1947 § 6360-40; RCW 46.36.090.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.435 Sunscreening, unlawful installation, penalty. From June 7, 1990, a person who installs safety glazing or film sunscreening material in violation of RCW 46.37.430 is guilty of unlawful installation of safety glazing or film sunscreening materials. Unlawful installation is a misdemeanor. [1990 c 95 § 2.]

46.37.440 Flares or other warning devices required on certain vehicles. (1) No person may operate any motor truck, passenger bus, truck tractor, motor home, or travel trailer over eighty inches in overall width upon any highway outside the corporate limits of municipalities at any time unless there is carried in such vehicle the following equipment except as provided in subsection (2) of this section:

(a) At least three flares or three red electric lanterns or three portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than six hundred feet under normal atmospheric conditions at nighttime.

No flare, fusee, electric lantern, or cloth warning flag may be used for the purpose of compliance with this section unless such equipment is of a type which has been submitted to the state patrol and conforms to rules adopted by it. No portable reflector unit may be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to be capable of reflecting red light clearly visible from all distances within six hundred feet to one hundred feet under normal atmospheric conditions at night when directly in front of lawful upper beams of head lamps, and unless it is of a type which has been submitted to the state patrol and conforms to rules adopted by it;

(b) At least three red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried;

(c) At least two red-cloth flags, not less than twelve inches square, with standards to support such flags.

(2) No person may operate at the time and under conditions stated in subsection (1) of this section any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases or liquefied gases, or any motor vehicle using compressed gas as a fuel unless there is carried in such vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection (1) of this section, and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame. [1987 c 330 § 724; 1986 c 113 § 6; 1977 ex.s. c 355 § 38; 1971 ex.s. c 97 § 1; 1961 c 12 § 46.37.440. Prior: 1955 c 269 § 44; prior: 1947 c 267 § 7, part; Rem. Supp. 1947 § 6360-32a, part; RCW 46.40.210, part.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.450 Disabled vehicle—Display of warning devices. (1) Whenever any motor truck, passenger bus, truck tractor over eighty inches in overall width, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside any municipality at any time when lighted lamps are required on vehicles, the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in subsection (2) of this section:

(a) A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (fifteen minutes), the driver shall place three liquid-burning flares (pot torches), three lighted red electric lanterns, or three portable red emergency reflectors on the traveled portion of the highway in the following order:

(i) One, approximately one hundred feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

(ii) One, approximately one hundred feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

(iii) One at the traffic side of the disabled vehicle not less than ten feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with subdivision (a) of this subsection, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within five hundred feet of a curve, hillcrest, or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than five hundred feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) of this section shall be placed as follows:

One at a distance of approximately two hundred feet from the vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one at a distance of approximately one hundred feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; and one at the traffic side of the vehicle and approximately ten feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside any municipality at any time when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the

vehicle, and one at a distance of approximately one hundred feet to the rear of the vehicle.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon a highway of this state at any time or place mentioned in subsection (1) of this section, the driver of such vehicle shall immediately display the following warning devices: One red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle, and two red electric lanterns or portable red reflectors, one placed approximately one hundred feet to the front and one placed approximately one hundred feet to the rear of this disabled vehicle in the center of the traffic lane occupied by such vehicle. Flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection.

(6) Whenever any vehicle, other than those described in subsection (1) of this section, is disabled upon the traveled portion of any highway or shoulder thereof outside any municipality, the state patrol or the county sheriff shall, upon discovery of the disabled vehicle, place a reflectorized warning device on the vehicle. The warning device and its placement shall be in accordance with rules adopted by the state patrol. Neither the standards for, placement or use of, nor the lack of placement or use of a warning device under this subsection gives rise to any civil liability on the part of the state of Washington, the state patrol, any county, or any law enforcement agency or officer.

(7) The flares, fusees, red electric lanterns, portable red emergency reflectors, and flags to be displayed as required in this section shall conform with the requirements of RCW 46.37.440 applicable thereto. [1987 c 330 § 725; 1987 c 226 § 1; 1984 c 119 § 1; 1961 c 12 § 46.37.450. Prior: 1955 c 269 § 45; prior: 1947 c 267 § 7, part; Rem. Supp. 1947 § 6360-32a, part; RCW 46.40.210, part.]

Reviser's note: This section was amended by 1987 c 226 § 1 and by 1987 c 330 § 725, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.465 Fuel system. (1) The fuel system shall be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public. Fuel tanks shall be equipped with approved caps.

(2) There shall be no signs of leakage from the carburetor or the fuel pump or the fuel hoses in the engine compartment or between the fuel tank and the engine compartment.

(3) No person shall operate any motor vehicle upon the public highways of this state unless the fuel tank is securely attached and so located that another vehicle would not be exposed to direct contact with the fuel tank in the event of a rear end collision. [1977 ex.s. c 355 § 39.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.467 Alternative fuel source—Placard required. (1) Every automobile, truck, motorcycle, motor home, or off-road vehicle that is fueled by an alternative fuel source shall

bear a reflective placard issued by the national fire protection association indicating that the vehicle is so fueled. Violation of this subsection is a traffic infraction.

(2) As used in this section "alternative fuel source" includes propane, compressed natural gas, liquid petroleum gas, or any chemically similar gas but does not include gasoline or diesel fuel.

(3) If a placard for a specific alternative fuel source has not been issued by the national fire protection association, a placard issued by the chief of the Washington state patrol, through the director of fire protection, shall be required. The chief of the Washington state patrol, through the director of fire protection, shall develop rules for the design, size, and placement of the placard which shall remain effective until a specific placard is issued by the national fire protection association. [1995 c 369 § 23; 1986 c 266 § 88; 1984 c 145 § 1; 1983 c 237 § 2.]

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

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

Legislative finding—1983 c 237: "The legislature finds that vehicles using alternative fuel sources such as propane, compressed natural gas, liquid petroleum gas, or other hydrocarbon gas fuels require firefighters to use a different technique if the vehicles catch fire. A reflective placard on such vehicles would warn firefighters of the danger so they could react properly." [1983 c 237 § 1.]

46.37.470 Air-conditioning equipment. (1) The term "air-conditioning equipment" as used or referred to in this section shall mean mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.

(2) Such equipment shall be manufactured, installed and maintained with due regard for the safety of the occupants of the vehicle and the public and shall not contain any refrigerant which is toxic to persons or which is flammable.

(3) The state patrol may adopt and enforce safety requirements, regulations and specifications consistent with the requirements of this section applicable to such equipment which shall correlate with and, so far as possible, conform to the current recommended practice or standard applicable to such equipment approved by the society of automotive engineers.

(4) No person shall have for sale, offer for sale, sell or equip any motor vehicle with any such equipment unless it complies with the requirements of this section.

(5) No person shall operate on any highway any motor vehicle equipped with any air-conditioning equipment unless said equipment complies with the requirements of this section. [1987 c 330 § 726; 1961 c 12 § 46.37.470. Prior: 1955 c 269 § 47.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.480 Television viewers—Earphones. (1) No person shall drive any motor vehicle equipped with any television viewer, screen, or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating the motor vehicle. This subsection does not apply to law enforcement vehicles communicating with mobile computer networks.

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(2) No person shall operate any motor vehicle on a public highway while wearing any headset or earphones connected to any electronic device capable of receiving a radio broadcast or playing a sound recording for the purpose of transmitting a sound to the human auditory senses and which headset or earphones muffle or exclude other sounds. This subsection does not apply to students and instructors participating in a Washington state motorcycle safety program.

(3) This section does not apply to authorized emergency vehicles, motorcyclists wearing a helmet with built-in headsets or earphones as approved by the Washington state patrol, or motorists using hands-free, wireless communications systems, as approved by the equipment section of the Washington state patrol. [1996 c 34 § 1; 1991 c 95 § 1; 1988 c 227 § 6; 1987 c 176 § 1; 1977 ex.s. c 355 § 40; 1961 c 12 § 46.37.480. Prior: 1949 c 196 § 11; Rem. Supp. 1949 § 6360-98d. Formerly RCW 46.36.150.]

Severability—1988 c 227: See RCW 46.81A.900.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.490 Safety load chains and devices required. It shall be unlawful to operate any vehicle upon the public highways of this state without having the load thereon securely fastened and protected by safety chains or other device. The chief of the Washington state patrol is hereby authorized to adopt and enforce reasonable rules and regulations as to what shall constitute adequate and safe chains or other devices for the fastening and protection of loads upon vehicles. [1987 c 330 § 727; 1961 c 12 § 46.37.490. Prior: 1937 c 189 § 43; RRS § 6360-43; 1927 c 309 § 18; RRS § 6362-18. Formerly RCW 46.36.110.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.495 Safety chains for towing. (1) "Safety chains" means flexible tension members connected from the front portion of the towed vehicle to the rear portion of the towing vehicle for the purpose of retaining connection between towed and towing vehicle in the event of failure of the connection provided by the primary connecting system, as prescribed by rule of the Washington state patrol.

(2) The term "safety chains" includes chains, cables, or wire ropes, or an equivalent flexible member meeting the strength requirements prescribed by rule of the Washington state patrol.

(3) A tow truck towing a vehicle and a vehicle towing a trailer must use safety chains. Failure to comply with this section is a class 1 civil infraction punishable under RCW 7.80.120. [1995 c 360 § 1.]

Tow trucks: Chapter 46.55 RCW.

46.37.500 Fenders or splash aprons. (1) Except as authorized under subsection (2) of this section, no person may operate any motor vehicle, trailer, or semitrailer that is not equipped with fenders, covers, flaps, or splash aprons adequate for minimizing the spray or splash of water or mud from the roadway to the rear of the vehicle. All such devices shall be as wide as the tires behind which they are mounted and extend downward at least to the center of the axle.

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(2) A motor vehicle that is not less than forty years old or a street rod vehicle that is owned and operated primarily as a collector's item need not be equipped with fenders when the vehicle is used and driven during fair weather on well-maintained, hard-surfaced roads. [1999 c 58 § 2; 1988 c 15 § 2; 1977 ex.s. c 355 § 41; 1961 c 12 § 46.37.500. Prior: 1947 c 200 § 3, part; 1937 c 189 § 44, part; Rem. Supp. 1947 § 6360-44, part. Formerly RCW 46.36.130 (second paragraph).]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.505 Child passenger restraint systems. The state patrol shall adopt standards for the performance, design, and installation of passenger restraint systems for children less than five years old and shall approve those systems which meet its standards. [1987 c 330 § 728; 1983 c 215 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 215: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 215 § 3.]

Child passenger restraint required: RCW 46.61.687.

46.37.510 Seat belts and shoulder harnesses. (1) No person may sell any automobile manufactured or assembled after January 1, 1964, nor may any owner cause such vehicle to be registered thereafter under the provisions of chapter 46.12 RCW unless such motor car or automobile is equipped with automobile seat belts installed for use on the front seats thereof which are of a type and installed in a manner conforming to rules adopted by the state patrol. Where registration is for transfer from an out-of-state license, the applicant shall be informed of this section by the issuing agent and has thirty days to comply. The state patrol shall adopt and enforce standards as to what constitutes adequate and safe seat belts and for the fastening and installation of them. Such standards shall not be below those specified as minimum requirements by the Society of Automotive Engineers on June 13, 1963.

(2) Every passenger car manufactured or assembled after January 1, 1965, shall be equipped with at least two lap-type safety belt assemblies for use in the front seating positions.

(3) Every passenger car manufactured or assembled after January 1, 1968, shall be equipped with a lap-type safety belt assembly for each permanent passenger seating position. This requirement shall not apply to police vehicles.

(4) Every passenger car manufactured or assembled after January 1, 1968, shall be equipped with at least two shoulder harness-type safety belt assemblies for use in the front seating positions.

(5) The state patrol shall excuse specified types of motor vehicles or seating positions within any motor vehicle from the requirements imposed by subsections (1), (2), and (3) of this section when compliance would be impractical.

(6) No person may distribute, have for sale, offer for sale, or sell any safety belt or shoulder harness for use in motor vehicles unless it meets current minimum standards and specifications conforming to rules adopted by the state patrol or the United States department of transportation. [1987 c 330 § 729; 1986 c 113 § 7; 1977 ex.s. c 355 § 42; 1963 c 117 § 1.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.
Safety belts, use required: RCW 46.61.688.

46.37.513 Bumpers. When any motor vehicle was originally equipped with bumpers or any other collision energy absorption or attenuation system, that system shall be maintained in good operational condition, and no person shall remove or disconnect, and no owner shall cause or knowingly permit the removal or disconnection of, any part of that system except temporarily in order to make repairs, replacements, or adjustments. [1977 ex.s. c 355 § 43.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.517 Body and body hardware. (1) The body, fenders, and bumpers shall be maintained without protrusions which could be hazardous to pedestrians. In addition, the bumpers shall be so attached and maintained so as to not protrude beyond the original bumper line.

(2) The hood, hood latches, hood fastenings, doors, and door latches shall be maintained in a condition sufficient to ensure proper working equal to that at the time of original vehicle manufacture. [1977 ex.s. c 355 § 44.]

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Lowering vehicle below legal clearance: RCW 46.61.680.

46.37.518 Street rods and kit vehicles. Notwithstanding the requirements of this chapter, hoods and bumpers are optional equipment on street rods and kit vehicles. Street rods and kit vehicles must comply with fender requirements under RCW 46.37.500(2) and the windshield requirement of RCW 46.37.410(1). [1996 c 225 § 12.]

Finding—1996 c 225: See note following RCW 46.04.125.

46.37.520 Beach vehicles with soft tires—"Dune buggies"—Inspection and approval required—Fee. It shall be unlawful for any person to lease for hire or permit the use of any vehicle with soft tires commonly used upon the beach and referred to as a dune buggy unless such vehicle has been inspected by and approved by the state patrol, which may charge a reasonable fee therefor to go into the motor vehicle fund. [1987 c 330 § 730; 1971 ex.s. c 91 § 4; 1965 ex.s. c 170 § 61.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.37.522 Motorcycles and motor-driven cycles—When head lamps and tail lamps to be lighted. Every motorcycle and motor-driven cycle shall have its head lamps and tail lamps lighted whenever such vehicle is in motion upon a highway. [1977 ex.s. c 355 § 45.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.523 Motorcycles and motor-driven cycles—Head lamps. (1) Every motorcycle and every motor-driven cycle shall be equipped with at least one lamp which shall comply with the requirements and limitations of this section.

(2) Every head lamp upon every motorcycle and motor-driven cycle shall be located at a height of not more than fifty-four inches nor less than twenty-four inches to be measured as set forth in RCW 46.37.030(2).

(3) Every motorcycle other than a motor-driven cycle shall be equipped with multiple-beam road-lighting equipment.

(4) Such equipment shall:

(a) Reveal persons and vehicles at a distance of at least three hundred feet ahead when the uppermost distribution of light is selected;

(b) Reveal persons and vehicles at a distance of at least one hundred fifty feet ahead when the lowermost distribution of light is selected, and on a straight, level road under any condition of loading none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver. [1977 ex.s. c 355 § 46.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.524 Motor-driven cycles—Head lamps. The head lamp or head lamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every such head lamp or head lamps on a motor-driven cycle shall be of a sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor-driven cycle is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when the motor-driven cycle is operated at a speed of twenty-five or more miles per hour, and at a distance of not less than three hundred feet when the motor-driven cycle is operated at a speed of thirty-five or more miles per hour;

(2) In the event the motor-driven cycle is equipped with a multiple-beam head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in RCW 46.37.220(1), and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in RCW 46.37.220;

(3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, such lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes. [1977 ex.s. c 355 § 47.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.525 Motorcycles and motor-driven cycles—Tail lamps, reflectors, and stop lamps. (1) Every motorcycle and motor-driven cycle shall have at least one tail lamp which shall be located at a height of not more than seventy-two nor less than fifteen inches.

(2) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together

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with any separate lamp or lamps for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(3) Every motorcycle and motor-driven cycle shall carry on the rear, either as part of the tail lamp or separately, at least one red reflector meeting the requirements of RCW 46.37.060.

(4) Every motorcycle and motor-driven cycle shall be equipped with at least one stop lamp meeting the requirements of RCW 46.37.070. [1977 ex.s. c 355 § 48.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.527 Motorcycles and motor-driven cycles—Brake requirements. Every motorcycle and motor-driven cycle must comply with the provisions of RCW 46.37.351, except that:

(1) Motorcycles and motor-driven cycles need not be equipped with parking brakes;

(2) The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, and the front wheel of a motor-driven cycle need not be equipped with brakes, if such motorcycle or motor-driven cycle is otherwise capable of complying with the braking performance requirements of RCW 46.37.528 and 46.37.529;

(3) Motorcycles shall be equipped with brakes operating on both the front and rear wheels unless the vehicle was originally manufactured without both front and rear brakes: PROVIDED, That a front brake shall not be required on any motorcycle over twenty-five years old which was originally manufactured without a front brake and which has been restored to its original condition and is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show or other such assemblage: PROVIDED FURTHER, That no front brake shall be required on any motorcycle manufactured prior to January 1, 1931. [1982 c 77 § 6; 1977 ex.s. c 355 § 49.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.528 Motorcycles and motor-driven cycles—Performance ability of brakes. Every motorcycle and motor-driven cycle, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(1) Developing a braking force that is not less than forty-three and one-half percent of its gross weight;

(2) Decelerating to a stop from not more than twenty miles per hour at not less than fourteen feet per second per second; and

(3) Stopping from a speed of twenty miles per hour in not more than thirty feet, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one percent grade), dry, smooth, hard surface that is free from loose material. [1977 ex.s. c 355 § 50.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.529 Motor-driven cycles—Braking system inspection. (1) The state patrol is authorized to require an inspection of the braking system on any motor-driven cycle and to disapprove any such braking system on a vehicle which it finds will not comply with the performance ability standard set forth in RCW 46.37.351, or which in its opinion is equipped with a braking system that is not so designed or constructed as to ensure reasonable and reliable performance in actual use.

(2) The director of licensing may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when the state patrol determines that the braking system thereon does not comply with the provisions of this section.

(3) No person shall operate on any highway any vehicle referred to in this section in the event the state patrol has disapproved the braking system upon such vehicle. [1987 c 330 § 731; 1979 c 158 § 158; 1977 ex.s. c 355 § 51.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.530 Motorcycles, motor-driven cycles, mopeds, electric-assisted bicycles—Helmets, other equipment—Children—Rules. (1) It is unlawful:

(a) For any person to operate a motorcycle or motor-driven cycle not equipped with mirrors on the left and right sides of the motorcycle which shall be so located as to give the driver a complete view of the highway for a distance of at least two hundred feet to the rear of the motorcycle or motor-driven cycle: PROVIDED, That mirrors shall not be required on any motorcycle or motor-driven cycle over twenty-five years old originally manufactured without mirrors and which has been restored to its original condition and which is being ridden to or from or otherwise in conjunction with an antique or classic motorcycle contest, show, or other such assemblage: PROVIDED FURTHER, That no mirror is required on any motorcycle manufactured prior to January 1, 1931;

(b) For any person to operate a motorcycle or motor-driven cycle which does not have a windshield unless wearing glasses, goggles, or a face shield of a type conforming to rules adopted by the state patrol;

(c) For any person to operate or ride upon a motorcycle, motor-driven cycle, or moped on a state highway, county road, or city street unless wearing upon his or her head a motorcycle helmet except when the vehicle is an antique motor-driven cycle or automobile that is licensed as a motorcycle or when the vehicle is equipped with seat belts and roll bars approved by the state patrol. The motorcycle helmet neck or chin strap must be fastened securely while the motorcycle or motor-driven cycle is in motion. Persons operating electric-assisted bicycles shall comply with all laws and regulations related to the use of bicycle helmets;

(d) For any person to transport a child under the age of five on a motorcycle or motor-driven cycle;

(e) For any person to sell or offer for sale a motorcycle helmet that does not meet the requirements established by this section.

(2) The state patrol may adopt and amend rules, pursuant to the Administrative Procedure Act, concerning standards for glasses, goggles, and face shields.

(3) For purposes of this section, "motorcycle helmet" means a protective covering for the head consisting of a hard outer shell, padding adjacent to and inside the outer shell, and a neck or chin strap type retention system, with a sticker indicating that the motorcycle helmet meets standards established by the United States Department of Transportation. [2003 c 197 § 1; 1997 c 328 § 4; 1990 c 270 § 7. Prior: 1987 c 454 § 1; 1987 c 330 § 732; 1986 c 113 § 8; 1982 c 77 § 7; 1977 ex.s. c 355 § 55; 1971 ex.s. c 150 § 1; 1969 c 42 § 1; 1967 c 232 § 4.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Short title—1990 c 270: See RCW 43.70.440.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1982 c 77: See note following RCW 46.20.500.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

Maximum height for handlebars: RCW 46.61.611.

Riding on motorcycles: RCW 46.61.610.

46.37.535 Motorcycles, motor-driven cycles, or mopeds—Helmet requirements when rented. It is unlawful for any person to rent out motorcycles, motor-driven cycles, or mopeds unless the person also has on hand for rent helmets of a type conforming to rules adopted by the state patrol.

It shall be unlawful for any person to rent a motorcycle, motor-driven cycle, or moped unless the person has in his or her possession a helmet of a type approved by the state patrol, regardless of from whom the helmet is obtained. [1990 c 270 § 8; 1987 c 330 § 733; 1986 c 113 § 9; 1977 ex.s. c 355 § 56; 1967 c 232 § 10.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Short title—1990 c 270: See RCW 43.70.440.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

License requirement for person renting motorcycle: RCW 46.20.220.

46.37.537 Motorcycles—Exhaust system. No person shall modify the exhaust system of a motorcycle in a manner which will amplify or increase the noise emitted by the engine of such vehicle above that emitted by the muffler originally installed on the vehicle, and it shall be unlawful for any person to operate a motorcycle not equipped as required by this section, or which has been amplified as prohibited by this section. [1977 ex.s. c 355 § 52.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.539 Motorcycles and motor-driven cycles—Additional requirements and limitations. Every motorcycle and every motor-driven cycle shall also comply with the requirements and limitations of:

RCW 46.37.380 on horns and warning devices;

RCW 46.37.390 on mufflers and prevention of noise;

RCW 46.37.400 on mirrors; and

RCW 46.37.420 on tires. [1977 ex.s. c 355 § 53.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1977 ex.s. c 355: See note following RCW 46.37.010.

46.37.540 Odometers—Disconnecting, resetting, or turning back prohibited. (1) The legislature intends to make it illegal for persons to turn forward the odometer on a new car to avoid compliance with the emissions standards required by chapter 295, Laws of 2005.

(2) It shall be unlawful for any person to disconnect, turn back, turn forward, or reset the odometer of any motor vehicle with the intent to change the number of miles indicated on the odometer gauge. A violation of this subsection is a gross misdemeanor. [2005 c 295 § 8; 1983 c 3 § 119; 1969 c 112 § 2.]

Findings—2005 c 295: See note following RCW 70.120A.010.

Motor vehicle dealers, unlawful acts and practices: RCW 46.70.180.

46.37.550 Odometers—Selling motor vehicle knowing odometer turned back unlawful. It shall be unlawful for any person to sell a motor vehicle in this state if such person has knowledge that the odometer on such motor vehicle has been turned back and if such person fails to notify the buyer, prior to the time of sale, that the odometer has been turned back or that he had reason to believe that the odometer has been turned back. [1969 c 112 § 3.]

46.37.560 Odometers—Selling motor vehicle knowing odometer replaced unlawful. It shall be unlawful for any person to sell a motor vehicle in this state if such person has knowledge that the odometer on such motor vehicle has been replaced with another odometer and if such person fails to notify the buyer, prior to the time of sale, that the odometer has been replaced or that he believes the odometer to have been replaced. [1969 c 112 § 4.]

46.37.570 Odometers—Selling, advertising, using, or installing device registering false mileage. It shall be unlawful for any person to advertise for sale, to sell, to use, or to install on any part of a motor vehicle or on an odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this section the true mileage driven is that driven by the car as registered by the odometer within the manufacturer's designed tolerance. [1969 c 112 § 5.]

46.37.590 Odometers—Purchaser plaintiff to recover costs and attorney's fee, when. In any suit brought by the purchaser of a motor vehicle against the seller of such vehicle, the purchaser shall be entitled to recover his court costs and a reasonable attorney's fee fixed by the court, if: (1) The suit or claim is based substantially upon the purchaser's allegation that the odometer on such vehicle has been tampered with contrary to RCW 46.37.540 and 46.37.550 or replaced contrary to RCW 46.37.560; and (2) it is found in such suit that the seller of such vehicle or any of his employees or agents knew or had reason to know that the odometer on such vehicle had been so tampered with or replaced and failed to disclose such knowledge to the purchaser prior to the time of sale. [1975 c 24 § 1; 1969 c 112 § 7.]

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46.37.600 Liability of operator, owner, lessee for violations. Whenever an act or omission is declared to be unlawful in chapter 46.37 RCW, if the operator of the vehicle is not the owner or lessee of such vehicle, but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and/or owner or lessee are both subject to the provisions of this chapter with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or lessee of the vehicle, such person is fully authorized to accept the citation and execute the promise to appear on behalf of the owner or lessee. [1980 c 104 § 4; 1969 ex.s. c 69 § 3.]

46.37.610 Wheelchair conveyance standards. The state patrol shall adopt rules for wheelchair conveyance safety standards. Operation of a wheelchair conveyance that is in violation of these standards is a traffic infraction. [1987 c 330 § 734; 1983 c 200 § 4.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definition: RCW 46.04.710.

licensing: RCW 46.16.640.

operator's license: RCW 46.20.109.

public roadways, operating on: RCW 46.61.730.

46.37.620 School buses—Crossing arms. Effective September 1, 1992, every school bus shall, in addition to any other equipment required by this chapter, be equipped with a crossing arm mounted to the bus that, when extended, will require students who are crossing in front of the bus to walk more than five feet from the front of the bus. [1991 c 166 § 1.]

46.37.630 Private school buses. A private school bus is subject to the requirements set forth in the National Standards for School Buses established by the national safety council in effect at the time of the bus manufacture, as adopted by rule by reference by the chief of the Washington state patrol. A private school bus manufactured before 1980 must meet the minimum standards set forth in the 1980 edition of the National Standards for School Buses. [1995 c 141 § 3.]

46.37.640 Air bags—Definitions. (1) "Air bag" means an inflatable restraint system or portion of an inflatable restraint system installed in a motor vehicle.

(2) "Previously deployed air bag" means an inflatable restraint system or portion of the system that has been activated or inflated as a result of a collision or other incident involving the vehicle.

(3) "Nondeployed salvage air bag" means an inflatable restraint system that has not been previously activated or inflated as a result of a collision or other incident involving the vehicle. [2003 c 33 § 1.]

46.37.650 Air bags—Installation of previously deployed—Penalty. (1) A person is guilty of a gross misdemeanor if he or she knew or reasonably should have known

that an air bag he or she installs or reinstalls in a vehicle for compensation, or distributes as an auto part, is a previously deployed air bag that is part of an inflatable restraint system.

(2) A person found guilty under subsection (1) of this section shall be punished by a fine of not more than five thousand dollars or by confinement in the county jail for not more than one year, or both. [2003 c 33 § 2.]

46.37.660 Air bags—Replacement requirements.

Whenever an air bag that is part of a previously deployed inflatable restraint system is replaced by either a new air bag that is part of an inflatable restraint system or a nondeployed salvage air bag that is part of an inflatable restraint system, the air bag must conform to the original equipment manufacturer requirements and the installer must verify that the self-diagnostic system for the inflatable restraint system indicates that the entire inflatable restraint system is operating properly. [2003 c 33 § 3.]

46.37.670 Signal preemption devices—Prohibited—

Exceptions. (1) Signal preemption devices shall not be installed or used on or with any vehicle other than an emergency vehicle authorized by the state patrol, a publicly owned law enforcement or emergency vehicle, a department of transportation, city, or county maintenance vehicle, or a public transit vehicle.

(2) This section does not apply to any of the following:

- (a) A law enforcement agency and law enforcement personnel in the course of providing law enforcement services;
- (b) A fire station or a firefighter in the course of providing fire prevention or fire extinguishing services;
- (c) An emergency medical service or ambulance in the course of providing emergency medical transportation or ambulance services;
- (d) An operator, passenger, or owner of an authorized emergency vehicle in the course of his or her emergency duties;
- (e) Department of transportation, city, or county maintenance personnel while performing maintenance;
- (f) Public transit personnel in the performance of their duties. However, public transit personnel operating a signal preemption device shall have second degree priority to law enforcement personnel, firefighters, emergency medical personnel, and other authorized emergency vehicle personnel, when simultaneously approaching the same traffic control signal;
- (g) A mail or package delivery service or employee or agent of a mail or package delivery service in the course of shipping or delivering a signal preemption device;
- (h) An employee or agent of a signal preemption device manufacturer or retailer in the course of his or her employment in providing, selling, manufacturing, or transporting a signal preemption device to an individual or agency described in this subsection. [2005 c 183 § 2.]

Reviser's note: 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

46.37.671 Signal preemption device—Possession—

Penalty. (1) It is unlawful to possess a signal preemption device except as authorized in RCW 46.37.670.

(2) A person who violates this section is guilty of a misdemeanor. [2005 c 183 § 3.]

Reviser's note: 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

46.37.672 Signal preemption device—Use, sale, purchase—Penalty. (1) It is unlawful to:

- (a) Use a signal preemption device except as authorized in RCW 46.37.670;
- (b) Sell a signal preemption device to a person other than a person described in RCW 46.37.670; or
- (c) Purchase a signal preemption device for use other than a duty as described in RCW 46.37.670.

(2) A person who violates this section is guilty of a gross misdemeanor. [2005 c 183 § 4.]

Reviser's note: 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

46.37.673 Signal preemption device—Accident—Property damage or less than substantial bodily harm—

Penalty. (1) When an accident that results only in injury to property or injury to a person that does not arise to substantial bodily harm as defined in RCW 9A.04.110 occurs as a proximate result of the operation of a signal preemption device which was not authorized in RCW 46.37.670, the driver is guilty of negligently causing an accident by use of a signal preemption device.

(2) Negligently causing an accident by use of a signal preemption device is a class C felony punishable under chapter 9A.20 RCW. [2005 c 183 § 5.]

Reviser's note: 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

46.37.674 Signal preemption device—Accident—Substantial bodily harm—Penalty. (1) When an accident that results in injury to a person that arises to substantial bodily harm as defined in RCW 9A.04.110 occurs as a proximate result of the operation of a signal preemption device which was not authorized in RCW 46.37.670, the driver is guilty of negligently causing substantial bodily harm by use of a signal preemption device.

(2) Negligently causing substantial bodily harm by use of a signal preemption device is a class B felony punishable under chapter 9A.20 RCW. [2005 c 183 § 6.]

Reviser's note: 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

46.37.675 Signal preemption device—Accident—Death—Penalty. (1) When an accident that results in death to a person occurs as a proximate result of the operation of a signal preemption device which was not authorized in RCW 46.37.670, the driver is guilty of negligently causing death by use of a signal preemption device.

(2) Negligently causing death by use of a signal preemption device is a class B felony punishable under chapter 9A.20 RCW. [2005 c 183 § 7.]

Reviser's note: 2005 c 183 directed that this section be added to chapter 46.61 RCW, but codification in chapter 46.37 RCW appears more appropriate.

46.37.680 Sound system attachment. (1) All vehicle sound system components, including any supplemental speaker systems or components, must be securely attached to the vehicle regardless of where the components are located, so that the components cannot become dislodged or loose during operation of the vehicle.

(2) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(3) The Washington state traffic safety commission shall create and implement a statewide educational program regarding the safety risks of unsecured vehicle sound system components, including supplemental speaker systems or components. The educational program shall include information regarding securely attaching sound system components to the vehicle, regardless of where the components are located, so that the components do not become dislodged or loose during the operation of the vehicle. The commission shall create and implement this program within the commission's existing budget. [2005 c 50 § 1.]

Short title—2005 c 50: "This act shall be known as the Courtney Amison Act." [2005 c 50 § 2.]

Chapter 46.38 RCW

VEHICLE EQUIPMENT SAFETY COMPACT

Sections

46.38.010	Compact enacted—Provisions.
46.38.020	Legislative findings.
46.38.030	Effective date of rules, etc. of vehicle safety equipment commission.
46.38.040	Appointment of commissioner and alternate commissioner.
46.38.050	Cooperation of state agencies with vehicle equipment safety commission.
46.38.060	State officers for the filing of documents and receipt of notices.
46.38.070	Vehicle equipment safety commission to submit budgets to director of financial management.
46.38.080	State auditor to inspect accounts of vehicle equipment safety commission.
46.38.090	Withdrawal from compact, "executive head" defined.

46.38.010 Compact enacted—Provisions. The vehicle equipment safety compact prepared pursuant to resolutions of the western governors' conference and the western interstate committee on highway policy problems of the council of state governments, is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

VEHICLE EQUIPMENT SAFETY COMPACT

ARTICLE I—Findings and Purposes

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uni-

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formity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this Article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—Definitions

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—The Commission

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the Commission. The Commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the Commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the Commission in such form as the Commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the Commission for expenses actually incurred in attending Commission meetings or while engaged in the business of the Commission.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The Commission may appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission, and together with the Treasurer shall be bonded in such amount as the Commission shall determine. The Executive Director also shall serve as secretary. If there be no Executive Director, the Commission shall elect a Secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director with the approval of the Commission, or the Commission if there be no Executive Director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the Commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize, and dispose of the same.

(i) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all Commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The Commission annually shall make to the governor and legislature of each party state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been issued by the Commission. The Commission may make such additional reports as it may deem desirable.

ARTICLE IV—Research and Testing

The Commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the Commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—Vehicular Equipment

(a) In the interest of vehicular and public safety, the Commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the Commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this Article. No less than sixty days after the publication of a report containing the results of such study, the Commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this Article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the Commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the Commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the Commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this Article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any Commission rule, regulation or code to the

legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this Article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the Commission pursuant to this Article if such agency specifically finds, after public hearing on due notice, that a variation from the Commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the Commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—Finance

(a) The Commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the Commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article III (h) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

ARTICLE VII—Conflict of Interest

(a) The Commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the Commission and contractors with the Commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the Commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a Commission rule or regulation adopted pursuant to this Article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the Commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the Commission subject to cancellation by the Commission.

(b) Nothing contained in this Article shall be deemed to prevent a contractor for the Commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the Commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—Advisory and Technical Committees

The Commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1963 c 204 § 1.]

46.38.020 Legislative findings. The legislature finds that:

(1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The state patrol, acting upon recommendations of the vehicle equipment safety commission and pursuant to the vehicle equipment safety compact provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this chapter. [1987 c 330 § 735; 1963 c 204 § 2.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.38.030 Effective date of rules, etc. of vehicle safety equipment commission. Pursuant to Article V(e) of the vehicle equipment safety compact it is the intention of this state and it is hereby provided that any rule, regulation, or code issued by the vehicle equipment safety commission in accordance with Article V of the compact shall take effect when issued in accordance with the administrative procedure act by the state patrol. [1987 c 330 § 736; 1967 ex.s. c 145 § 57; 1963 c 204 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.38.040 Appointment of commissioner and alternate commissioner. The commissioner of this state on the vehicle equipment safety commission shall be appointed by the chief of the state patrol to serve at the chief's pleasure. The chief of the state patrol may also designate an alternate commissioner to serve whenever the commissioner of this state is unable to participate on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the chief of the state patrol. [1987 c 330 § 737; 1963 c 204 § 4.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.38.050 Cooperation of state agencies with vehicle equipment safety commission. Within appropriations available therefor, the departments, agencies and officers of the government of this state may cooperate with and assist the vehicle equipment safety commission within the scope contemplated by Article III(h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to cooperate with said commission. [1963 c 204 § 5.]

46.38.060 State officers for the filing of documents and receipt of notices. Filing of documents as required by Article III(j) of the compact shall be with the chief of the state patrol. Any and all notices required by commission bylaws to be given pursuant to Article III(j) of the compact shall be given to the commissioner of this state, his alternate, if any, and the chief of the state patrol. [1987 c 330 § 738; 1963 c 204 § 6.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.38.070 Vehicle equipment safety commission to submit budgets to director of financial management. Pursuant to Article VI(a) of the compact, the vehicle equipment safety commission shall submit its budgets to the director of financial management. [1979 c 151 § 160; 1963 c 204 § 7.]

46.38.080 State auditor to inspect accounts of vehicle equipment safety commission. Pursuant to Article VI(e) of the compact, the state auditor is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission. [1963 c 204 § 8.]

46.38.090 Withdrawal from compact, "executive head" defined. The term "executive head" as used in Article IX(b) of the compact shall, with reference to this state, mean the governor. [1963 c 204 § 9.]

Chapter 46.39 RCW INTERSTATE COMPACT FOR SCHOOL BUS SAFETY

Sections

- 46.39.010 Compact enacted—Provisions.
46.39.020 Designation of Washington state commissioners.

46.39.010 Compact enacted—Provisions. The "Interstate Compact for School Bus Safety" is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE COMPACT FOR SCHOOL BUS SAFETY

ARTICLE I FINDINGS AND PURPOSES

- (a) The party states find that:

(1) School transportation is an integral part of our education systems. The increasing volume of traffic on streets and highways, with larger numbers of school children being transported each year, presents a serious problem in safety that requires regulation and control.

(2) During recent years the various states have each developed their own rules, regulations and standards which govern the operation of school buses in the individual states, thus creating vast differences in construction standards and operational procedures.

(3) Standardization by means of interstate cooperation, exchange of information, and the promulgation of uniform practices among the states can do much to mitigate present hazards and at the same time generate cost reductions and improved service.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for school bus equipment.

(2) Secure uniformity of law and administrative practices in school bus vehicle regulation and related safety standards, incorporating desirable equipment changes in the interest of greater school bus safety.

(3) Establish a means whereby the states party to this compact shall jointly agree on certain school bus minimum standards and procedures including, without limitation by the enumeration, the following:

(i) Items which affect the motorist, such as use of lights, signs, and signaling devices that control traffic;

(ii) Procedural activities of school bus drivers in controlling traffic; and in the loading and unloading of buses;

(iii) Construction and other specifications which can lead to lower initial costs and the interchangeability of school buses among states;

(iv) A framework within which the party states may develop uniform driver training programs; and

(v) Development of accurate and uniform accident statistical reporting among the party states.

(4) Encourage and utilize research which will facilitate achievement of the foregoing purposes, with due regard for the findings set forth in subsection (a) of this Article.

(5) It is recognized that there are inherent differences in transportation needs in each of the party states. It shall not be the purpose of this compact to abridge, impair or adversely affect the jurisdiction or authority of the individual states to regulate and control their own school transportation systems.

(6) Investigate the safety and economic advantage of children being transported.

ARTICLE II DEFINITIONS

(a) "State" means a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other special commonwealth as may be established by the Government of the United States.

(b) "School bus" shall have the same meaning as provided in RCW 46.04.521.

(c) "Equipment" means the equipment required for school buses under chapter 46.37 RCW.

ARTICLE III THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Western States School Bus Safety Commission" (hereinafter called the Commission). The Commission shall consist of not less than one nor more than three commissioners from each State, each of whom shall be a citizen of the State from which he is appointed, and not less than one or nor more than three commissioners representing the United States Government. The commissioners from each State shall be chosen in the manner and for the terms provided by the laws of the States from which they shall be appointed, provided that at least one member shall be appointed from the State agency which has primary responsibility for pupil transportation in that State. Any commissioner may be removed or suspended from office as provided by the law of the State from which he shall be appointed. The commissioners representing the United States shall be appointed by the President of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual expenses incurred in and incidental to the performance of their duties; but nothing herein shall prevent the appointment of an officer or employee of any State or of the United States Government.

(b) Each state delegation shall be entitled to one vote, and the presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. A majority vote of the quorum will be required to adopt any measure before the Commission. The commissioners representing the United States Government shall act in an advisory capacity and shall not have voting powers.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The Commission shall appoint an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, shall be bonded in such amounts as the Commission may require.

(e) The Executive Director, with the approval of the Commission, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The Commission may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(i) The Commission shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Commission shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The Commission annually shall make to the governor and the legislature of each party state, a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

ARTICLE IV FUNCTIONS AND ACTIVITIES

(a) The Commission shall have power to perform the following functions and activities that relate to school bus transportation:

(1) Recommend and encourage research, testing and training activities to the extent the Commission finds necessary.

(2) Contract for research, testing and training activities on behalf of the Commission itself or for one or more governmental agencies if they provide special funding for that purpose.

(3) Engage directly in such activities to the extent approved by the Commission.

(4) Recommend to the party states of needed changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination of school bus construction, equipment, safety programs, and school bus driver training.

(5) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(6) Each party state, recognizing that to carry out the intent of this compact, obligates itself to adopt in identical terms, all rules, regulations and specifications which are standardized through due process to the States.

(b) The Commission may establish such advisory and technical committees as may be necessary, membership on which may include public officials and private citizens. The Commission may also cooperate with other governmental agencies and interstate organizations and with organizations representing the private sector.

ARTICLE V FINANCE

(a) Moneys necessary to finance the Commission in carrying out its duties shall be provided through appropriations from the states party to this compact, said payments to be in direct proportion to the number of school buses registered in the respective party states. The initial rate of payment shall be figured at \$0.50 per bus, provided that no state shall contribute less than \$500.00 per annum. The annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars. Subsequent budgets shall be determined

by the Commission, and the cost thereof allocated in the same proportion as the initial budget.

(b) The Commission may accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional and otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize and dispose of the same.

ARTICLE VI ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into immediate force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states joining therein.

(b) It is the purpose of this compact to provide the necessary legal basis for implementation and adoption by each party state of the standardized rules, regulations and specifications as adopted by the Commission. Consistent with the laws of each party state, there shall be a "compact administrator" who, acting jointly with like officials of other party states, shall promulgate necessary rules, regulations and specifications within that state to carry out the actions and directives of the Commission.

(c) Any state party to this compact may, by legislative act after one year's notice to the Commission, withdraw from the compact. The compact may also be terminated at any time by the unanimous agreement of the several party states. Withdrawal shall not relieve a state from its obligations hereunder prior to the effective withdrawal date.

(d) If any state shall at any time default in the performance of any of its obligations assumed herein or with respect to any obligation imposed upon said state as authorized by and in compliance with the terms and provisions of this compact, all rights, privileges and benefits of such defaulting state and its members on the Commission shall be suspended after the date of such default. Such suspension shall in no manner release such defaulting state from any accrued obligation or otherwise affect this compact or the rights, duties, privileges or obligations of the remaining states thereunder.

ARTICLE VII SEVERABILITY

(a) The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any other state, agency, person or circumstances shall not be affected thereby. It is the legislative intent that the provisions of this compact be reasonably and liberally construed. [1977 ex.s. c 88 § 1.]

46.39.020 Designation of Washington state commissioners. The Washington state commissioners to the western states school bus safety commission shall be the secretary of transportation, the superintendent of public instruction, and the chief of the Washington state patrol or their respective

designees. Annually the Washington commissioners shall elect a chairman from their own membership who shall serve for one year commencing July 1st. Election as chairman shall not interfere with the member's right to vote on all matters before the Washington commissioners. The Washington commissioners may by majority vote designate one of their members to represent the state on any matter coming before the Western states school bus safety commission. [1984 c 7 § 51; 1977 ex.s. c 88 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 46.44 RCW SIZE, WEIGHT, LOAD

Sections

46.44.010	Outside width limit.
46.44.013	Appurtenances on recreational vehicles.
46.44.020	Maximum height—Impaired clearance signs.
46.44.030	Maximum lengths.
46.44.034	Maximum lengths—Front and rear protrusions.
46.44.036	Combination of units—Limitation.
46.44.037	Combination of units—Lawful operations.
46.44.041	Maximum gross weights—Wheelbase and axle factors.
46.44.042	Maximum gross weights—Axle and tire factors.
46.44.043	Cement trucks—Axle loading controls.
46.44.047	Excess weight—Logging trucks—Special permits—County or city permits—Fees—Discretion of arresting officer.
46.44.049	Effect of weight on highways—Study authorized.
46.44.050	Minimum length of wheelbase.
46.44.060	Outside load limits for passenger vehicles.
46.44.070	Drawbar requirements—Trailer whipping or weaving—Towing flag.
46.44.080	Local regulations—State highway regulations.
46.44.090	Special permits for oversize or overweight movements.
46.44.091	Special permits—Gross weight limit.
46.44.0915	Heavy haul industrial corridors—Overweight sealed containers and vehicles.
46.44.092	Special permits—Overall width limits, exceptions—Application for permit.
46.44.093	Special permits—Discretion of issuer—Conditions.
46.44.0941	Special permits—Fees.
46.44.095	Temporary additional tonnage permits—Fees.
46.44.096	Special permits—Determining fee—To whom paid.
46.44.098	Increase in federal limits on sizes and weights—Increases by commission.
46.44.101	Interstate travel by specialized equipment.
46.44.105	Enforcement procedures—Penalties—Rules.
46.44.110	Liability for damage to highways, bridges, etc.
46.44.120	Liability of owner, others, for violations.
46.44.130	Farm implements—Gross weight and size limitation exception—Penalty.
46.44.140	Farm implements—Special permits—Penalty.
46.44.150	Highway improvement vehicles—Gross weight limit excesses authorized—Limitations.
46.44.170	Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules.
46.44.173	Notice to treasurer and assessor of county where mobile home or park trailer to be located.
46.44.175	Penalties—Hearing.
46.44.180	Operation of mobile home pilot vehicle without insurance unlawful—Amounts—Exception—Penalty.
46.44.190	Fire-fighting apparatus.

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Traffic infractions—Monetary penalty schedule—IRLJ 6.2.

Auto transportation companies: Chapter 81.68 RCW.

Permitting escape of load materials: RCW 46.61.655.

46.44.010 Outside width limit. The total outside width of any vehicle or load thereon must not exceed eight and one-half feet; except that an externally mounted rear vision mirror may extend beyond the width limits of the vehicle body to a

point that allows the driver a view to the rear of the vehicle along both sides in conformance with Federal National Safety Standard 111 (49 C.F.R. 571.111), and RCW 46.37.400. Excluded from this calculation of width are certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed or used to carry cargo. The width-exclusive devices must be identified in rules adopted by the department of transportation under RCW 46.44.101. A width-exclusive device must not extend more than three inches beyond the width limit of the vehicle body. [2005 c 189 § 1; 1997 c 63 § 1; 1983 c 278 § 1; 1961 c 12 § 46.44.010. Prior: 1947 c 200 § 4; 1937 c 189 § 47; Rem. Supp. 1947 § 6360-47; 1923 c 181 § 4, part; RRS § 6362-8, part.]

46.44.013 Appurtenances on recreational vehicles.

Motor homes, travel trailers, and campers may exceed the maximum width established under RCW 46.44.010 if the excess width is attributable to appurtenances that do not extend beyond the body of the vehicle by more than four inches, or if an awning, by more than six inches. As used in this section, "appurtenance" means an appendage that is installed by a factory or a vehicle dealer and is intended as an integral part of the motor home, travel trailer, or camper. "Appurtenance" does not include an item temporarily affixed or attached to the exterior of a vehicle for the purpose of transporting the item from one location to another. "Appurtenance" does not include an item that obstructs the driver's rearward vision. [2005 c 264 § 1.]

46.44.020 Maximum height—Impaired clearance signs. It is unlawful for any vehicle unladen or with load to exceed a height of fourteen feet above the level surface upon which the vehicle stands. This height limitation does not apply to authorized emergency vehicles or repair equipment of a public utility engaged in reasonably necessary operation. The provisions of this section do not relieve the owner or operator of a vehicle or combination of vehicles from the exercise of due care in determining that sufficient vertical clearance is provided upon the public highways where the vehicle or combination of vehicles is being operated; and no liability may attach to the state or to any county, city, town, or other political subdivision by reason of any damage or injury to persons or property by reason of the existence of any structure over or across any public highway where the vertical clearance above the roadway is fourteen feet or more; or, where the vertical clearance is less than fourteen feet, if impaired clearance signs of a design approved by the state department of transportation are erected and maintained on the right side of any such public highway in accordance with the manual of uniform traffic control devices for streets and highways as adopted by the state department of transportation under chapter 47.36 RCW. If any structure over or across any public highway is not owned by the state or by a county, city, town, or other political subdivision, it is the duty of the owner thereof when billed therefor to reimburse the state department of transportation or the county, city, town, or other political subdivision having jurisdiction over the highway for the actual cost of erecting and maintaining the impaired clearance signs, but no liability may attach to the

owner by reason of any damage or injury to persons or property caused by impaired vertical clearance above the roadway. [1984 c 7 § 52; 1977 c 81 § 1; 1975-'76 2nd ex.s. c 64 § 7; 1971 ex.s. c 248 § 1; 1965 c 43 § 1; 1961 c 12 § 46.44.020. Prior: 1959 c 319 § 26; 1955 c 384 § 1; 1953 c 125 § 1; 1951 c 269 § 20; 1937 c 189 § 48; RRS § 6360-48.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.030 Maximum lengths. It is unlawful for any person to operate upon the public highways of this state any vehicle having an overall length, with or without load, in excess of forty feet. This restriction does not apply to (1) a municipal transit vehicle, (2) auto stage, private carrier bus, school bus, or motor home with an overall length not to exceed forty-six feet, or (3) an articulated auto stage with an overall length not to exceed sixty-one feet.

It is unlawful for any person to operate upon the public highways of this state any combination consisting of a tractor and semitrailer that has a semitrailer length in excess of fifty-three feet or a combination consisting of a tractor and two trailers in which the combined length of the trailers exceeds sixty-one feet, with or without load.

It is unlawful for any person to operate on the highways of this state any combination consisting of a truck and trailer, or log truck and stinger-steered pole trailer, with an overall length, with or without load, in excess of seventy-five feet. "Stinger-steered," as used in this section, means the coupling device is located behind the tread of the tires of the last axle of the towing vehicle.

These length limitations do not apply to vehicles transporting poles, pipe, machinery, or other objects of a structural nature that cannot be dismembered and operated by a public utility when required for emergency repair of public service facilities or properties, but in respect to night transportation every such vehicle and load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

Excluded from the calculation of length are certain devices that provide added safety, energy conservation, or are otherwise necessary, and are not designed or used to carry cargo. The length-exclusive devices must be identified in rules adopted by the department of transportation under RCW 46.44.101. [2005 c 189 § 2; 2000 c 102 § 1; 1995 c 26 § 1; 1994 c 59 § 2; 1993 c 301 § 1; 1991 c 113 § 1; 1990 c 28 § 1; 1985 c 351 § 1; 1984 c 104 § 1; 1983 c 278 § 2; 1979 ex.s. c 113 § 4; 1977 ex.s. c 64 § 1; 1975-'76 2nd ex.s. c 53 § 1; 1974 ex.s. c 76 § 2; 1971 ex.s. c 248 § 2; 1967 ex.s. c 145 § 61; 1963 ex.s. c 3 § 52; 1961 ex.s. c 21 § 36; 1961 c 12 § 46.44.030. Prior: 1959 c 319 § 25; 1957 c 273 § 14; 1951 c 269 § 22; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Effective date—1995 c 26: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1995." [1995 c 26 § 2.]

Severability—1967 ex.s. c 145: See RCW 47.98.043.

46.44.034 Maximum lengths—Front and rear protrusions. (1) The load, or any portion of any vehicle, operated alone upon the public highway of this state, or the load, or any portion of the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle, or the front bumper, if equipped with front bumper. This subsection does not apply to a front-loading garbage truck or recycling truck while on route and actually engaged in the collection of solid waste or recyclables at speeds of twenty miles per hour or less.

(2) No vehicle shall be operated upon the public highways with any part of the permanent structure or load extending in excess of fifteen feet beyond the center of the last axle of such vehicle. This subsection does not apply to "specialized equipment" designated under 49 U.S.C. Sec. 2311 that is operated on the interstate highway system, those designated portions of the federal-aid primary system, and routes constituting reasonable access from such highways to terminals and facilities for food, fuel, repairs, and rest. [1997 c 191 § 1; 1991 c 143 § 1; 1961 c 12 § 46.44.034. Prior: 1957 c 273 § 15; 1951 c 269 § 24; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

46.44.036 Combination of units—Limitation. Except as provided in RCW 46.44.037, it is unlawful for any person to operate upon the public highways of this state any combination of vehicles consisting of more than two vehicles. For the purposes of this section a truck tractor-semitrailer or pole trailer combination will be considered as two vehicles but the addition of another axle to the tractor of a truck tractor-semitrailer or pole trailer combination in such a way that it supports a proportional share of the load of the semitrailer or pole trailer shall not be deemed a separate vehicle but shall be considered a part of the truck tractor. For the purposes of this section a converter gear used in converting a semitrailer to a full trailer shall not be deemed a separate vehicle but shall be considered a part of the trailer. [1975-'76 2nd ex.s. c 64 § 8; 1961 c 12 § 46.44.036. Prior: 1955 c 384 § 2; 1951 c 269 § 23; prior: 1949 c 221 § 1, part; 1947 c 200 § 5, part; 1941 c 116 § 1, part; 1937 c 189 § 49, part; Rem. Supp. 1949 § 6360-49, part.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.037 Combination of units—Lawful operations. Notwithstanding the provisions of RCW 46.44.036 and subject to such rules and regulations governing their operation as may be adopted by the state department of transportation, operation of the following combinations is lawful:

(1) A combination consisting of a truck tractor, a semitrailer, and another semitrailer or a full trailer. In this combination a converter gear used to convert a semitrailer into a full trailer shall be considered to be a part of the full trailer and not a separate vehicle. A converter gear being pulled without load and not used to convert a semitrailer into a full trailer may be substituted in lieu of a full trailer or a semitrailer in any lawful combination;

(2) A combination not exceeding seventy-five feet in overall length consisting of four trucks or truck tractors used

in driveway service where three of the vehicles are towed by the fourth in triple saddlemount position;

(3) A combination consisting of a truck tractor carrying a freight compartment no longer than eight feet, a semitrailer, and another semitrailer or full trailer that meets the legal length requirement for a truck and trailer combination set forth in RCW 46.44.030. [1991 c 143 § 2; 1985 c 351 § 2; 1984 c 7 § 53; 1979 ex.s. c 149 § 3; 1975-'76 2nd ex.s. c 64 § 9; 1965 ex.s. c 170 § 37; 1963 ex.s. c 3 § 53; 1961 c 12 § 46.44.037. Prior: 1957 c 273 § 16; 1955 c 384 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.041 Maximum gross weights—Wheelbase and axle factors. No vehicle or combination of vehicles shall operate upon the public highways of this state with a gross load on any single axle in excess of twenty thousand pounds, or upon any group of axles in excess of that set forth in the following table, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each, if the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more.

Distance in feet between the extremes of any group of 2 or more consecutive axles	Maximum load in pounds carried on any group of 2 or more consecutive axles								
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles	9 axles	
4	34,000								
5	34,000								
6	34,000								
7	34,000								
8 & less	34,000	34,000							
more than 8	38,000	42,000							
9	39,000	42,500							
10	40,000	43,500							
11		44,000							
12		45,000	50,000						
13		45,500	50,500						
14		46,500	51,500						
15		47,000	52,000						
16		48,000	52,500	58,000					
17		48,500	53,500	58,500					
18		49,500	54,000	59,000					
19		50,000	54,500	60,000					
20		51,000	55,500	60,500	66,000				
21		51,500	56,000	61,000	66,500				
22		52,500	56,500	61,500	67,000				
23		53,000	57,500	62,500	68,000				
24		54,000	58,000	63,000	68,500	74,000			
25		54,500	58,500	63,500	69,000	74,500			
26		55,500	59,500	64,000	69,500	75,000			
27		56,000	60,000	65,000	70,000	75,500			
28		57,000	60,500	65,500	71,000	76,500	82,000		
29		57,500	61,500	66,000	71,500	77,000	82,500		
30		58,500	62,000	66,500	72,000	77,500	83,000		
31		59,000	62,500	67,500	72,500	78,000	83,500		
32		60,000	63,500	68,000	73,000	78,500	84,500	90,000	
33			64,000	68,500	74,000	79,000	85,000	90,500	
34			64,500	69,000	74,500	80,000	85,500	91,000	
35			65,500	70,000	75,000	80,500	86,000	91,500	
36			66,000	70,500	75,500	81,000	86,500	92,000	
37			66,500	71,000	76,000	81,500	87,000	93,000	
38			67,500	71,500	77,000	82,000	87,500	93,500	
39			68,000	72,500	77,500	82,500	88,500	94,000	
40			68,500	73,000	78,000	83,500	89,000	94,500	
41			69,500	73,500	78,500	84,000	89,500	95,000	
42			70,000	74,000	79,000	84,500	90,000	95,500	
43			70,500	75,000	80,000	85,000	90,500	96,000	
44			71,500	75,500	80,500	85,500	91,000	96,500	
45			72,000	76,000	81,000	86,000	91,500	97,500	
46			72,500	76,500	81,500	87,000	92,500	98,000	

47	73,500	77,500	82,000	87,500	93,000	98,500			
48	74,000	78,000	83,000	88,000	93,500	99,000			
49	74,500	78,500	83,500	88,500	94,000	99,500			
50	75,500	79,000	84,000	89,000	94,500	100,000			
51	76,000	80,000	84,500	89,500	95,000	100,500			
52	76,500	80,500	85,000	90,500	95,500	101,000			
53	77,500	81,000	86,000	91,000	96,500	102,000			
54	78,000	81,500	86,500	91,500	97,000	102,500			
55	78,500	82,500	87,000	92,000	97,500	103,000			
56	79,500	83,000	87,500	92,500	98,000	103,500			
57	80,000	83,500	88,000	93,000	98,500	104,000			
58		84,000	89,000	94,000	99,000	104,500			
59		85,000	89,500	94,500	99,500	105,500			
60		85,500	90,000	95,000	100,500	105,500			
61		86,000	90,500	95,500	101,000	105,500			
62		86,500	91,000	96,000	101,500	105,500			
63		87,500	92,000	96,500	102,000	105,500			
64		88,000	92,500	97,500	102,500	105,500			
65		88,500	93,000	98,000	103,000	105,500			
66		89,000	93,500	98,500	103,500	105,500			
67		90,000	94,000	99,000	104,500	105,500			
68		90,500	95,000	99,500	105,000	105,500			
69		91,000	95,500	100,000	105,500	105,500			
70		91,500	96,000	101,000	105,500	105,500			
71		92,500	96,500	101,500	105,500	105,500			
72		93,000	97,000	102,000	105,500	105,500			
73		93,500	98,000	102,500	105,500	105,500			
74		94,000	98,500	103,000	105,500	105,500			
75		95,000	99,000	103,500	105,500	105,500			
76		95,500	99,500	104,500	105,500	105,500			
77		96,000	100,000	105,000	105,500	105,500			
78		96,500	101,000	105,500	105,500	105,500			
79		97,500	101,500	105,500	105,500	105,500			
80		98,000	102,000	105,500	105,500	105,500			
81		98,500	102,500	105,500	105,500	105,500			
82		99,000	103,000	105,500	105,500	105,500			
83		100,000	104,000	105,500	105,500	105,500			
84			104,500	105,500	105,500	105,500			
85			105,000	105,500	105,500	105,500			
86 or more			105,500	105,500	105,500	105,500			

When inches are involved: Under six inches take lower, six inches or over take higher. The maximum load on any axle in any group of axles shall not exceed the single axle or tandem axle allowance as set forth in the table above.

The maximum axle and gross weights specified in this section are subject to the braking requirements set up for the service brakes upon any motor vehicle or combination of vehicles as provided by law.

Loads of not more than eighty thousand pounds which may be legally hauled in the state bordering this state which also has a sales tax, are legal in this state when moving to a port district within four miles of the bordering state except on the interstate system. This provision does not allow the operation of a vehicle combination consisting of a truck tractor and three trailers.

Notwithstanding anything contained herein, a vehicle or combination of vehicles in operation on January 4, 1975, may operate upon the public highways of this state, including the interstate system within the meaning of section 127 of Title 23, United States Code, with an overall gross weight upon a group of two consecutive sets of dual axles which was lawful in this state under the laws, regulations, and procedures in effect in this state on January 4, 1975. [1997 c 198 § 1; 1995 c 171 § 1. Prior: 1993 c 246 § 1; 1993 c 102 § 3; prior: 1988 c 229 § 1; 1988 c 6 § 2; 1985 c 351 § 3; 1977 c 81 § 2; 1975-'76 2nd ex.s. c 64 § 22.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.042 Maximum gross weights—Axle and tire factors. Subject to the maximum gross weights specified in RCW 46.44.041, it is unlawful to operate any vehicle upon the public highways with a gross weight, including load, upon any tire concentrated upon the surface of the highway in excess of six hundred pounds per inch width of such tire. An axle manufactured after July 31, 1993, carrying more than ten thousand pounds gross weight must be equipped with four or more tires. An axle carrying more than ten thousand pounds gross weight must have four or more tires, regardless of date of manufacture. Instead of the four or more tires per axle requirements of this section, an axle may be equipped with two tires limited to five hundred pounds per inch width of tire. This section does not apply to vehicles operating under oversize or overweight permits, or both, issued under RCW 46.44.090, while carrying a nonreducible load.

The following equipment may operate at six hundred pounds per inch width of tire: (1) A nonliftable steering axle or axles on the power unit; (2) a tiller axle on fire fighting apparatus; (3) a rear booster trailing axle equipped with two tires on a ready-mix concrete transit truck; and (4) a straddle trailer manufactured before January 1, 1996, equipped with single-tire axles or a single axle using a walking beam supported by two in-line single tires and used exclusively for the transport of fruit bins between field, storage, and processing. A straddle trailer manufactured after January 1, 1996, meeting this use criteria may carry five hundred fifteen pounds per inch width of tire on sixteen and one-half inch wide tires.

For the purpose of this section, the width of tire in case of solid rubber or hollow center cushion tires, so long as the use thereof may be permitted by the law, shall be measured between the flanges of the rim. For the purpose of this section, the width of tires in case of pneumatic tires shall be the maximum overall normal inflated width as stipulated by the manufacturer when inflated to the pressure specified and without load thereon.

The department of transportation, by rule with respect to state highways, and a local authority, with respect to a public highway under its jurisdiction, may extend the weight table in RCW 46.44.041 to one hundred fifteen thousand pounds. However, the extension must be in compliance with federal law, and vehicles operating under the extension must be in full compliance with the 1997 axle and tire requirements under this section. [2006 c 334 § 15; 1996 c 116 § 1; 1993 c 103 § 1; 1985 c 351 § 4; 1975-'76 2nd ex.s. c 64 § 10; 1961 c 12 § 46.44.042. Prior: 1959 c 319 § 27; 1951 c 269 § 27; prior: 1949 c 221 § 2, part; 1947 c 200 § 6, part; 1941 c 116 § 2, part; 1937 c 189 § 50, part; Rem. Supp. 1949 § 6360-50, part; 1929 c 180 § 3, part; 1927 c 309 § 8, part; 1923 c 181 § 4, part; 1921 c 96 § 20, part; RRS § 6362-8, part.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.043 Cement trucks—Axle loading controls. The switch that controls the raising and lowering of the retractable rear booster or tag axle on a ready-mix cement truck may be located within the reach of the driver's compartment as long as the variable control, used to adjust axle loadings by regulating air pressure or by other means, is out of the reach of the driver's compartment. [1994 c 305 § 1.]

46.44.047 Excess weight—Logging trucks—Special permits—County or city permits—Fees—Discretion of arresting officer. A three axle truck tractor and a two axle pole trailer combination engaged in the operation of hauling logs may exceed by not more than six thousand eight hundred pounds the legal gross weight of the combination of vehicles when licensed, as permitted by law, for sixty-eight thousand pounds: PROVIDED, That the distance between the first and last axle of the vehicles in combination shall have a total wheelbase of not less than thirty-seven feet, and the weight upon two axles spaced less than seven feet apart shall not exceed thirty-three thousand six hundred pounds.

Such additional allowances shall be permitted by a special permit to be issued by the department of transportation valid only on state primary or secondary highways authorized by the department and under such rules, regulations, terms, and conditions prescribed by the department. The fee for such special permit shall be fifty dollars for a twelve-month period beginning and ending on April 1st of each calendar year. Permits may be issued at any time, but if issued after July 1st of any year the fee shall be thirty-seven dollars and fifty cents. If issued on or after October 1st the fee shall be twenty-five dollars, and if issued on or after January 1st the fee shall be twelve dollars and fifty cents. A copy of such special permit covering the vehicle involved shall be carried in the cab of the vehicle at all times. Upon the third offense within the duration of the permit for violation of the terms and conditions of the special permit, the special permit shall be canceled. The vehicle covered by such canceled special permit shall not be eligible for a new special permit until thirty days after the cancellation of the special permit issued to said vehicle. The fee for such renewal shall be at the same rate as set forth in this section which covers the original issuance of such special permit. Each special permit shall be assigned to a three-axle truck tractor in combination with a two-axle pole trailer. When the department issues a duplicate permit to replace a lost or destroyed permit and where the department transfers a permit, a fee of fourteen dollars shall be charged for each such duplicate issued or each such transfer.

All fees collected hereinabove shall be deposited with the state treasurer and credited to the motor vehicle fund.

Permits involving city streets or county roads or using city streets or county roads to reach or leave state highways, authorized for permit by the department may be issued by the city or county or counties involved. A fee of five dollars for such city or county permit may be assessed by the city or by the county legislative authority which shall be deposited in the city or county road fund. The special permit provided for herein shall be known as a "log tolerance permit" and shall designate the route or routes to be used, which shall first be approved by the city or county engineer involved. Authorization of additional route or routes may be made at the discretion of the city or county by amending the original permit or by issuing a new permit. Said permits shall be issued on a yearly basis expiring on March 31st of each calendar year. Any person, firm, or corporation who uses any city street or county road for the purpose of transporting logs with weights authorized by state highway log tolerance permits, to reach or leave a state highway route, without first obtaining a city or county permit when required by the city or the county legislative authority shall be subject to the penalties prescribed by

RCW 46.44.105. For the purpose of determining gross weight the actual scale weight taken by the officer shall be prima facie evidence of such total gross weight. In the event the gross weight is in excess of the weight permitted by law, the officer may, within his discretion, permit the operator to proceed with his vehicles in combination.

The chief of the state patrol, with the advice of the department, may make reasonable rules and regulations to aid in the enforcement of the provisions of this section. [1994 c 172 § 1; 1979 ex.s. c 136 § 74; 1975-'76 2nd ex.s. c 64 § 11; 1973 1st ex.s. c 150 § 2; 1971 ex.s. c 249 § 2; 1961 ex.s. c 21 § 35; 1961 c 12 § 46.44.047. Prior: 1955 c 384 § 19; 1953 c 254 § 10; 1951 c 269 § 31.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.049 Effect of weight on highways—Study authorized. The department of transportation may make and enter into agreements with the federal government or any state or group of states or agencies thereof, or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weight on highway construction. The studies or tests may be made either by designating existing highways or the construction of test strips including natural resource roads to the end that a proper solution of the many problems connected with the imposition on highways of motor vehicle weights may be determined.

The studies may include the determination of values to be assigned various highway-user groups according to their gross weight or use. [1984 c 7 § 54; 1961 c 12 § 46.44.049. Prior: 1951 c 269 § 47.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.44.050 Minimum length of wheelbase. It shall be unlawful to operate any vehicle upon public highways with a wheelbase between any two axles thereof of less than three feet, six inches when weight exceeds that allowed for one axle under RCW 46.44.042 or 46.44.041. It shall be unlawful to operate any motor vehicle upon the public highways of this state with a wheelbase between the frontmost axle and the rearmost axle of less than three feet, six inches: PROVIDED, That the minimum wheelbase for mopeds is thirty-eight inches.

For the purposes of this section, wheelbase shall be measured upon a straight line from center to center of the vehicle axles designated. [1979 ex.s. c 213 § 7; 1975-'76 2nd ex.s. c 64 § 12; 1961 c 12 § 46.44.050. Prior: 1941 c 116 § 3; 1937 c 189 § 51; Rem. Supp. 1941 § 6360-51; 1929 c 180 § 3, part; 1927 c 309 § 8, part; 1923 c 181 § 4, part; RRS § 6362-8, part.]

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.060 Outside load limits for passenger vehicles. No passenger type vehicle shall be operated on any public highway with any load carried thereon extending beyond the line of the fenders on the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof. [1961 c 12 § 46.44.060. Prior: 1937 c 189

(2008 Ed.)

§ 52; RRS § 6360-52; 1929 c 180 § 5, part; 1927 c 309 § 10, part; RRS § 6362-10, part.]

46.44.070 Drawbar requirements—Trailer whipping or weaving—Towing flag. The drawbar or other connection between vehicles in combination shall be of sufficient strength to hold the weight of the towed vehicle on any grade where operated. No trailer shall whip, weave or oscillate or fail to follow substantially in the course of the towing vehicle. When a disabled vehicle is being towed by means of bar, chain, rope, cable or similar means and the distance between the towed vehicle and the towing vehicle exceeds fifteen feet there shall be fastened on such connection in approximately the center thereof a white flag or cloth not less than twelve inches square. [1961 c 12 § 46.44.070. Prior: 1937 c 189 § 53; RRS § 6360-53; 1929 c 180 § 5, part; 1927 c 309 § 10, part; RRS § 6362-10, part; 1923 c 181 § 4, part.]

46.44.080 Local regulations—State highway regulations. Local authorities with respect to public highways under their jurisdiction may prohibit the operation thereon of motor trucks or other vehicles or may impose limits as to the weight thereof, or any other restrictions as may be deemed necessary, whenever any such public highway by reason of rain, snow, climatic or other conditions, will be seriously damaged or destroyed unless the operation of vehicles thereon be prohibited or restricted or the permissible weights thereof reduced: PROVIDED, That whenever a highway has been closed generally to vehicles or specified classes of vehicles, local authorities shall by general rule or by special permit authorize the operation thereon of school buses, emergency vehicles, and motor trucks transporting perishable commodities or commodities necessary for the health and welfare of local residents under such weight and speed restrictions as the local authorities deem necessary to protect the highway from undue damage: PROVIDED FURTHER, That the governing authorities of incorporated cities and towns shall not prohibit the use of any city street designated a part of the route of any primary state highway through any such incorporated city or town by vehicles or any class of vehicles or impose any restrictions or reductions in permissible weights unless such restriction, limitation, or prohibition, or reduction in permissible weights be first approved in writing by the department of transportation.

The local authorities imposing any such restrictions or limitations, or prohibiting any use or reducing the permissible weights shall do so by proper ordinance or resolution and shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution in each end of the portion of any public highway affected thereby, and no such ordinance or resolution shall be effective unless and until such signs are erected and maintained.

The department shall have the same authority as hereinabove granted to local authorities to prohibit or restrict the operation of vehicles upon state highways. The department shall give public notice of closure or restriction. The department may issue special permits for the operation of school buses and motor trucks transporting perishable commodities or commodities necessary for the health and welfare of local residents under specified weight and speed restrictions as

may be necessary to protect any state highway from undue damage. [2006 c 334 § 16; 1977 ex.s. c 151 § 29; 1973 2nd ex.s. c 15 § 1; 1961 c 12 § 46.44.080. Prior: 1937 c 189 § 54; RRS § 6360-54.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—2006 c 334: See note following RCW 47.01.051.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Highway and street closures authorized—Notice: Chapter 47.48 RCW.

46.44.090 Special permits for oversize or overweight movements. The department of transportation, pursuant to its rules with respect to state highways, and local authorities, with respect to public highways under their jurisdiction, may, upon application in writing and good cause being shown therefor, issue a special permit in writing, or electronically, authorizing the applicant to operate or move a vehicle or combination of vehicles of a size, weight of vehicle, or load exceeding the maximum set forth in RCW 46.44.010, 46.44.020, 46.44.030, 46.44.034, and 46.44.041 upon any public highway under the jurisdiction of the authority granting such permit and for the maintenance of which such authority is responsible. [2006 c 334 § 17; 2001 c 262 § 1; 1977 ex.s. c 151 § 30; 1975-'76 2nd ex.s. c 64 § 13; 1961 c 12 § 46.44.090. Prior: 1951 c 269 § 34; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.091 Special permits—Gross weight limit. (1) Except as otherwise provided in subsections (3) and (4) of this section, no special permit shall be issued for movement on any state highway or route of a state highway within the limits of any city or town where the gross weight, including load, exceeds the following limits:

(a) Twenty-two thousand pounds on a single axle or on dual axles with a wheelbase between the first and second axles of less than three feet six inches;

(b) Forty-three thousand pounds on dual axles having a wheelbase between the first and second axles of not less than three feet six inches but less than seven feet;

(c) On any group of axles or in the case of a vehicle employing two single axles with a wheel base between the first and last axle of not less than seven feet but less than ten feet, a weight in pounds determined by multiplying six thousand five hundred times the distance in feet between the center of the first axle and the center of the last axle of the group;

(d) On any group of axles with a wheel base between the first and last axle of not less than ten feet but less than thirty feet, a weight in pounds determined by multiplying two thousand two hundred times the sum of twenty and the distance in feet between the center of the first axle and the center of the last axle of the group;

(e) On any group of axles with a wheel base between the first and last axle of thirty feet or greater, a weight in pounds determined by multiplying one thousand six hundred times

the sum of forty and the distance in feet between the center of the first axle and the center of the last axle of the group.

(2) The total weight of a vehicle or combination of vehicles allowable by special permit under subsection (1) of this section shall be governed by the lesser of the weights obtained by using the total number of axles as a group or any combination of axles as a group.

(3) The weight limitations pertaining to single axles may be exceeded to permit the movement of equipment operating upon single pneumatic tires having a rim width of twenty inches or more and a rim diameter of twenty-four inches or more or dual pneumatic tires having a rim width of sixteen inches or more and a rim diameter of twenty-four inches or more and specially designed vehicles manufactured and certified for special permits prior to July 1, 1975.

(4) Permits may be issued for weights in excess of the limitations contained in subsection (1) of this section on highways or sections of highways which have been designed and constructed for weights in excess of such limitations, or for any shipment duly certified as necessary by military officials, or by officials of public or private power facilities, or when in the opinion of the department of transportation the movement or action is a necessary movement or action: PROVIDED, That in the judgment of the department of transportation the structures and highway surfaces on the routes involved are capable of sustaining weights in excess of such limitations and it is not reasonable for economic or operational considerations to transport such excess weights by rail or water for any substantial distance of the total mileage applied for.

(5) Application shall be made in writing on special forms provided by the department of transportation and shall be submitted at least thirty-six hours in advance of the proposed movement. An application for a special permit for a gross weight of any combination of vehicles exceeding two hundred thousand pounds shall be submitted in writing to the department of transportation at least thirty days in advance of the proposed movement. [2001 c 262 § 2; 1989 c 52 § 1; 1977 ex.s. c 151 § 31; 1975-'76 2nd ex.s. c 64 § 14; 1975 1st ex.s. c 168 § 1; 1969 ex.s. c 281 § 30; 1961 c 12 § 46.44.091. Prior: 1959 c 319 § 28; 1953 c 254 § 12; 1951 c 269 § 35; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: "This 1973 [1975] amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 168 § 4.]

46.44.0915 Heavy haul industrial corridors—Overweight sealed containers and vehicles. (1)(a) Except as provided in (b) of this subsection, the department of transportation, with respect to state highways maintained within port district property, may, at the request of a port commission, make and enter into agreements with port districts and adjacent jurisdictions or agencies of the districts, for the purpose of identifying, managing, and maintaining short heavy haul

industrial corridors within port district property for the movement of overweight sealed containers used in international trade.

(b) The department of transportation shall designate that portion of state route number 97 from the Canadian border to milepost 331.22 as a heavy haul industrial corridor for the movement of overweight vehicles to and from the Oroville railhead. The department may issue special permits to vehicles operating in the heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041, but not to exceed a gross vehicle weight of 137,788 pounds.

(2) Except as provided in subsection (1)(b) of this section, the department may issue special permits to vehicles operating in a heavy haul industrial corridor to carry weight in excess of weight limits established in RCW 46.44.041. However, the excess weight on a single axle, tandem axle, or any axle group must not exceed that allowed by RCW 46.44.091 (1) and (2), weight per tire must not exceed six hundred pounds per inch width of tire, and gross vehicle weight must not exceed one hundred five thousand five hundred pounds.

(3) The entity operating or hiring vehicles under subsection (1)(b) of this section or moving overweight sealed containers used in international trade must pay a fee for each special permit of one hundred dollars per month or one thousand dollars annually, beginning from the date of issue, for all movements under the special permit made on state highways within a heavy haul industrial corridor. Within a port district property, under no circumstances are the for hire carriers or rail customers responsible for the purchase or cost of the permits. All funds collected, except the amount retained by authorized agents of the department under RCW 46.44.096, must be forwarded to the state treasurer and deposited in the motor vehicle fund.

(4) For purposes of this section, an overweight sealed container used in international trade, including its contents, is considered nondivisible when transported within a heavy haul industrial corridor defined by the department.

(5) Any agreement entered into by the department as authorized under this section with a port district adjacent to Puget Sound and located within a county that has a population of more than seven hundred thousand, but less than one million, must limit the applicability of any established heavy haul corridor to that portion of state route no. 509 beginning at milepost 0.25 in the vicinity of East 'D' Street and ending at milepost 3.88 in the vicinity of Taylor Way.

(6) The department of transportation may adopt reasonable rules to implement this section. [2008 c 89 § 1; 2005 c 311 § 1.]

46.44.092 Special permits—Overall width limits, exceptions—Application for permit. Special permits may not be issued for movements on any state highway outside the limits of any city or town in excess of the following widths:

On two-lane highways, fourteen feet;

On multiple-lane highways where a physical barrier serving as a median divider separates opposing traffic lanes, twenty feet;

On multiple-lane highways without a physical barrier serving as a median divider, thirty-two feet.

(2008 Ed.)

These limits apply except under the following conditions:

(1) In the case of buildings, the limitations referred to in this section for movement on any two lane state highway other than the national system of interstate and defense highways may be exceeded under the following conditions: (a) Controlled vehicular traffic shall be maintained in one direction at all times; (b) the maximum distance of movement shall not exceed five miles; additional contiguous permits shall not be issued to exceed the five-mile limit: PROVIDED, That when the department of transportation determines a hardship would result, this limitation may be exceeded upon approval of the department of transportation; (c) prior to issuing a permit a qualified transportation department employee shall make a visual inspection of the building and route involved determining that the conditions listed herein shall be complied with and that structures or overhead obstructions may be cleared or moved in order to maintain a constant and uninterrupted movement of the building; (d) special escort or other precautions may be imposed to assure movement is made under the safest possible conditions, and the Washington state patrol shall be advised when and where the movement is to be made;

(2) Permits may be issued for widths of vehicles in excess of the preceding limitations on highways or sections of highways which have been designed and constructed for width in excess of such limitations;

(3) Permits may be issued for vehicles with a total outside width, including the load, of nine feet or less when the vehicle is equipped with a mechanism designed to cover the load pursuant to RCW 46.61.655;

(4) These limitations may be rescinded when certification is made by military officials, or by officials of public or private power facilities, or when in the opinion of the department of transportation the movement or action is a necessary movement or action: PROVIDED FURTHER, That in the judgment of the department of transportation the structures and highway surfaces on the routes involved are capable of sustaining widths in excess of such limitation;

(5) These limitations shall not apply to movement during daylight hours on any two lane state highway where the gross weight, including load, does not exceed eighty thousand pounds and the overall width of load does not exceed sixteen feet: PROVIDED, That the minimum and maximum speed of such movements, prescribed routes of such movements, the times of such movements, limitation upon frequency of trips (which limitation shall be not less than one per week), and conditions to assure safety of traffic may be prescribed by the department of transportation or local authority issuing such special permit.

The applicant for any special permit shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular state highways for which permit to operate is requested and whether such permit is requested for a single trip or for continuous operation. [2006 c 334 § 18; 1989 c 398 § 2; 1981 c 63 § 1; 1977 ex.s. c 151 § 32; 1975-'76 2nd ex.s. c 64 § 15; 1970 ex.s. c 9 § 1; 1969 ex.s. c 281 § 60; 1965 ex.s. c 170 § 39; 1963 ex.s. c 3 § 54; 1961 c 12 § 46.44.092. Prior: 1959 c 319 § 29; 1955 c 146 § 2; 1951 c 269 § 36; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part;

1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.093 Special permits—Discretion of issuer—Conditions. The department of transportation or the local authority is authorized to issue or withhold such special permit at its discretion, although where a mobile home is being moved, the verification of a valid license under chapter 46.70 RCW as a mobile home dealer or manufacturer, or under chapter 46.76 RCW as a transporter, shall be done by the department or local government. If the permit is issued, the department or local authority may limit the number of trips, establish seasonal or other time limitations within which the vehicle described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle or vehicles when necessary to assure against undue damage to the road foundation, surfaces, or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure. [1988 c 239 § 3; 1984 c 7 § 55; 1961 c 12 § 46.44.093. Prior: 1951 c 269 § 37; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.44.0941 Special permits—Fees. The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

- All overlegal loads, except overweight, single trip \$ 10.00
- Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days \$ 20.00
- Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days \$ 10.00
- Continuous operation of a combination of vehicles having one trailing unit that exceeds fifty-three feet and is not more than fifty-six feet in length, for a period of one year. \$ 100.00
- Continuous operation of a combination of vehicles having two trailing units which together exceed sixty-one feet and are not more than sixty-eight feet in length, for a period of one year. \$ 100.00
- Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not

- to exceed thirty days \$ 70.00
- Continuous operation of a four-axle fixed load vehicle meeting the requirements of RCW 46.44.091(1) and weighing less than 86,000 pounds gross weight, not to exceed thirty days \$ 90.00
- Continuous movement of a mobile home or manufactured home having nonreducible features not to exceed eighty-five feet in total length and fourteen feet in width, for a period of one year. \$ 150.00
- Continuous operation of a class C tow truck or a class E tow truck with a class C rating while performing emergency and nonemergency tows of oversize or overweight, or both, vehicles and vehicle combinations, under rules adopted by the transportation commission, for a period of one year. \$ 150.00
- Continuous operation of a class B tow truck or a class E tow truck with a class B rating while performing emergency and nonemergency tows of oversize or overweight, or both, vehicles and vehicle combinations, under rules adopted by the transportation commission, for a period of one year. \$ 75.00
- Continuous operation of a two or three-axle collection truck, actually engaged in the collection of solid waste or recyclables, or both, under chapter 81.77 or 35.21 RCW or by contract under RCW 36.58.090, for one year with an additional six thousand pounds more than the weight authorized in RCW 46.16.070 on the rear axle of a two-axle truck or eight thousand pounds for the tandem axles of a three-axle truck. RCW 46.44.041 and 46.44.091 notwithstanding, the tire limits specified in RCW 46.44.042 apply, but none of the excess weight is valid or may be permitted on any part of the federal interstate highway system \$ 42.00 per thousand pounds

The department may issue any of the above-listed permits that involve height, length, or width for an expanded period of consecutive months, not to exceed one year.

Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:

- (1) Farmers in the course of farming activities, for any three-month period \$ 10.00
- (2) Farmers in the course of farming activities, for a period not to exceed one year. \$ 25.00
- (3) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for any three-month period . . \$ 25.00
- (4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year. \$ 100.00

Overweight Fee Schedule

Excess weight over legal capacity, as provided in RCW 46.44.041.	Cost per mile.
0- 9,999 pounds	\$.07
10,000-14,999 pounds	\$.14
15,000-19,999 pounds	\$.21
20,000-24,999 pounds	\$.28
25,000-29,999 pounds	\$.35
30,000-34,999 pounds	\$.49
35,000-39,999 pounds	\$.63
40,000-44,999 pounds	\$.79
45,000-49,999 pounds	\$.93
50,000-54,999 pounds	\$ 1.14
55,000-59,999 pounds	\$ 1.35
60,000-64,999 pounds	\$ 1.56
65,000-69,999 pounds	\$ 1.77
70,000-74,999 pounds	\$ 2.12
75,000-79,999 pounds	\$ 2.47
80,000-84,999 pounds	\$ 2.82
85,000-89,999 pounds	\$ 3.17
90,000-94,999 pounds	\$ 3.52
95,000-99,999 pounds	\$ 3.87
100,000 pounds	\$ 4.25

The fee for weights in excess of 100,000 pounds is \$4.25 plus fifty cents for each 5,000 pound increment or portion thereof exceeding 100,000 pounds.

PROVIDED: (a) The minimum fee for any overweight permit shall be \$14.00, (b) the fee for issuance of a duplicate permit shall be \$14.00, (c) when computing overweight fees prescribed in this section or in RCW 46.44.095 that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under.

The fees levied in this section and RCW 46.44.095 do not apply to vehicles owned and operated by the state of Washington, a county within the state, a city or town or metropolitan municipal corporation within the state, or the federal government. [2004 c 109 § 1; 1995 c 171 § 2. Prior: 1994 c 172 § 2; 1994 c 59 § 1; 1993 c 102 § 4; 1990 c 42 § 107; 1989 c 398 § 1; 1985 c 351 § 5; 1983 c 278 § 3; 1979 ex.s. c 113 § 5; 1975-'76 2nd ex.s. c 64 § 16; 1975 1st ex.s. c 168 § 2; 1973 1st ex.s. c 1 § 3; 1971 ex.s. c 248 § 3; 1967 c 174 § 8; 1965 c 137 § 2.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: See note following RCW 46.44.091.

46.44.095 Temporary additional tonnage permits—Fees. When a combination of vehicles has been licensed to a total gross weight of 80,000 pounds or when a three or more axle single unit vehicle has been licensed to a total gross weight of 40,000 pounds, a temporary additional tonnage permit to haul loads in excess of these limits may be issued. This permit is valid for periods of not less than five days at

two dollars and eighty cents per day for each two thousand pounds or fraction thereof. The fee may not be prorated. The permits shall authorize the movement of loads not exceeding the weight limits set forth in RCW 46.44.041 and 46.44.042. [1993 c 102 § 5; 1990 c 42 § 108; 1989 c 398 § 3; 1988 c 55 § 1; 1983 c 68 § 2; 1979 c 158 § 159; 1977 ex.s. c 151 § 33; 1975-'76 2nd ex.s. c 64 § 17; 1974 ex.s. c 76 § 1; 1973 1st ex.s. c 150 § 3; 1969 ex.s. c 281 § 55; 1967 ex.s. c 94 § 15; 1967 c 32 § 51; 1965 ex.s. c 170 § 38; 1961 ex.s. c 7 § 15; 1961 c 12 § 46.44.095. Prior: 1959 c 319 § 31; 1957 c 273 § 18; 1955 c 185 § 1; 1953 c 254 § 13; 1951 c 269 § 39; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.096 Special permits—Determining fee—To whom paid. In determining fees according to RCW 46.44.0941, mileage on state primary and secondary highways shall be determined from the planning survey records of the department of transportation, and the gross weight of the vehicle or vehicles, including load, shall be declared by the applicant. Overweight on which fees shall be paid will be gross loadings in excess of loadings authorized by law or axle loadings in excess of loadings authorized by law, whichever is the greater. Loads which are overweight and oversize shall be charged the fee for the overweight permit without additional fees being assessed for the oversize features.

Special permits issued under RCW 46.44.047, 46.44.0941, or 46.44.095, may be obtained from offices of the department of transportation, ports of entry, or other agents appointed by the department.

The department may appoint agents for the purposes of selling special motor vehicle permits, temporary additional tonnage permits, and log tolerance permits. Agents so appointed may retain three dollars and fifty cents for each permit sold to defray expenses incurred in handling and selling the permits. If the fee is collected by the department of transportation, the department shall certify the fee so collected to the state treasurer for deposit to the credit of the motor vehicle fund.

The department may select a third party contractor, by means of competitive bid, to perform the department's permit issuance function, as provided under RCW 46.44.090. Factors the department shall consider, but is not limited to, in the selection of a third party contractor are economic benefit to both the department and the motor carrier industry, and enhancement of the overall level of permit service. For purposes of this section, "third party contractor" means a business entity that is authorized by the department to issue special permits. The department of transportation may adopt rules specifying the criteria that a business entity must meet in order to qualify as a third party contractor under this section.

Fees established in RCW 46.44.0941 shall be paid to the political body issuing the permit if the entire movement is to be confined to roads, streets, or highways for which that political body is responsible. When a movement involves a combination of state highways, county roads, and/or city streets the fee shall be paid to the department of transportation. When a movement is confined within the city limits of a city or town upon city streets, including routes of state highways on city streets, all fees shall be paid to the city or town involved. A permit will not be required from city or town authorities for a move involving a combination of city or town streets and state highways when the move through a city or town is being confined to the route of the state highway. When a move involves a combination of county roads and city streets the fee shall be paid to the county authorities, but the fee shall not be collected nor the county permit issued until valid permits are presented showing that the city or town authorities approve of the move in question. When the movement involves only county roads the fees collected shall be paid to the county involved. Fees established shall be paid to the political body issuing the permit if the entire use of the vehicle during the period covered by the permit shall be confined to the roads, streets, or highways for which that political body is responsible. [2006 c 334 § 19; 1996 c 92 § 1; 1993 c 102 § 6; 1989 c 398 § 4; 1984 c 7 § 56; 1975-'76 2nd ex.s. c 64 § 18; 1971 ex.s. c 248 § 4; 1969 ex.s. c 281 § 31; 1961 c 12 § 46.44.096. Prior: 1955 c 185 § 2; 1951 c 269 § 40; prior: 1949 c 221 § 3, part; 1947 c 200 § 7, part; 1945 c 177 § 1, part; 1937 c 189 § 55, part; Rem. Supp. 1949 § 6360-55, part.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.098 Increase in federal limits on sizes and weights—Increases by commission. If the congress of the United States further amends section 127, Title 23 of the United States Code, authorizing increased sizes and weights, the Washington state department of transportation may authorize the operation of vehicles and combinations of vehicles upon completed portions of the interstate highway system and other designated state highways if determined to be capable of accommodating the increased sizes and weights in excess of those prescribed in RCW 46.44.041, or as provided in RCW 46.44.010 and 46.44.037. The permitted increases shall not in any way exceed the federal limits which would jeopardize the state's allotment of federal funds. [1984 c 7 § 57; 1975-'76 2nd ex.s. c 64 § 19; 1965 c 38 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.101 Interstate travel by specialized equipment. The department of transportation may, within the provisions set forth in this chapter, adopt rules for size and weight criteria relating to vehicles considered to be specialized equipment by the federal highway administration for interstate

travel or as determined by the department for intrastate travel. [2005 c 189 § 3.]

46.44.105 Enforcement procedures—Penalties—Rules. (1) Violation of any of the provisions of this chapter is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed a penalty for each pound overweight, as follows:

(a) One pound through four thousand pounds overweight is three cents for each pound;

(b) Four thousand one pounds through ten thousand pounds overweight is one hundred twenty dollars plus twelve cents per pound for each additional pound over four thousand pounds overweight;

(c) Ten thousand one pounds through fifteen thousand pounds overweight is eight hundred forty dollars plus sixteen cents per pound for each additional pound over ten thousand pounds overweight;

(d) Fifteen thousand one pounds through twenty thousand pounds overweight is one thousand six hundred forty dollars plus twenty cents per pound for each additional pound over fifteen thousand pounds overweight;

(e) Twenty thousand one pounds and more is two thousand six hundred forty dollars plus thirty cents per pound for each additional pound over twenty thousand pounds overweight.

Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section or the additional penalty assessed in subsection (2) of this section, except as provided for the first violation, be suspended.

(3) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(4) It is unlawful for the driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. It is unlawful for a driver of a commercial motor vehicle as defined in RCW 46.32.005, other than the driver of a bus as defined in RCW 46.32.005(3) or a vehicle with a gross vehicle weight rating or gross combination weight rating of 7,257 kilograms or less (16,000 pounds or less) and not transporting hazardous materials in accordance with RCW 46.32.005(4), to fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open. However, unladen tow trucks regardless

of weight and farm vehicles carrying farm produce with a gross vehicle weight rating or gross combination weight rating of 11,794 kilograms or less (26,000 pounds or less) may fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open.

Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law. If the vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of the load, unless the gross weight of the vehicle and load exceeds by more than ten percent the limit permitted by this chapter. The owner or operator of the vehicle shall care for all materials unloaded at the risk of the owner or operator.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person so convicted shall be fined one thousand dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(5) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(6) For the purpose of determining additional penalties as provided by subsection (2) of this section, "overweight" means the poundage in excess of the maximum allowable gross weight or axle/axle grouping weight prescribed by RCW 46.44.041, 46.44.042, 46.44.047, 46.44.091, and 46.44.095.

(7) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under subsections (1) and (2) of this section, the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(8) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is

suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(9) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(10) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(11) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section. [2007 c 419 § 13. Prior: 2006 c 297 § 1; 2006 c 50 § 4; 2002 c 254 § 1; 1999 c 23 § 1; 1996 c 92 § 2; 1993 c 403 § 4; 1990 c 217 § 1; 1985 c 351 § 6; 1984 c 258 § 327; 1984 c 7 § 58; 1979 ex.s. c 136 § 75; 1975-'76 2nd ex.s. c 64 § 23.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

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

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

46.44.110 Liability for damage to highways, bridges, etc. Any person operating any vehicle or moving any object or conveyance upon any public highway in this state or upon any bridge or elevated structure that is a part of any such public highway is liable for all damages that the public highway, bridge, or elevated structure may sustain as a result of any illegal operation of the vehicle or the moving of any such object or conveyance or as a result of the operation or moving of any vehicle, object, or conveyance weighing in excess of the legal weight limits allowed by law. This section applies to any person operating any vehicle or moving any object or contrivance in any illegal or negligent manner or without a special permit as provided by law for vehicles, objects, or contrivances that are overweight, overwidth, overheight, or overlength. Any person operating any vehicle is liable for any damage to any public highway, bridge, or elevated structure sustained as the result of any negligent operation thereof.

When the operator is not the owner of the vehicle, object, or contrivance but is operating or moving it with the express or implied permission of the owner, the owner and the operator are jointly and severally liable for any such damage. Such damage to any state highway or structure may be recovered in a civil action instituted in the name of the state of Washington by the department of transportation. Any measure of damage to any public highway determined by the department of transportation by reason of this section is prima facie the amount of damage caused thereby and is presumed to be the amount recoverable in any civil action therefor. [1984 c 7 § 59; 1961 c 12 § 46.44.110. Prior: 1937 c 189 § 57; RRS 6360-57.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.44.120 Liability of owner, others, for violations.

Whenever an act or omission is declared to be unlawful in chapter 46.44 RCW, the owner or lessee of any motor vehicle involved in such act or omission is responsible therefor. Any person knowingly and intentionally participating in creating an unlawful condition of use, is also subject to the penalties provided in this chapter for such unlawful act or omission.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or lessee of the vehicle, such person is fully authorized to accept the citation and execute the promise to appear on behalf of the owner or lessee. [1980 c 104 § 2; 1971 ex.s. c 148 § 1; 1969 ex.s. c 69 § 1.]

46.44.130 Farm implements—Gross weight and size limitation exception—Penalty. The limitations of RCW 46.44.010, 46.44.020, 46.44.030, and 46.44.041 shall not apply to the movement of farm implements of less than forty-five thousand pounds gross weight, a total length of seventy feet or less, and a total outside width of fourteen feet or less when being moved while patrolled, flagged, lighted, signed, and at a time of day in accordance with rules hereby authorized to be adopted by the department of transportation and the statutes. Violation of a rule adopted by the department as authorized by this section or a term of this section is a traffic infraction. [1979 ex.s. c 136 § 76; 1975-'76 2nd ex.s. c 64 § 20; 1975 1st ex.s. c 168 § 3; 1973 1st ex.s. c 1 § 1.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective dates—Severability—1975-'76 2nd ex.s. c 64: See notes following RCW 46.16.070.

Effective date—1975 1st ex.s. c 168: See note following RCW 46.44.091.

46.44.140 Farm implements—Special permits—Penalty. In addition to any other special permits authorized by law, special permits may be issued by the department of transportation for a quarterly or annual period upon such terms and conditions as it finds proper for the movement of (1) farm implements used for the cutting or threshing of mature crops; or (2) other farm implements that may be identified by rule of the department of transportation. Any farm implement moved under this section must comply with RCW 46.44.091, have a gross weight of less than sixty-five thousand pounds, and have a total outside width of less than twenty feet while being moved, and such movement must be patrolled, flagged, lighted, signed, at a time of day, and oth-

erwise in accordance with rules hereby authorized to be adopted by the department of transportation for the control of such movements.

Applications for and permits issued under this section shall provide for a description of the farm implements to be moved, the approximate dates of movement, and the routes of movement so far as they are reasonably known to the applicant at the time of application, but the permit shall not be limited to these circumstances but shall be general in its application except as limited by the statutes and rules adopted by the department of transportation.

A copy of the governing permit shall be carried on the farm implement being moved during the period of its movement. The department shall collect a fee as provided in RCW 46.44.0941.

Violation of a term or condition under which a permit was issued, of a rule adopted by the department of transportation as authorized by this section, or of a term of this section is a traffic infraction. [2008 c 76 § 1; 1984 c 7 § 60; 1979 ex.s. c 136 § 77; 1973 1st ex.s. c 1 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.44.150 Highway improvement vehicles—Gross weight limit excesses authorized—Limitations. The state, county, or city authority having responsibility for the reconstruction or improvement of any public highway may, subject to prescribed conditions and limitations, authorize vehicles employed in such highway reconstruction or improvement to exceed the gross weight limitations contained in RCW 46.44.041 and 46.44.042 without a special permit or additional fees as prescribed by chapter 46.44 RCW, but only while operating within the boundaries of project limits as defined in the public works contract or plans. [1983 c 3 § 121; 1975 1st ex.s. c 63 § 1.]

46.44.170 Mobile home or park model trailer movement special permit and decal—Responsibility for taxes—License plates—Rules. (1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model trailer as defined in RCW 46.04.622 upon public highways of the state must obtain:

(a) A special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and shall pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096; and

(b) For mobile homes constructed before June 15, 1976, and already situated in the state: (i) A certification from the department of labor and industries that the mobile home was inspected for fire safety; or (ii) an affidavit in the form prescribed by the department of community, trade, and economic development signed by the owner at the county treasurer's office at the time of the application for the movement permit stating that the mobile home is being moved by the owner for his or her continued occupation or use; or (iii) a copy of the certificate of ownership or title together with an affidavit signed under penalty of perjury by the certified owner stating that the mobile home is being transferred to a wrecking yard or similar facility for disposal. In addition, the destroyed mobile home must be removed from the assess-

ment rolls of the county and any outstanding taxes on the destroyed mobile home must be removed by the county treasurer.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model trailer that is assessed for purposes of property taxes shall not be valid until the county treasurer of the county in which the mobile home or park model trailer is located shall endorse or attach his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit under this section shall display an easily recognizable decal. However, endorsement or certification by the county treasurer and the display of the decal is not required:

(a) When a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets;

(b) When a signed affidavit of destruction is filed with the county assessor and the mobile home or park model trailer is being moved to a disposal site by a landlord as defined in RCW 59.20.030 after (i) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer. The mobile home or park model trailer will be removed from the tax rolls and, upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer will be removed by the county treasurer; or

(c) When a signed affidavit of destruction is filed with the county assessor by any mobile home or park model trailer owner or any property owner with an abandoned mobile home or park model trailer, the same shall be removed from the tax rolls and upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer shall be removed by the county treasurer.

(3) If the landlord of a mobile home park takes ownership of a mobile home or park model trailer with the intent to resell or rent the same under RCW 59.20.030 after (a) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer, the outstanding taxes become the responsibility of the landlord.

(4) It is the responsibility of the owner of the mobile home or park model trailer subject to property taxes or the agent to obtain the endorsement and decal from the county treasurer before a mobile home or park model trailer is moved.

(5) This section does not prohibit the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but plates shall not be issued unless the mobile home or park model trailer subject to property taxes for which plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for the license has been paid.

(2008 Ed.)

(6) The department of transportation, the department of labor and industries, and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation shall adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section. By January 1, 2006, the department of labor and industries shall also adopt procedures for notifying destination local jurisdictions concerning the arrival of mobile homes that failed safety inspections. [2005 c 399 § 1; 2004 c 79 § 4; 2003 c 61 § 1; 2002 c 168 § 6; 1986 c 211 § 4. Prior: 1985 c 395 § 1; 1985 c 22 § 1; 1980 c 152 § 1; 1977 ex.s. c 22 § 2.]

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

46.44.173 Notice to treasurer and assessor of county where mobile home or park trailer to be located. (1) Upon validation of a special permit as provided in RCW 46.44.170, the county treasurer shall forward notice of movement of the mobile home or park model trailer subject to property taxes to the treasurer's own county assessor and to the county assessor of the county in which the mobile home or park model trailer will be located.

(2) When a single trip special permit not requiring tax certification is issued, the department of transportation or the local authority shall notify the assessor of the county in which the mobile home or park model trailer is to be located. When a continuous trip special permit is used to transport a mobile home or park model trailer not requiring tax certification, the transporter shall notify the assessor of the county in which the mobile home or park model trailer is to be located. Notification is not necessary when the destination of a mobile home or park model trailer is a manufacturer, distributor, retailer, or location outside the state.

(3) A notification under this section shall state the specific, residential destination of the mobile home or park model trailer. [2002 c 168 § 7; 1984 c 7 § 61; 1977 ex.s. c 22 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

46.44.175 Penalties—Hearing. (1) Failure of any person or agent acting for a person who causes to be moved or moves a mobile home as defined in RCW 46.04.302 upon public highways of this state and failure to comply with any of the provisions of RCW 46.44.170 and 46.44.173 is a traffic infraction for which a penalty of not less than one hundred dollars or more than five hundred dollars shall be assessed. In addition to the above penalty, the department of transportation or local authority may withhold issuance of a special permit or suspend a continuous special permit as provided by RCW 46.44.090 and 46.44.093 for a period of not less than thirty days.

(2) Any person who shall alter, reuse, transfer, or forge the decal required by RCW 46.44.170, or who shall display a decal knowing it to have been forged, reused, transferred, or altered, shall be guilty of a gross misdemeanor.

(3) Any person or agent who is denied a special permit or whose special permit is suspended may upon request receive a hearing before the department of transportation or the local

authority having jurisdiction. The department or the local authority after such hearing may revise its previous action. [2003 c 53 § 239; 1995 c 38 § 11; 1994 c 301 § 15; 1985 c 22 § 2; 1979 ex.s. c 136 § 78; 1977 ex.s. c 22 § 4.]

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

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1977 ex.s. c 22: See note following RCW 46.04.302.

46.44.180 Operation of mobile home pilot vehicle without insurance unlawful—Amounts—Exception—Penalty. (1) It is unlawful for a person, other than an employee of a dealer or other principal licensed to transport mobile homes within this state acting within the course of employment with the principal, to operate a pilot vehicle accompanying a mobile home, as defined in RCW 46.04.302, being transported on the public highways of this state, without maintaining insurance for the pilot vehicle in the minimum amounts of:

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

(2) Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon demand by a police officer.

(3) Failure to maintain the insurance as required by this section is a gross misdemeanor.

(4) Failure to carry or disclose the evidence of the insurance as required by this section is a misdemeanor. [2003 c 53 § 240; 1980 c 153 § 3.]

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

46.44.190 Fire-fighting apparatus. (1) As used in this section, "fire-fighting apparatus" means a vehicle or combination of vehicles, owned by a regularly organized fire suppression agency, designed, maintained, and used exclusively for fire suppression and rescue or for fire prevention activities. These vehicles and associated loads or equipment are necessary to protect the public safety and are considered non-divisible loads. A vehicle or combination of vehicles that is not designed primarily for fire suppression including, but not limited to, a hazardous materials response vehicle, bus, mobile kitchen, mobile sanitation facility, and heavy equipment transport vehicle is not a fire-fighting apparatus for purposes of this section.

(2) Fire-fighting apparatus must comply with all applicable federal and state vehicle operating and safety criteria, including rules adopted by agencies within each jurisdiction.

(3) All owners and operators of fire-fighting apparatus shall comply with current information, provided by the department, regarding the applicable load restrictions of state and local bridges within the designated fire service area, including any automatic or mutual aid agreement areas.

(4) Fire-fighting apparatus operating within a fire district or municipal department boundary of the owner of the apparatus, including any automatic or mutual aid agreement areas, may operate without a permit if:

(a) The weight does not exceed:

(i) 600 pounds per inch width of tire;

(ii) 24,000 pounds on a single axle;

(iii) 43,000 pounds on a tandem axle set;

(iv) 67,000 pounds gross vehicle weight, subject to the gross weight limits of RCW 46.44.091(1) (c), (d), and (e);

(v) The tire manufacturer's tire load rating.

(b) There is no tridem axle set.

(c) The dimensions do not exceed:

(i) 8 feet, 6 inches wide;

(ii) 14 feet high;

(iii) 50 feet overall length;

(iv) 15 foot front overhang;

(v) Rear overhang not exceeding the length of the wheel base.

(5) Operators of fire-fighting apparatus that exceed the weight limits in subsection (4) of this section must apply for an overweight permit with the department. The maximum weight a fire-fighting apparatus may weigh is 50,000 pounds on the tandem axle set, and may not exceed 600 pounds per inch width of tire. The maximum weight limit must include the weight of a full water tank, if applicable, all equipment necessary for operation, and the normal number of personnel usually assigned to be on board, or four personnel, whichever is greater. At least four personnel must be physically present at the time the apparatus is weighed.

(6) When applying for a permit, a current weight slip from a certified scale must be attached to the department's application form. Upon receiving an application, the department shall transmit it to the local jurisdictions in which the fire-fighting apparatus will be operating, so that the local jurisdictions can make a determination on the need for local travel and route restrictions within the operating area. The department shall issue a permit within twenty days of receiving a permit application and shall issue the permit on an annual basis for the apparatus to operate on the state highway system, with reference made to applicable load restrictions and any other limitations stipulated on the permit, including limitations placed by local jurisdictions.

(7) Fire-fighting apparatus in operation in this state before June 13, 2002, and privately owned industrial fire-fighting apparatus used for purposes of providing emergency response and mutual aid are each exempt from subsections (4) and (5) of this section. However, operators of the exempt fire-fighting apparatus must still obtain an annual permit under subsection (6) of this section.

(8) Fire-fighting apparatus without the proper overweight permits are prohibited from being operated on city, county, or state roadways until the apparatus is within legal weight limits and a current permit has been issued by the department. When the permit is issued, the fire district must notify the Washington state patrol that the apparatus is in compliance with overweight permit regulations.

(9) The Washington state patrol may conduct random spot checks of fire-fighting apparatus to ensure compliance with overweight permit regulations. If a fire-fighting apparatus is found to be not in compliance with overweight permit

regulations, the state patrol shall issue a violation notice to the fire department stating this fact and prohibiting operation of the apparatus on city, county, and state roadways.

(10) It is a traffic infraction to continue to operate a fire-fighting apparatus on the roadways after a violation notice has been issued. The following penalties apply:

(a) For a first offense, the penalty will be no less than fifty dollars but no more than fifty dollars;

(b) For a second offense, the penalty will be no less than seventy-five dollars;

(c) For a third or subsequent offense, the penalty will be no less than one hundred dollars.

(11) No individual liability attaches to an employee or volunteer of the penalized fire department. [2002 c 231 § 1; 2001 c 262 § 3.]

Chapter 46.48 RCW

TRANSPORTATION OF HAZARDOUS MATERIALS

Sections

- 46.48.170 State patrol authority—Rules and regulations.
- 46.48.175 Rules—Penalties—Responsibility for compliance.
- 46.48.180 State patrol study to insure uniformity of regulations.
- 46.48.185 Inspections.

Hazardous materials incident command agency, state patrol as: RCW 70.136.030.

46.48.170 State patrol authority—Rules and regulations. The Washington state patrol acting by and through the chief of the Washington state patrol shall have the authority to adopt and enforce the regulations promulgated by the United States department of transportation, Title 49 CFR parts 100 through 199, transportation of hazardous materials, as these regulations apply to motor carriers. "Motor carrier" means any person engaged in the transportation of passengers or property operating interstate and intrastate upon the public highways of this state, except farmers. The chief of the Washington state patrol shall confer with the emergency management council under RCW 38.52.040 and may make rules and regulations pertaining thereto, sufficient to protect persons and property from unreasonable risk of harm or damage. The chief of the Washington state patrol shall establish such additional rules not inconsistent with Title 49 CFR parts 100 through 199, transportation of hazardous materials, which for compelling reasons make necessary the reduction of risk associated with the transportation of hazardous materials. No such rules may lessen a standard of care; however, the chief of the Washington state patrol may, after conferring with the emergency management council, establish a rule imposing a more stringent standard of care. The chief of the Washington state patrol shall appoint the necessary qualified personnel to carry out the provisions of RCW 46.48.170 through *46.48.190. [1988 c 81 § 19; 1980 c 20 § 1; 1961 c 12 § 46.48.170. Prior: 1951 c 102 § 1; 1949 c 101 § 1; Rem. Supp. 1949 § 6360-63a.]

*Reviser's note: RCW 46.48.190 was repealed by 1988 c 81 § 20.

46.48.175 Rules—Penalties—Responsibility for compliance. Each violation of any rules and/or regulations made pursuant to RCW 46.48.170 or 81.80.290 pertaining to vehi-

cle equipment on motor carriers transporting hazardous material shall be a misdemeanor.

Bail for such a violation shall be set at a minimum of one hundred dollars. The fine for such a violation shall be not less than two hundred dollars nor more than five hundred dollars. Compliance with the provisions of this chapter is the primary responsibility of the owner or lessee of the vehicle or any vehicle used in combination that is cited in the violation. [1980 c 104 § 1; 1961 c 12 § 46.48.175. Prior: 1951 c 102 § 2.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.48.180 State patrol study to insure uniformity of regulations. The Washington state patrol shall make a study of the United States department of transportation regulations pertaining to Title 49 CFR, parts 100 through 199, and the laws of this state pertaining to the same subject in order that the chief of the Washington state patrol may make necessary and proper recommendations to the legislature and state departments from time to time to bring about uniformity between the laws and regulations of the federal government and this state in regard to the transportation of such materials. [1980 c 20 § 2; 1961 c 12 § 46.48.180. Prior: 1949 c 101 § 2; Rem. Supp. 1949 § 6360-63b.]

46.48.185 Inspections. The chief of the Washington state patrol shall direct the necessary qualified personnel to inspect the cargo of any motor carriers vehicle transporting hazardous material, inspect for proper securing, and inspect for the combined loading of cargo which would be inconsistent with the provisions of Title 49 CFR, parts 100 through 199. Authorized personnel inspecting loads of hazardous material shall do so in the presence of a representative of the motor carrier. Seal and locking devices may be removed as necessary to facilitate the inspection. The seals or locking devices removed shall be replaced by the Washington state patrol with a written form approved by the chief to certify seal or locking device removal for inspection of the cargo. [1980 c 20 § 3.]

Chapter 46.52 RCW

ACCIDENTS—REPORTS—ABANDONED VEHICLES

Sections

- 46.52.010 Duty on striking unattended car or other property—Penalty.
- 46.52.020 Duty in case of personal injury or death or damage to attended vehicle or other property—Penalties.
- 46.52.030 Accident reports.
- 46.52.035 Accident reports—Suspension of license or permit for failure to make report.
- 46.52.040 Accident reports—Report when operator disabled.
- 46.52.050 Coroner's reports to sheriff and state patrol.
- 46.52.060 Tabulation and analysis of reports—Availability for use.
- 46.52.065 Blood samples to state toxicologist—Analysis—Availability, admissibility of reports.
- 46.52.070 Police officer's report.
- 46.52.080 Confidentiality of reports—Information required to be disclosed—Evidence.
- 46.52.083 Confidentiality of reports—Availability of factual data to interested parties.
- 46.52.085 Confidentiality of reports—Fee for written information.
- 46.52.088 Reports—False information.
- 46.52.090 Reports of major repairs, etc.—Violations, penalties—Rules—Exceptions for older vehicles.

- 46.52.100 Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs.
 46.52.101 Records of traffic charges, dispositions.
 46.52.120 Case record of convictions and infractions—Cross-reference to accident reports.
 46.52.130 Abstract of driving record—Access—Fees—Penalty.
 46.52.190 Abandoned vehicles or hulks—Impoundment—Notification—Hearing—Liability for charges—Nonpayment penalty.

Abandoned, unauthorized vehicles generally: Chapter 46.55 RCW.

Hulk haulers and scrap processors: Chapter 46.79 RCW.

Removal of certain vehicles from roadway: RCW 46.55.113, 46.55.115, 46.61.590.

Vehicle wreckers: Chapter 46.80 RCW.

46.52.010 Duty on striking unattended car or other property—Penalty. (1) The operator of any vehicle which collided with any other vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the operator and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice, giving the name and address of the operator and of the owner of the vehicle striking such other vehicle.

(2) The driver of any vehicle involved in an accident resulting only in damage to property fixed or placed upon or adjacent to any public highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the name and address of the operator and owner of the vehicle striking such property, or shall leave in a conspicuous place upon the property struck a written notice, giving the name and address of the operator and of the owner of the vehicle so striking the property, and such person shall further make report of such accident as in the case of other accidents upon the public highways of this state.

(3) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 241; 1979 ex.s. c 136 § 79; 1961 c 12 § 46.52.010. Prior: 1937 c 189 § 133; RRS § 6360-133; 1927 c 309 § 50, part; RRS § 6362-50, part.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person violating duty on striking unattended vehicle or other property: RCW 10.31.100.

46.52.020 Duty in case of personal injury or death or damage to attended vehicle or other property—Penalties.

(1) A driver of any vehicle involved in an accident resulting in the injury to or death of any person or involving striking the body of a deceased person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall then forthwith return to, and in every event remain at, the scene of such accident until he or she has fulfilled the requirements of subsection (3) of this section; every such stop shall be made without obstructing traffic more than is necessary.

(2)(a) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person or damage to other property must

move the vehicle as soon as possible off the roadway or freeway main lanes, shoulders, medians, and adjacent areas to a location on an exit ramp shoulder, the frontage road, the nearest suitable cross street, or other suitable location. The driver shall remain at the suitable location until he or she has fulfilled the requirements of subsection (3) of this section. Moving the vehicle in no way affects fault for an accident.

(b) A law enforcement officer or representative of the department of transportation may cause a motor vehicle, cargo, or debris to be moved from the roadway; and neither the department of transportation representative, nor anyone acting under the direction of the officer or the department of transportation representative is liable for damage to the motor vehicle, cargo, or debris caused by reasonable efforts of removal.

(3) Unless otherwise provided in subsection (7) of this section the driver of any vehicle involved in an accident resulting in injury to or death of any person, or involving striking the body of a deceased person, or resulting in damage to any vehicle which is driven or attended by any person or damage to other property shall give his or her name, address, insurance company, insurance policy number, and vehicle license number and shall exhibit his or her vehicle driver's license to any person struck or injured or the driver or any occupant of, or any person attending, any such vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying or the making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person or on his or her behalf. Under no circumstances shall the rendering of assistance or other compliance with the provisions of this subsection be evidence of the liability of any driver for such accident.

(4)(a) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in death is guilty of a class B felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(b) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident resulting in injury is guilty of a class C felony and, upon conviction, is punishable according to chapter 9A.20 RCW.

(c) Any driver covered by the provisions of subsection (1) of this section failing to stop or comply with any of the requirements of subsection (3) of this section in the case of an accident involving striking the body of a deceased person is guilty of a gross misdemeanor.

(d) This subsection shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying with this section.

(5) Any driver covered by the provisions of subsection (2) of this section failing to stop or to comply with any of the requirements of subsection (3) of this section under said circumstances shall be guilty of a gross misdemeanor: PROVIDED, That this provision shall not apply to any person injured or incapacitated by such accident to the extent of being physically incapable of complying herewith.

(6) The license or permit to drive or any nonresident privilege to drive of any person convicted under this section or any local ordinance consisting of substantially the same language as this section of failure to stop and give information or render aid following an accident with any vehicle driven or attended by any person shall be revoked by the department.

(7) If none of the persons specified are in condition to receive the information to which they otherwise would be entitled under subsection (3) of this section, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (1) and (3) of this section insofar as possible on his or her part to be performed, shall forthwith report such accident to the nearest office of the duly authorized police authority and submit thereto the information specified in subsection (3) of this section. [2002 c 194 § 1; 2001 c 145 § 1; 2000 c 66 § 1; 1990 c 210 § 2; 1980 c 97 § 1; 1979 ex.s. c 136 § 80; 1975-'76 2nd ex.s. c 18 § 1. Prior: 1975 1st ex.s. c 210 § 1; 1975 c 62 § 14; 1967 c 32 § 53; 1961 c 12 § 46.52.020; prior: 1937 c 189 § 134; RRS § 6360-134; 1927 c 309 § 50, part; RRS § 6362-50, part.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—1980 c 97: "This 1980 act shall take effect on July 1, 1980." [1980 c 97 § 3.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1975 c 62: See note following RCW 36.75.010.

Arrest of person violating duty in case of injury to or death of person or damage to attended vehicle: RCW 10.31.100.

46.52.030 Accident reports. (1) Unless a report is to be made by a law enforcement officer under subsection (3) of this section, the driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with subsection (5) of this section, shall, within four days after such accident, make a written report of such accident to the chief of police of the city or town if such accident occurred within an incorporated city or town or the county sheriff or state patrol if such accident occurred outside incorporated cities and towns. Nothing in this subsection prohibits accident reports from being filed by drivers where damage to property is less than the minimum amount or where a law enforcement officer has submitted a report.

(2) The original of the report shall be immediately forwarded by the authority receiving the report to the chief of the Washington state patrol at Olympia, Washington. The Washington state patrol shall give the department of licensing full access to the report.

(3) Any law enforcement officer who investigates an accident for which a report is required under subsection (1) of this section shall submit an investigator's report as required by RCW 46.52.070.

(4) The chief of the Washington state patrol may require any driver of any vehicle involved in an accident, of which report must be made as provided in this section, to file supplemental reports whenever the original report in the chief's

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opinion is insufficient, and may likewise require witnesses of any such accident to render reports. For this purpose, the chief of the Washington state patrol shall prepare and, upon request, supply to any police department, coroner, sheriff, and any other suitable agency or individual, sample forms of accident reports required hereunder, which reports shall be upon a form devised by the chief of the Washington state patrol and shall call for sufficiently detailed information to disclose all material facts with reference to the accident to be reported thereon, including the location, the circumstances, the conditions then existing, the persons and vehicles involved, the insurance information required under RCW 46.30.030, personal injury or death, if any, the amounts of property damage claimed, the total number of vehicles involved, whether the vehicles were legally parked, legally standing, or moving, whether such vehicles were occupied at the time of the accident, and whether any driver involved in the accident was distracted at the time of the accident. Distractions contributing to an accident must be reported on the accident form and include at least the following minimum reporting options: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking; reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown. Every required accident report shall be made on a form prescribed by the chief of the Washington state patrol and each authority charged with the duty of receiving such reports shall provide sufficient report forms in compliance with the form devised. The report forms shall be designated so as to provide that a copy may be retained by the reporting person.

(5) The chief of the Washington state patrol shall adopt rules establishing the accident-reporting threshold for property damage accidents. Beginning October 1, 1987, the accident-reporting threshold for property damage accidents shall be five hundred dollars. The accident-reporting threshold for property damage accidents shall be revised when necessary, but not more frequently than every two years. The revisions shall only be for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the time period since the last revision. [2005 c 171 § 1; 1997 c 248 § 1; 1996 c 183 § 1; 1989 c 353 § 5; 1987 c 463 § 2; 1981 c 30 § 1; 1979 c 158 § 160; 1979 c 11 § 2. Prior: 1977 ex.s. c 369 § 2; 1977 ex.s. c 68 § 1; 1969 ex.s. c 40 § 2; 1967 c 32 § 54; 1965 ex.s. c 119 § 1; 1961 c 12 § 46.52.030; prior: 1943 c 154 § 1; 1937 c 189 § 135; RRS § 6360-135.]

Effective date—2005 c 171: "This act takes effect January 1, 2006." [2005 c 171 § 3.]

Effective date—1997 c 248: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 1997]." [1997 c 248 § 2.]

Effective date—1996 c 183: "This act takes effect July 1, 1996." [1996 c 183 § 3.]

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

46.52.035 Accident reports—Suspension of license or permit for failure to make report. The director may suspend the license or permit to drive and any nonresident operating privileges of any person failing to report an accident as provided in RCW 46.52.030 until such report has been filed. [1988 c 8 § 1; 1965 ex.s. c 119 § 2.]

46.52.040 Accident reports—Report when operator disabled. Whenever the driver of the vehicle involved in any accident, concerning which accident report is required, is physically incapable of making the required accident report and there is another occupant other than a passenger for hire therein, in the vehicle at the time of the accident capable of making a report, such occupant shall make or cause to be made such report. Upon recovery such driver shall make such report in the manner required by law. [1967 c 32 § 55; 1961 c 12 § 46.52.040. Prior: 1937 c 189 § 136; RRS § 6360-136.]

46.52.050 Coroner's reports to sheriff and state patrol. Every coroner or other official performing like functions shall on or before the tenth day of each month, report in writing to the sheriff of the county in which he holds office and to the chief of the Washington state patrol the death of any person within his jurisdiction during the preceding calendar month as a result of an accident involving any vehicle, together with the circumstances of such accident. [1961 c 12 § 46.52.050. Prior: 1937 c 189 § 137; RRS § 6360-137.]

46.52.060 Tabulation and analysis of reports—Availability for use. It shall be the duty of the chief of the Washington state patrol to file, tabulate, and analyze all accident reports and to publish annually, immediately following the close of each fiscal year, and monthly during the course of the year, statistical information based thereon showing the number of accidents, the location, the frequency, whether any driver involved in the accident was distracted at the time of the accident and the circumstances thereof, and other statistical information which may prove of assistance in determining the cause of vehicular accidents. Distractions contributing to an accident to be reported must include at least the following: Not distracted; operating a handheld electronic telecommunication device; operating a hands-free wireless telecommunication device; other electronic devices (including, but not limited to, PDA's, laptop computers, navigational devices, etc.); adjusting an audio or entertainment system; smoking; eating or drinking; reading or writing; grooming; interacting with children, passengers, animals, or objects in the vehicle; other inside distractions; outside distractions; and distraction unknown.

Such accident reports and analysis or reports thereof shall be available to the director of licensing, the department of transportation, the utilities and transportation commission, the traffic safety commission, and other public entities authorized by the chief of the Washington state patrol, or their duly authorized representatives, for further tabulation and analysis for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators and all other purposes, and to publish information so derived as may be deemed of publication value. [2005 c 171 § 2; 1998 c 169 § 1; 1979 c 158 § 161; 1977 c 75 § 67; 1967 c 32 § 56; 1961 c 12 § 46.52.060. Prior: 1937 c 189 § 138; RRS § 6360-138.]

[Title 46 RCW—page 208]

Effective date—2005 c 171: See note following RCW 46.52.030.

46.52.065 Blood samples to state toxicologist—Analysis—Availability, admissibility of reports. Every coroner or other official performing like functions shall submit to the state toxicologist a blood sample taken from all drivers and all pedestrians who are killed in any traffic accident where the death occurred within four hours after the accident. Blood samples shall be taken and submitted in the manner prescribed by the state toxicologist. The state toxicologist shall analyze these blood samples to determine the concentration of alcohol and, where feasible, the presence of drugs or other toxic substances. The reports and records of the state toxicologist relating to analyses made pursuant to this section shall be confidential: PROVIDED, That the results of these analyses shall be reported to the state patrol and made available to the prosecuting attorney or law enforcement agency having jurisdiction: PROVIDED FURTHER, That the results of these analyses may be admitted in evidence in any civil or criminal action where relevant and shall be made available to the parties to any such litigation on application to the court. [1977 ex.s. c 50 § 1; 1971 ex.s. c 270 § 1.]

46.52.070 Police officer's report. (1) Any police officer of the state of Washington or of any county, city, town or other political subdivision, present at the scene of any accident or in possession of any facts concerning any accident whether by way of official investigation or otherwise shall make report thereof in the same manner as required of the parties to such accident and as fully as the facts in his possession concerning such accident will permit.

(2) The police officer shall report to the department, on a form prescribed by the director: (a) When a collision has occurred that results in a fatality; and (b) the identity of the operator of a vehicle involved in the collision when the officer has reasonable grounds to believe the operator caused the collision.

(3) The police officer shall report to the department, on a form prescribed by the director: (a) When a collision has occurred that results in a serious injury; (b) the identity of the operator of a vehicle involved in the collision when the officer has reasonable grounds to believe the operator who caused the serious injury may not be competent to operate a motor vehicle; and (c) the reason or reasons for the officer's belief. [1999 c 351 § 2; 1998 c 165 § 8; 1967 c 32 § 57; 1961 c 12 § 46.52.070. Prior: 1937 c 189 § 139; RRS § 6360-139.]

Effective date—1998 c 165 §§ 8-14: "Sections 8 through 14 of this act take effect January 1, 1999." [1998 c 165 § 15.]

Short title—1998 c 165: See note following RCW 43.59.010.

46.52.080 Confidentiality of reports—Information required to be disclosed—Evidence. All required accident reports and supplemental reports and copies thereof shall be without prejudice to the individual so reporting and shall be for the confidential use of the county prosecuting attorney and chief of police or county sheriff, as the case may be, and the director of licensing and the chief of the Washington state patrol, and other officer or commission as authorized by law, except that any such officer shall disclose the names and addresses of persons reported as involved in an accident or as witnesses thereto, the vehicle license plate numbers and

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descriptions of vehicles involved, and the date, time and location of an accident, to any person who may have a proper interest therein, including the driver or drivers involved, or the legal guardian thereof, the parent of a minor driver, any person injured therein, the owner of vehicles or property damaged thereby, or any authorized representative of such an interested party, or the attorney or insurer thereof. No such accident report or copy thereof shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that any officer above named for receiving accident reports shall furnish, upon demand of any person who has, or who claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the chief of the Washington state patrol solely to prove a compliance or a failure to comply with the requirement that such a report be made in the manner required by law: PROVIDED, That the reports may be used as evidence when necessary to prosecute charges filed in connection with a violation of RCW 46.52.088. [1979 c 158 § 162; 1975 c 62 § 15; 1967 c 32 § 58; 1965 ex.s. c 119 § 3; 1961 c 12 § 46.52.080. Prior: 1937 c 189 § 140; RRS § 6360-140.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.52.083 Confidentiality of reports—Availability of factual data to interested parties. All of the factual data submitted in report form by the officers, together with the signed statements of all witnesses, except the reports signed by the drivers involved in the accident, shall be made available upon request to the interested parties named in RCW 46.52.080. [1965 ex.s. c 119 § 4.]

46.52.085 Confidentiality of reports—Fee for written information. Any information authorized for release under RCW 46.52.080 and 46.52.083 may be furnished in written form for a fee sufficient to meet, but not exceed, the costs incurred. All fees received by the Washington state patrol for such copies shall be deposited in the motor vehicle fund. [1979 c 34 § 1; 1971 ex.s. c 91 § 5; 1965 ex.s. c 119 § 5.]

46.52.088 Reports—False information. A person shall not give information in oral or written reports as required in chapter 46.52 RCW knowing that such information is false. [1975 c 62 § 16.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.52.090 Reports of major repairs, etc.—Violations, penalties—Rules—Exceptions for older vehicles. (1) Any person, firm, corporation, or association engaged in the business of repairs of any kind to vehicles or any person, firm, corporation, or association which may at any time engage in any kind of major repair, restoration, or substantial alteration to a vehicle required to be licensed or registered under this title shall maintain verifiable records regarding the source of used major component parts used in such repairs, restoration, or alteration. Satisfactory records include but are not limited to personal identification of the seller if such parts were acquired from other than a vehicle wrecker licensed under chapter 46.80 RCW, signed work orders, and bills of sale signed by the seller whose identity and address has been ver-

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ified describing parts acquired, and the make, model, and vehicle identification number of a vehicle from which the following parts are removed: (a) Engines and short blocks, (b) frames, (c) transmissions and transfer cases, (d) cabs, (e) doors, (f) front or rear differentials, (g) front or rear clips, (h) quarter panels or fenders, (i) bumpers, (j) truck beds or boxes, (k) seats, and (l) hoods.

(2) The records required under subsection (1) of this section shall be kept for a period of four years and shall be made available for inspection by a law enforcement officer during ordinary business hours.

(3) It is a gross misdemeanor to: (a) Acquire a part without a substantiating bill of sale or invoice from the parts supplier or fail to comply with any rules adopted under this section; (b) fail to obtain the vehicle identification number for those parts requiring that it be obtained; or (c) fail to keep records for four years or to make such records available during normal business hours to a law enforcement officer.

(4) The chief of the Washington state patrol shall adopt rules for the purpose of regulating record-keeping and parts acquisition by vehicle repairers, restorers, rebuilders, or those who perform substantial vehicle alterations.

(5) The provisions of this section do not apply to major repair, restoration, or alteration of a vehicle thirty years of age or older. [2003 c 53 § 242; 1983 c 142 § 1; 1967 c 32 § 59; 1961 c 12 § 46.52.090. Prior: 1937 c 189 § 141; RRS § 6360-141.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

46.52.100 Record of traffic charges—Reports of court—District court venue—Driving under influence of liquor or drugs.

Reviser's note: RCW 46.52.100 was amended by 1999 c 274 § 5 without reference to its repeal by 1999 c 86 § 8. It has been decodified for publication purposes under RCW 1.12.025.

46.52.101 Records of traffic charges, dispositions. (1) Every district court, municipal court, and clerk of a superior court shall keep or cause to be kept a record of every traffic complaint, traffic citation, notice of infraction, or other legal form of traffic charge deposited with or presented to the court or a traffic violations bureau, and shall keep a record of every official action by the court or its traffic violations bureau regarding the charge, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, finding that a traffic infraction has been committed, dismissal of a notice of infraction, and the amount of fine, forfeiture, or penalty resulting from every traffic charge deposited with or presented to the court or traffic violations bureau. In the case of a record of a conviction for a violation of RCW 46.61.502 or 46.61.504, and notwithstanding any other provision of law, the court shall maintain the record permanently.

(2) After the conviction, forfeiture of bail, or finding that a traffic infraction was committed for a violation of any provisions of this chapter or other law regulating the operating of vehicles on highways, the clerk of the court in which the conviction was had, bail was forfeited, or the finding of commission was made shall prepare and immediately forward to the

director of licensing at Olympia an abstract of the court record covering the case. Report need not be made of a finding involving the illegal parking or standing of a vehicle.

(3) The abstract must be made upon a form or forms furnished by the director and must include the name and address of the party charged, the number, if any, of the party's driver's or chauffeur's license, the registration number of the vehicle involved if required by the director, the nature of the offense, the date of hearing, the plea, the judgment, whether the offense was an alcohol-related offense as defined in RCW 46.01.260(2), whether the incident that gave rise to the offense charged resulted in a fatality, whether bail was forfeited, whether the determination that a traffic infraction was committed was contested, and the amount of the fine, forfeiture, or penalty, as the case may be.

(4) In courts where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the department of licensing, the court may electronically provide the information required in subsections (2), (3), and (5) of this section.

(5) The superior court clerk shall also forward a like report to the director upon the conviction of a person of a felony in the commission of which a vehicle was used.

(6) The director shall keep all abstracts received under this section at the director's office in Olympia. The abstracts must be open to public inspection during reasonable business hours.

(7) The officer, prosecuting attorney, or city attorney signing the charge or information in a case involving a charge of driving under the influence of intoxicating liquor or any drug shall immediately request from the director an abstract of convictions and forfeitures. The director shall furnish the requested abstract. [2006 c 327 § 6; 1999 c 86 § 4.]

46.52.120 Case record of convictions and infractions—Cross-reference to accident reports. (1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident and whether or not the accident resulted in any fatality. The chief of the Washington state patrol shall furnish the index cross-reference record to the director, with reference to each driver involved in the reported accidents.

(2) The records shall be for the confidential use of the director, the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be admitted into evidence in any court, except where relevant to the prosecution or defense of a criminal charge, or in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license.

(3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. The director shall

also suspend a person's driver's license if the person fails to attend or complete a driver improvement interview or fails to abide by conditions of probation under RCW 46.20.335. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law. [1998 c 218 § 1; 1998 c 165 § 10; 1993 c 501 § 12; 1992 c 32 § 3; 1989 c 178 § 23; 1988 c 38 § 2; 1984 c 99 § 1; 1982 c 52 § 1; 1979 ex.s. c 136 § 83; 1977 ex.s. c 356 § 1; 1967 c 32 § 62; 1961 c 12 § 46.52.120. Prior: 1937 c 189 § 144; RRS § 6360-144.]

Reviser's note: This section was amended by 1998 c 165 § 10 and by 1998 c 218 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.52.130 Abstract of driving record—Access—Fees—Penalty. (1) A certified abstract of the driving record shall be furnished only to:

- (a) The individual named in the abstract;
- (b) An employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with mental or physical disabilities;
- (c) An employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs;
- (d) The insurance carrier that has insurance in effect covering the employer or a prospective employer;
- (e) The insurance carrier that has motor vehicle or life insurance in effect covering the named individual;
- (f) The insurance carrier to which the named individual has applied;
- (g) An alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment;
- (h) City and county prosecuting attorneys; or
- (i) State colleges, universities, or agencies for employment and risk management purposes; or units of local government authorized to self-insure under RCW 48.62.031.

(2) City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(3)(a) The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies.

(b) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and subject to the same restrictions as certified abstracts.

(4) Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years.

(5) Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract, to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual, or to a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, or to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(6) The abstract, whenever possible, shall include:

(a) An enumeration of motor vehicle accidents in which the person was driving;

(b) The total number of vehicles involved;

(c) Whether the vehicles were legally parked or moving;

(d) Whether the vehicles were occupied at the time of the accident;

(e) Whether the accident resulted in any fatality;

(f) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(g) The status of the person's driving privilege in this state; and

(h) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(7) Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).

(8) The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or firefighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of

occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

(9) The director shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.

(10) Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(11) Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, upon the public highways of this state and shall not divulge any information contained in it to a third party.

(12) Any employee or agent of a transit authority receiving a certified abstract for its vanpool program shall use it exclusively for determining whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle. The transit authority may not divulge any information contained in the abstract to a third party.

(13) Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

(14) Release of a certified abstract of the driving record of an employee, prospective employee, or prospective volunteer requires a statement signed by: (a) The employee, pro-

spective employee, or prospective volunteer that authorizes the release of the record, and (b) the employer or volunteer organization attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or persons with physical or mental disabilities, upon the public highways of this state. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement. This subsection does not apply to entities identified in subsection (1)(i) of this section.

(15) Any negligent violation of this section is a gross misdemeanor.

(16) Any intentional violation of this section is a class C felony. [2008 c 253 § 1; 2007 c 424 § 3; 2004 c 49 § 1; 2003 c 367 § 1. Prior: 2002 c 352 § 20; 2002 c 221 § 1; 2001 c 309 § 1; 1998 c 165 § 11; 1997 c 66 § 12; prior: 1996 c 307 § 4; 1996 c 183 § 2; 1994 c 275 § 16; 1991 c 243 § 1; 1989 c 178 § 24; prior: 1987 1st ex.s c 9 § 2; 1987 c 397 § 2; 1987 c 181 § 1; 1986 c 74 § 1; 1985 ex.s. c 1 § 11; 1979 ex.s. c 136 § 84; 1977 ex.s. c 356 § 2; 1977 ex.s. c 140 § 1; 1973 1st ex.s. c 37 § 1; 1969 ex.s. c 40 § 3; 1967 c 174 § 2; 1967 c 32 § 63; 1963 c 169 § 65; 1961 ex.s. c 21 § 27.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2008 c 253: "This act takes effect August 1, 2008." [2008 c 253 § 2.]

Effective date—2007 c 424: See note following RCW 46.20.293.

Effective dates—2002 c 352: See note following RCW 46.09.070.

Effective date—1998 c 165 §§ 8-14: See note following RCW 46.52.070.

Short title—1998 c 165: See note following RCW 43.59.010.

Effective date—1996 c 183: See note following RCW 46.52.030.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—Effective date—1987 1st ex.s. c 9: See notes following RCW 46.29.050.

Intent—1987 c 397: See note following RCW 46.61.410.

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Effective date—1967 c 174: See note following RCW 46.29.050.

Severability—1963 c 169: See RCW 46.29.910.

Abstract of driving record to be furnished: RCW 46.29.050.

Use of highway safety fund to defray cost of furnishing and maintaining driving records: RCW 46.68.060.

46.52.190 Abandoned vehicles or hulks—Impoundment—Notification—Hearing—Liability for charges—Nonpayment penalty.

Reviser's note: RCW 46.52.190 was amended by 1987 c 202 § 215 without reference to its repeal by 1987 c 311 § 21. It has been decodified for publication purposes under RCW 1.12.025.

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Chapter 46.55 RCW

TOWING AND IMPOUNDMENT

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46.55.010 Definitions. The definitions set forth in this section apply throughout this chapter:

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(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for one hundred twenty consecutive hours.

(2) "Immobilize" means the use of a locking wheel boot that, when attached to the wheel of a vehicle, prevents the vehicle from moving without damage to the tire to which the locking wheel boot is attached.

(3) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

(4) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

(5) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements:

- (a) Is three years old or older;
- (b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield, or missing wheels, tires, motor, or transmission;
- (c) Is apparently inoperable;
- (d) Has an approximate fair market value equal only to the approximate value of the scrap in it.

(6) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(7) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(8) "Residential property" means property that has no more than four living units located on it.

(9) "Suspended license impound" means an impound ordered under RCW 46.55.113 because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345.

(10) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

(11) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(12) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

(13) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

(14) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

- (a) Public locations:
 - (i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 Immediately
 - (ii) On a highway and tagged as described in RCW 46.55.085 24 hours
 - (iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 Immediately
- (b) Private locations:
 - (i) On residential property Immediately
 - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 Immediately
 - (iii) On private, nonresidential property, not posted 24 hours

[2005 c 88 § 2; 1999 c 398 § 2; 1998 c 203 § 8; 1994 c 176 § 1; 1991 c 292 § 1; 1989 c 111 § 1. Prior: 1987 c 330 § 739; 1987 c 311 § 1; 1985 c 377 § 1.]

Finding—1998 c 203: See note following RCW 46.55.105.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

TOW TRUCK OPERATORS—
REGISTRATION REQUIREMENTS

46.55.020 Registration required—Penalty. (1) A person shall not engage in or offer to engage in the activities of a registered tow truck operator without a current registration certificate from the department of licensing authorizing him or her to engage in such activities.

(2) Any person engaging in or offering to engage in the activities of a registered tow truck operator without the registration certificate required by this chapter is guilty of a gross misdemeanor.

(3) A registered operator who engages in a business practice that is prohibited under this chapter may be issued a notice of traffic infraction under chapter 46.63 RCW and is also subject to the civil penalties that may be imposed by the department under this chapter.

(4) A person found to have committed an offense that is a traffic infraction under this chapter is subject to a monetary penalty of at least two hundred fifty dollars.

(5) All traffic infractions issued under this chapter shall be under the jurisdiction of the district court in whose jurisdiction they were issued. [2003 c 53 § 243; 1989 c 111 § 2; 1985 c 377 § 2.]

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

46.55.025 Registration or insurance required—Penalty. A vehicle engaging in the business of recovery of disabled vehicles for monetary compensation, from or on a public road or highway must either be operated by a registered tow truck operator, or someone who at a minimum has insurance in a like manner and amount as prescribed in RCW 46.55.030(3), and have had their tow trucks inspected in a like manner as prescribed by RCW 46.55.040(1). The department shall adopt rules to enforce this section. Failure to com-

ply with this section is a class 1 civil infraction punishable under RCW 7.80.120. [1995 c 360 § 2.]

46.55.030 Application—Contents, bond, insurance, fee, certificate. (1) Application for licensing as a registered tow truck operator shall be made on forms furnished by the department, shall be accompanied by an inspection certification from the Washington state patrol, shall be signed by the applicant or an agent, and shall include the following information:

(a) The name and address of the person, firm, partnership, association, or corporation under whose name the business is to be conducted;

(b) The names and addresses of all persons having an interest in the business, or if the owner is a corporation, the names and addresses of the officers of the corporation;

(c) The names and addresses of all employees who serve as tow truck drivers;

(d) Proof of minimum insurance required by subsection (3) of this section;

(e) The vehicle license and vehicle identification numbers of all tow trucks of which the applicant is the registered owner;

(f) Any other information the department may require; and

(g) A certificate of approval from the Washington state patrol certifying that:

(i) The applicant has an established place of business and that mail is received at the address shown on the application;

(ii) The address of any storage locations where vehicles may be stored is correctly stated on the application;

(iii) The place of business has an office area that is accessible to the public without entering the storage area; and

(iv) The place of business has adequate and secure storage facilities, as defined in this chapter and the rules of the department, where vehicles and their contents can be properly stored and protected.

(2) Before issuing a registration certificate to an applicant the department shall require the applicant to file with the department a surety bond in the amount of five thousand dollars running to the state and executed by a surety company authorized to do business in this state. The bond shall be approved as to form by the attorney general and conditioned that the operator shall conduct his business in conformity with the provisions of this chapter pertaining to abandoned or unauthorized vehicles, and to compensate any person, company, or the state for failure to comply with this chapter or the rules adopted hereunder, or for fraud, negligence, or misrepresentation in the handling of these vehicles. Any person injured by the tow truck operator's failure to fully perform duties imposed by this chapter and the rules adopted hereunder, or an ordinance or resolution adopted by a city, town, or county is entitled to recover actual damages, including reasonable attorney's fees against the surety and the tow truck operator. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. As a condition of authority to do business, the operator shall keep the bond in full force and effect. Failure to maintain the penalty value of the bond or cancellation of the bond by the surety automatically cancels the operator's registration.

(3) Before the department may issue a registration certificate to an applicant, the applicant shall provide proof of minimum insurance requirements of:

(a) One hundred thousand dollars for liability for bodily injury or property damage per occurrence; and

(b) Fifty thousand dollars of legal liability per occurrence, to protect against vehicle damage, including but not limited to fire and theft, from the time a vehicle comes into the custody of an operator until it is redeemed or sold.

Cancellation of or failure to maintain the insurance required by (a) and (b) of this subsection automatically cancels the operator's registration.

(4) The fee for each original registration and annual renewal is one hundred dollars per company, plus fifty dollars per truck. The department shall forward the registration fee to the state treasurer for deposit in the motor vehicle fund.

(5) The applicant must submit an inspection certificate from the state patrol before the department may issue or renew an operator's registration certificate or tow truck permits.

(6) Upon approval of the application, the department shall issue a registration certificate to the registered operator to be displayed prominently at the operator's place of business. [1989 c 111 § 3; 1987 c 311 § 2; 1985 c 377 § 3.]

46.55.035 Prohibited acts—Penalty. (1) No registered tow truck operator may:

(a) Except as authorized under RCW 46.55.037, ask for or receive any compensation, gratuity, reward, or promise thereof from a person having control or possession of private property or from an agent of the person authorized to sign an impound authorization, for or on account of the impounding of a vehicle;

(b) Be beneficially interested in a contract, agreement, or understanding that may be made by or between a person having control or possession of private property and an agent of the person authorized to sign an impound authorization;

(c) Have a financial, equitable, or ownership interest in a firm, partnership, association, or corporation whose functions include acting as an agent or a representative of a property owner for the purpose of signing impound authorizations.

(2) This section does not prohibit the registered tow truck operator from collecting the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing of an impounded vehicle as provided by RCW 46.55.120.

(3) A violation of this section is a gross misdemeanor. [1992 c 18 § 1; 1989 c 111 § 4.]

Riding in towed vehicles: RCW 46.61.625.

Safety chains for towing: RCW 46.37.495.

46.55.037 Compensation for private impounds. A registered tow truck operator may receive compensation from a private property owner or agent for a private impound of an unauthorized vehicle that has an approximate fair market value equal only to the approximate value of the scrap in it. The private property owner or an agent must authorize the impound under RCW 46.55.080. The registered tow truck operator shall process the vehicle in accordance with this chapter and shall deduct any compensation received from the

private property owner or agent from the amount of the lien on the vehicle in accordance with this chapter. [1992 c 18 § 2.]

46.55.040 Permit required—Inspections of equipment and facilities. (1) A registered operator shall apply for and keep current a tow truck permit for each tow truck of which the operator is the registered owner. Application for a tow truck permit shall be accompanied by a report from the Washington state patrol covering a physical inspection of each tow truck capable of being used by the applicant.

(2) Upon receipt of the fee provided in RCW 46.55.030(4) and a satisfactory inspection report from the state patrol, the department shall issue each tow truck an annual tow truck permit or decal. The class of the tow truck, determined according to RCW 46.55.050, shall be stamped on the permit or decal. The permit or decal shall be displayed on the passenger side of the truck's front windshield.

(3) A tow truck number from the department shall be affixed in a permanent manner to each tow truck.

(4) The Washington state patrol shall conduct annual inspections of tow truck operators' equipment and facilities during the operators' normal business hours. Unscheduled inspections may be conducted without notice at the operator's place of business by an inspector to determine the fitness of a tow truck or facilities. At the time of the inspection, the operator shall provide a paper copy of the master log referred to in RCW 46.55.080.

(5) If at the time of the annual or subsequent inspections the equipment does not meet the requirements of this chapter, and the deficiency is a safety related deficiency, or the equipment is necessary to the truck's performance, the inspector shall cause the registered tow truck operator to remove that equipment from service as a tow truck until such time as the equipment has been satisfactorily repaired. A red tag shall be placed on the windshield of a tow truck taken out of service, and the tow truck shall not provide tow truck service until the Washington state patrol recertifies the truck and removes the tag. [1989 c 111 § 5; 1985 c 377 § 4.]

46.55.050 Classification of trucks—Marking requirements—Time and place of inspection—Penalty.

(1) Tow trucks shall be classified by towing capabilities, and shall meet or exceed all equipment standards set by the state patrol for the type of tow trucks to be used by an operator.

(2) All tow trucks shall display the firm's name, city of address, and telephone number. This information shall be painted on or permanently affixed to both sides of the vehicle in accordance with rules adopted by the department.

(3) Before a tow truck is put into tow truck service, or when the reinspection of a tow truck is necessary, the district commander of the state patrol shall designate a location and time for the inspection to be conducted. When practicable, the inspection or reinspection shall be made within three business days following the request by the operator.

(4) Failure to comply with any requirement of this section or rules adopted under it is a traffic infraction. [1987 c 330 § 740; 1985 c 377 § 5.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

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46.55.060 Business location—Requirements. (1) The address that the tow truck operator lists on his or her application shall be the business location of the firm where its files are kept. Each separate business location requires a separate registration under this chapter. The application shall also list all locations of secure areas for vehicle storage and redemption.

(2) Before an additional lot may be used for vehicle storage, it must be inspected and approved by the state patrol. The lot must also be inspected and approved on an annual basis for continued use.

(3) Each business location must have a sign displaying the firm's name that is readable from the street.

(4) At the business locations listed where vehicles may be redeemed, the registered operator shall post in a conspicuous and accessible location:

(a) All pertinent licenses and permits to operate as a registered tow truck operator;

(b) The current towing and storage charges itemized on a form approved by the department;

(c) The vehicle redemption procedure and rights;

(d) Information supplied by the department as to where complaints regarding either equipment or service are to be directed;

(e) Information concerning the acceptance of commercially reasonable tender as defined in *RCW 46.55.120(1)(b).

(5) The department shall adopt rules concerning fencing and security requirements of storage areas, which may provide for modifications or exemptions where needed to achieve compliance with local zoning laws.

(6) On any day when the registered tow truck operator holds the towing services open for business, the business office shall remain open with personnel present who are able to release impounded vehicles in accordance with this chapter and the rules adopted under it. The normal business hours of a towing service shall be from 8:00 a.m. to 5:00 p.m. on weekdays, excluding Saturdays, Sundays, and holidays.

(7) A registered tow truck operator shall maintain personnel who can be contacted twenty-four hours a day to release impounded vehicles within a reasonable time.

(8) A registered operator shall provide access to a telephone for any person redeeming a vehicle, at the time of redemption. [1989 c 111 § 6; 1987 c 311 § 3; 1985 c 377 § 6.]

*Reviser's note: RCW 46.55.120 was amended by 1999 c 398 § 7, changing subsection (1)(b) to subsection (1)(e).

46.55.063 Fees, schedules, contracts, invoices. (1) An operator shall file a fee schedule with the department. All filed fees must be adequate to cover the costs of service provided. No fees may exceed those filed with the department. At least ten days before the effective date of any change in an operator's fee schedule, the registered tow truck operator shall file the revised fee schedule with the department.

(2) Towing contracts with private property owners shall be in written form and state the hours of authorization to impound, the persons empowered to authorize the impounds, and the present charge of a private impound for the classes of tow trucks to be used in the impound, and must be retained in the files of the registered tow truck operator for three years.

(3) A fee that is charged for tow truck service must be calculated on an hourly basis, and after the first hour must be charged to the nearest quarter hour.

(4) Fees that are charged for the storage of a vehicle, or for other items of personal property registered or titled with the department, must be calculated on a twenty-four hour basis and must be charged to the nearest half day from the time the vehicle arrived at the secure storage area. However, items of personal property registered or titled with the department that are wholly contained within an impounded vehicle are not subject to additional storage fees; they are, however, subject to satisfying the underlying lien for towing and storage of the vehicle in which they are contained.

(5) All billing invoices that are provided to the redeemer of the vehicle, or other items of personal property registered or titled with the department, must be itemized so that the individual fees are clearly discernable. [1995 c 360 § 3; 1989 c 111 § 7.]

IMPOUNDING UNAUTHORIZED VEHICLES

46.55.070 Posting requirements—Exception. (1) No person may impound, tow, or otherwise disturb any unauthorized vehicle standing on nonresidential private property or in a public parking facility for less than twenty-four hours unless a sign is posted near each entrance and on the property in a clearly conspicuous and visible location to all who park on such property that clearly indicates:

(a) The times a vehicle may be impounded as an unauthorized vehicle; and

(b) The name, telephone number, and address of the towing firm where the vehicle may be redeemed.

(2) The requirements of subsection (1) of this section do not apply to residential property. Any person having charge of such property may have an unauthorized vehicle impounded immediately upon giving written authorization.

(3) The department shall adopt rules relating to the size of the sign required by subsection (1) of this section, its lettering, placement, and the number required.

(4) This section applies to all new signs erected after July 1, 1986. All other signs must meet these requirements by July 1, 1989. [1987 c 311 § 4; 1985 c 377 § 7.]

Vehicle immobilization unlawful: RCW 46.55.300.

46.55.075 Law enforcement impound—Required form, procedures. (1) The Washington state patrol shall provide by rule for a uniform impound authorization and inventory form. All law enforcement agencies must use this form for all vehicle impounds after June 30, 2001.

(2) By January 1, 2003, the Washington state patrol shall develop uniform impound procedures, which must include but are not limited to defining an impound and a visual inspection. Local law enforcement agencies shall adopt the procedures by July 1, 2003. [2002 c 279 § 5; 1999 c 398 § 3.]

46.55.080 Law enforcement impound, private impound—Master log—Certain associations restricted.

(1) If a vehicle is in violation of the time restrictions of *RCW 46.55.010(13), it may be impounded by a registered tow truck operator at the direction of a law enforcement

officer or other public official with jurisdiction if the vehicle is on public property, or at the direction of the property owner or an agent if it is on private property. A law enforcement officer may also direct the impoundment of a vehicle pursuant to a writ or court order.

(2) The person requesting a private impound or a law enforcement officer or public official requesting a public impound shall provide a signed authorization for the impound at the time and place of the impound to the registered tow truck operator before the operator may proceed with the impound. A registered tow truck operator, employee, or his or her agent may not serve as an agent of a property owner for the purposes of signing an impound authorization or, independent of the property owner, identify a vehicle for impound.

(3) In the case of a private impound, the impound authorization shall include the following statement: "A person authorizing this impound, if the impound is found in violation of chapter 46.55 RCW, may be held liable for the costs incurred by the vehicle owner."

(4) A registered tow truck operator shall record and keep in the operator's files the date and time that a vehicle is put in the operator's custody and released. The operator shall make an entry into a master log regarding transactions relating to impounded vehicles. The operator shall make this master log available, upon request, to representatives of the department or the state patrol.

(5) A person who engages in or offers to engage in the activities of a registered tow truck operator may not be associated in any way with a person or business whose main activity is authorizing the impounding of vehicles. [1999 c 398 § 4; 1989 c 111 § 8; 1987 c 311 § 5; 1985 c 377 § 8.]

*Reviser's note: RCW 46.55.010 was amended by 2005 c 88 § 2, changing subsection (13) to subsection (14).

46.55.085 Law enforcement impound—Unauthorized vehicle in right-of-way.

(1) A law enforcement officer discovering an unauthorized vehicle left within a highway right-of-way shall attach to the vehicle a readily visible notification sticker. The sticker shall contain the following information:

(a) The date and time the sticker was attached;

(b) The identity of the officer;

(c) A statement that if the vehicle is not removed within twenty-four hours from the time the sticker is attached, the vehicle may be taken into custody and stored at the owner's expense;

(d) A statement that if the vehicle is not redeemed as provided in RCW 46.55.120, the registered owner will have committed the traffic infraction of littering—abandoned vehicle; and

(e) The address and telephone number where additional information may be obtained.

(2) If the vehicle has current Washington registration plates, the officer shall check the records to learn the identity of the last owner of record. The officer or his department shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the notification sticker.

(3) If the vehicle is not removed within twenty-four hours from the time the notification sticker is attached, the

law enforcement officer may take custody of the vehicle and provide for the vehicle's removal to a place of safety. A vehicle that does not pose a safety hazard may remain on the roadside for more than twenty-four hours if the owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance.

(4) For the purposes of this section a place of safety includes the business location of a registered tow truck operator. [2002 c 279 § 6; 1993 c 121 § 1; 1987 c 311 § 6. Formerly RCW 46.52.170 and 46.52.180.]

46.55.090 Storage, return requirements—Personal property—Combination endorsement for tow truck drivers—Viewing impounded vehicle. (1) All vehicles impounded shall be taken to the nearest storage location that has been inspected and is listed on the application filed with the department.

(2) All vehicles shall be handled and returned in substantially the same condition as they existed before being towed.

(3) All personal belongings and contents in the vehicle, with the exception of those items of personal property that are registered or titled with the department, shall be kept intact, and shall be returned to the vehicle's owner or agent during normal business hours upon request and presentation of a driver's license or other sufficient identification. Personal belongings, with the exception of those items of personal property that are registered or titled with the department, shall not be sold at auction to fulfill a lien against the vehicle.

(4) All personal belongings, with the exception of those items of personal property that are registered or titled with the department, not claimed before the auction shall be turned over to the local law enforcement agency to which the initial notification of impoundment was given. Such personal belongings shall be disposed of pursuant to chapter 63.32 or 63.40 RCW.

(5) Tow truck drivers shall have a Washington state driver's license endorsed for the appropriate classification under chapter 46.25 RCW or the equivalent issued by another state.

(6) Any person who shows proof of ownership or written authorization from the impounded vehicle's registered or legal owner or the vehicle's insurer may view the vehicle without charge during normal business hours. [1995 c 360 § 4; 1989 c 178 § 25; 1987 c 311 § 7; 1985 c 377 § 9.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

46.55.100 Impound notice—Abandoned vehicle report—Owner information, liability—Disposition report. (1) At the time of impoundment the registered tow truck operator providing the towing service shall give immediate notification, by telephone or radio, to a law enforcement agency having jurisdiction who shall maintain a log of such reports. A law enforcement agency, or a private communication center acting on behalf of a law enforcement agency, shall within six to twelve hours of the impoundment, provide to a requesting operator the name and address of the legal and registered owners of the vehicle, and the registered owner of any personal property registered or titled with the department that is attached to or contained in or on the impounded vehicle, the vehicle identification number, and any other neces-

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sary, pertinent information. The initial notice of impoundment shall be followed by a written or electronic facsimile notice within twenty-four hours. In the case of a vehicle from another state, time requirements of this subsection do not apply until the requesting law enforcement agency in this state receives the information.

(2) The operator shall immediately send an abandoned vehicle report to the department for any vehicle, and for any items of personal property registered or titled with the department, that are in the operator's possession after the one hundred twenty hour abandonment period. Such report need not be sent when the impoundment is pursuant to a writ, court order, or police hold that is not a suspended license impound. The owner notification and abandonment process shall be initiated by the registered tow truck operator immediately following notification by a court or law enforcement officer that the writ, court order, or police hold that is not a suspended license impound is no longer in effect.

(3) Following the submittal of an abandoned vehicle report, the department shall provide the registered tow truck operator with owner information within seventy-two hours.

(4) Within fourteen days of the sale of an abandoned vehicle at public auction, the towing operator shall send a copy of the abandoned vehicle report showing the disposition of the abandoned vehicle and any other items of personal property registered or titled with the department to the department. The vehicle buyer information sent to the department on the abandoned vehicle report relieves the previous owner of the vehicle from any civil or criminal liability for the operation of the vehicle from the date of sale thereafter and transfers full liability for the vehicle to the buyer. By January 1, 2003, the department shall create a system enabling tow truck operators the option of sending the portion of the abandoned vehicle report that contains the vehicle's buyer information to the department electronically.

(5) If the operator sends an abandoned vehicle report to the department and the department finds no owner information, an operator may proceed with an inspection of the vehicle and any other items of personal property registered or titled with the department to determine whether owner identification is within the vehicle.

(6) If the operator finds no owner identification, the operator shall immediately notify the appropriate law enforcement agency, which shall search the vehicle and any other items of personal property registered or titled with the department for the vehicle identification number or other appropriate identification numbers and check the necessary records to determine the vehicle's or other property's owners. [2002 c 279 § 9; 1999 c 398 § 5; 1998 c 203 § 9; 1995 c 360 § 5; 1991 c 20 § 1; 1989 c 111 § 9; 1987 c 311 § 8; 1985 c 377 § 10.]

Finding—1998 c 203: See note following RCW 46.55.105.

46.55.105 Responsibility of registered owner. (1) The abandonment of any vehicle creates a prima facie presumption that the last registered owner of record is responsible for the abandonment and is liable for costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction.

(2) If an unauthorized vehicle is found abandoned under subsection (1) of this section and removed at the direction of law enforcement, the last registered owner of record is guilty of the traffic infraction of "littering—abandoned vehicle," unless the vehicle is redeemed as provided in RCW 46.55.120. In addition to any other monetary penalty payable under chapter 46.63 RCW, the court shall not consider all monetary penalties as having been paid until the court is satisfied that the person found to have committed the infraction has made restitution in the amount of the deficiency remaining after disposal of the vehicle under RCW 46.55.140.

(3) A vehicle theft report filed with a law enforcement agency relieves the last registered owner of liability under subsection (2) of this section for failure to redeem the vehicle. However, the last registered owner remains liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle under subsection (1) of this section. Nothing in this section limits in any way the registered owner's rights in a civil action or as restitution in a criminal action against a person responsible for the theft of the vehicle.

(4) Properly filing a report of sale or transfer regarding the vehicle involved in accordance with RCW 46.12.101(1) relieves the last registered owner of liability under subsections (1) and (2) of this section. If the date of sale as indicated on the report of sale is on or before the date of impoundment, the buyer identified on the latest properly filed report of sale with the department is assumed liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction. If the date of sale is after the date of impoundment, the previous registered owner is assumed to be liable for such costs. A licensed vehicle dealer is not liable under subsections (1) and (2) of this section if the dealer, as transferee or assignee of the last registered owner of the vehicle involved, has complied with the requirements of RCW 46.70.122 upon selling or otherwise disposing of the vehicle, or if the dealer has timely filed a transitional ownership record or report of sale under RCW 46.12.103. In that case the person to whom the licensed vehicle dealer has sold or transferred the vehicle is assumed liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less amounts realized at auction.

(5) For the purposes of reporting notices of traffic infraction to the department under RCW 46.20.270 and 46.52.101, and for purposes of reporting notices of failure to appear, respond, or comply regarding a notice of traffic infraction to the department under RCW 46.63.070(6), a traffic infraction under subsection (2) of this section is not considered to be a standing, stopping, or parking violation.

(6) A notice of infraction for a violation of this section may be filed with a court of limited jurisdiction organized under Title 3, 35, or 35A RCW, or with a violations bureau subject to the court's jurisdiction. [2002 c 279 § 10; 1999 c 86 § 5; 1998 c 203 § 2; 1995 c 219 § 4; 1993 c 314 § 1.]

Finding—1998 c 203: "The legislature finds that the license to drive a motor vehicle on the public highways is suspended or revoked in order to protect public safety following a driver's failure to comply with the laws of this state. Over six hundred persons are killed in traffic accidents in Washington annually, and more than eighty-four thousand persons are injured. It is estimated that of the three million four hundred thousand drivers' licenses issued to citizens of Washington, more than two hundred sixty thousand are suspended or revoked at any given time. Suspended drivers are more likely to be involved in causing traffic accidents, including fatal accidents, than

properly licensed drivers, and pose a serious threat to the lives and property of Washington residents. Statistics show that suspended drivers are three times more likely to kill or seriously injure others in the commission of traffic felony offenses than are validly licensed drivers. In addition to not having a driver's license, most such drivers also lack required liability insurance, increasing the financial burden upon other citizens through uninsured losses and higher insurance costs for validly licensed drivers. Because of the threat posed by suspended drivers, all registered owners of motor vehicles in Washington have a duty to not allow their vehicles to be driven by a suspended driver.

Despite the existence of criminal penalties for driving with a suspended or revoked license, an estimated seventy-five percent of these drivers continue to drive anyway. Existing sanctions are not sufficient to deter or prevent persons with a suspended or revoked license from driving. It is common for suspended drivers to resume driving immediately after being stopped, cited, and released by a police officer and to continue to drive while a criminal prosecution for suspended driving is pending. More than half of all suspended drivers charged with the crime of driving while suspended or revoked fail to appear for court hearings. Vehicle impoundment will provide an immediate consequence which will increase deterrence and reduce unlawful driving by preventing a suspended driver access to that vehicle. Vehicle impoundment will also provide an appropriate measure of accountability for registered owners who permit suspended drivers to drive their vehicles. Impoundment of vehicles driven by suspended drivers has been shown to reduce future driving while suspended or revoked offenses for up to two years afterwards, and the recidivism rate for drivers whose cars were not impounded was one hundred percent higher than for drivers whose cars were impounded. In order to adequately protect public safety and to enforce the state's driver licensing laws, it is necessary to authorize the impoundment of any vehicle when it is found to be operated by a driver with a suspended or revoked license in violation of RCW 46.20.342 and 46.20.420. The impoundment of a vehicle operated in violation of RCW 46.20.342 or 46.20.420 is intended to be a civil in rem action against the vehicle in order to remove it from the public highways and reduce the risk posed to traffic safety by a vehicle accessible to a driver who is reasonably believed to have violated these laws." [1998 c 203 § 1.]

Suspension of driver's license for failure to respond to notice of traffic infraction: RCW 46.20.289.

46.55.110 Notice to legal and registered owners. (1) When an unauthorized vehicle is impounded, the impounding towing operator shall notify the legal and registered owners of the impoundment of the unauthorized vehicle and the owners of any other items of personal property registered or titled with the department. The notification shall be sent by first-class mail within twenty-four hours after the impoundment to the last known registered and legal owners of the vehicle, and the owners of any other items of personal property registered or titled with the department, as provided by the law enforcement agency, and shall inform the owners of the identity of the person or agency authorizing the impound. The notification shall include the name of the impounding tow firm, its address, and telephone number. The notice shall also include the location, time of the impound, and by whose authority the vehicle was impounded. The notice shall also include the written notice of the right of redemption and opportunity for a hearing to contest the validity of the impoundment pursuant to RCW 46.55.120.

(2) In addition, if a suspended license impound has been ordered, the notice must state the length of the impound, the requirement of the posting of a security deposit to ensure payment of the costs of removal, towing, and storage, notification that if the security deposit is not posted the vehicle will immediately be processed and sold at auction as an abandoned vehicle, and the requirements set out in RCW 46.55.120(1)(b) regarding the payment of the costs of removal, towing, and storage as well as providing proof of satisfaction of any penalties, fines, or forfeitures before

redemption. The notice must also state that the registered owner is ineligible to purchase the vehicle at the abandoned vehicle auction, if held.

(3) In the case of an abandoned vehicle, or other item of personal property registered or titled with the department, within twenty-four hours after receiving information on the owners from the department through the abandoned vehicle report, the tow truck operator shall send by certified mail, with return receipt requested, a notice of custody and sale to the legal and registered owners and of the penalties for the traffic infraction littering—abandoned vehicle.

(4) If the date on which a notice required by subsection (3) of this section is to be mailed falls upon a Saturday, Sunday, or a postal holiday, the notice may be mailed on the next day that is neither a Saturday, Sunday, nor a postal holiday.

(5) No notices need be sent to the legal or registered owners of an impounded vehicle or other item of personal property registered or titled with the department, if the vehicle or personal property has been redeemed. [2002 c 279 § 11; 1999 c 398 § 6; 1998 c 203 § 3; 1995 c 360 § 6; 1989 c 111 § 10; 1987 c 311 § 9; 1985 c 377 § 11.]

Finding—1998 c 203: See note following RCW 46.55.105.

46.55.113 Removal by police officer. (1) Whenever the driver of a vehicle is arrested for a violation of RCW 46.61.502, 46.61.504, 46.20.342, or 46.20.345, the vehicle is subject to summary impoundment, pursuant to the terms and conditions of an applicable local ordinance or state agency rule at the direction of a law enforcement officer.

(2) In addition, a police officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.16.381 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(3) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or RCW 46.55.120(1)(a)(ii).

(4) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator. [2007 c 242 § 1; 2007 c 86 § 1; 2005 c 390 § 5. Prior: 2003 c 178 § 1; 2003 c 177 § 1; 1998 c 203 § 4; 1997 c 66 § 7; 1996 c 89 § 1; 1994 c 275 § 32; 1987 c 311 § 10. Formerly RCW 46.61.565.]

Reviser's note: This section was amended by 2007 c 86 § 1 and by 2007 c 242 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1998 c 203: See note following RCW 46.55.105.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.55.115 State patrol—Appointment of towing operators—Lien for costs—Appeal. The Washington state patrol, under its authority to remove vehicles from the highway, may remove the vehicles directly, through towing operators appointed by the state patrol and called on a rotational or other basis, through contracts with towing operators, or by a combination of these methods. When removal is to be accomplished through a towing operator on a noncontractual basis, the state patrol may appoint any towing operator for this purpose upon the application of the operator. Each appointment shall be contingent upon the submission of an application to the state patrol and the making of subsequent reports in such form and frequency and compliance with such standards of equipment, performance, pricing, and practices as may be required by rule of the state patrol.

An appointment may be rescinded by the state patrol upon evidence that the appointed towing operator is not complying with the laws or rules relating to the removal and storage of vehicles from the highway. The state patrol may not rescind an appointment merely because a registered tow truck operator negotiates a different rate for voluntary, owner-

requested towing than for involuntary towing under this chapter. The costs of removal and storage of vehicles under this section shall be paid by the owner or driver of the vehicle and shall be a lien upon the vehicle until paid, unless the removal is determined to be invalid.

Rules promulgated under this section shall be binding only upon those towing operators appointed by the state patrol for the purpose of performing towing services at the request of the Washington state patrol. Any person aggrieved by a decision of the state patrol made under this section may appeal the decision under chapter 34.05 RCW. [1993 c 121 § 2; 1987 c 330 § 744; 1979 ex.s. c 178 § 22; 1977 ex.s. c 167 § 5. Formerly RCW 46.61.567.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1979 ex.s. c 178: See note following RCW 46.61.590.

46.55.117 Impounds under RCW 64.44.050. An impound under RCW 64.44.050 shall not be considered an impound under this chapter. A tow operator who contracts with a law enforcement agency for transporting a vehicle impounded under RCW 64.44.050 shall only remove the vehicle to a secure public facility, and is not required to store or dispose of the vehicle. The vehicle shall remain in the care, custody, and control of the law enforcement agency to be demolished, disposed of, or decontaminated as provided under RCW 64.44.050. The law enforcement agency shall pay for all costs incurred as a result of the towing if the vehicle owner does not pay within thirty days. The law enforcement agency may seek reimbursement from the owner. [2008 c 201 § 3.]

REDEMPTION RIGHTS AND HEARING PROCEDURES

46.55.120 Redemption of vehicles—Sale of unredeemed property—Improper impoundment. (1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held

for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency may issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(c) Notwithstanding (b) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept

the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO:
YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the Court located at in the sum of \$., in an action entitled, Case No. YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded against you under RCW . . . if the judgment is not paid within 15 days of the date of this notice.
DATED this day of, (year) . . .
Signature
Typed name and address
of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and stor-

age fees. [2004 c 250 § 1; 2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]

Findings—Intent—1999 c 327: See note following RCW 9A.88.130.

Finding—1998 c 203: See note following RCW 46.55.105.

46.55.130 Notice requirements—Public auction—Accumulation of storage charges.

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(3) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, or a suspended license impound has been directed, but no security paid under RCW 46.55.120, then the registered tow truck operator having custody of the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction, and a method to contact the tow truck operator conducting the auction such as a telephone number, electronic mail address, or web site, in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. For the purposes of this section, a newspaper of general circulation may be a commercial, widely circulated, free, classified advertisement circular not affiliated with the registered tow truck operator and the notice may be listed in a classification delineating "auctions" or similar language designed to attract potential bidders to the auction. The notice shall contain a notification that a public viewing period will be available before the auction and the length of the viewing period. The auction shall be held during daylight hours of a normal business day. The viewing period must be one hour if twenty-five or fewer vehicles are to be auctioned, two hours if more than twenty-five and fewer than fifty vehicles are to be auctioned, and three hours if fifty or more vehicles are to be auctioned.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within forty-five days, sell the vehicle to a licensed vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) A tow truck operator may refuse to accept a bid at an abandoned vehicle auction under this section for any reason in the operator's posted operating procedures and for any of the following reasons: (a) The bidder is currently indebted to the operator; (b) the operator has knowledge that the bidder has previously abandoned vehicles purchased at auction; or (c) the bidder has purchased, at auction, more than four vehicles in the last calendar year without obtaining title to any or all of the vehicles. In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4)(a) In no case may the accumulation of storage charges exceed fifteen days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(3).

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available. However, storage charges begin to accrue again on the date the correct and complete information is provided to the department by the registered tow truck operator. [2006 c 28 § 1; 2002 c 279 § 12; 2000 c 193 § 2; 1998 c 203 § 6; 1989 c 111 § 12; 1987 c 311 § 13; 1985 c 377 § 13.]

Finding—1998 c 203: See note following RCW 46.55.105.

46.55.140 Operator's lien, deficiency claim, liability.

(1) A registered tow truck operator who has a valid and signed impoundment authorization has a lien upon the impounded vehicle for services provided in the towing and storage of the vehicle, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vehicle that is not permanently attached to or is not an integral part of the vehicle except for

items of personal property registered or titled with the department. The registered tow truck operator also has a deficiency claim against the registered owner of the vehicle for services provided in the towing and storage of the vehicle not to exceed the sum of five hundred dollars after deduction of the amount bid at auction, and for vehicles of over ten thousand pounds gross vehicle weight, the operator has a deficiency claim of one thousand dollars after deduction of the amount bid at auction, unless the impound is determined to be invalid. The limitation on towing and storage deficiency claims does not apply to an impound directed by a law enforcement officer. In no case may the cost of the auction or a buyer's fee be added to the amount charged for the vehicle at the auction, the vehicle's lien, or the overage due. A registered owner who has completed and filed with the department the seller's report as provided for by RCW 46.12.101 and has timely and properly filed the seller's report is relieved of liability under this section. The person named as the new owner of the vehicle on the timely and properly filed seller's report shall assume liability under this section.

(2) Any person who tows, removes, or otherwise disturbs any vehicle parked, stalled, or otherwise left on privately owned or controlled property, and any person owning or controlling the private property, or either of them, are liable to the owner or operator of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of the vehicle which does not comply with the requirements of this chapter. [1995 c 360 § 8; 1992 c 200 § 1; 1991 c 20 § 2; 1989 c 111 § 13; 1987 c 311 § 14; 1985 c 377 § 14.]

RECORDS, INSPECTIONS, AND ENFORCEMENT

46.55.150 Vehicle transaction file. The registered tow truck operator shall keep a transaction file on each vehicle. The transaction file shall contain as a minimum those of the following items that are required at the time the vehicle is redeemed or becomes abandoned and is sold at a public auction:

(1) A signed impoundment authorization as required by RCW 46.55.080;

(2) A record of the twenty-four hour written impound notice to a law enforcement agency;

(3) A copy of the impoundment notification to registered and legal owners, sent within twenty-four hours of impoundment, that advises the owners of the address of the impounding firm, a twenty-four hour telephone number, and the name of the person or agency under whose authority the vehicle was impounded;

(4) A copy of the abandoned vehicle report that was sent to and returned by the department;

(5) A copy and proof of mailing of the notice of custody and sale sent by the registered tow truck operator to the owners advising them they have fifteen days to redeem the vehicle before it is sold at public auction;

(6) A copy of the published notice of public auction;

(7) A copy of the affidavit of sale showing the sales date, purchaser, amount of the lien, and sale price;

(8) A record of the two highest bid offers on the vehicle, with the names, addresses, and telephone numbers of the two bidders;

(9) A copy of the notice of opportunity for hearing given to those who redeem vehicles;

(10) An itemized invoice of charges against the vehicle.

The transaction file shall be kept for a minimum of three years. [1989 c 111 § 14; 1987 c 311 § 15; 1985 c 377 § 15.]

46.55.160 Availability of records, equipment, and facilities for audit and inspection. Records, equipment, and facilities of a registered tow truck operator shall be available during normal business hours for audit or inspection by the department of licensing, the Washington state patrol, or any law enforcement agency having jurisdiction. [1985 c 377 § 16.]

46.55.170 Complaints, where forwarded. (1) All law enforcement agencies or local licensing agencies that receive complaints involving registered tow truck operators shall forward the complaints, along with any supporting documents including all results from local investigations, to the department.

(2) Complaints involving deficiencies of equipment shall be forwarded by the department to the state patrol. [1987 c 330 § 741; 1985 c 377 § 17.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.55.180 Presiding officer at licensing hearing. The director or the chief of the state patrol may use a hearing officer or administrative law judge for presiding over a hearing regarding licensing provisions under this chapter or rules adopted under it. [1989 c 111 § 15; 1987 c 330 § 742; 1985 c 377 § 18.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

46.55.190 Rules. The director, in cooperation with the chief of the Washington state patrol, shall adopt rules that carry out the provisions and intent of this chapter. [1985 c 377 § 19.]

46.55.200 Penalties for certain acts or omissions. A registered tow truck operator's license may be denied, suspended, or revoked, or the licensee may be ordered to pay a monetary penalty of a civil nature, not to exceed one thousand dollars per violation, or the licensee may be subjected to any combination of license and monetary penalty, whenever the director has reason to believe the licensee has committed, or is at the time committing, a violation of this chapter or rules adopted under it or any other statute or rule relating to the title or disposition of vehicles or vehicle hulks, including but not limited to:

(1) Towing any abandoned vehicle without first obtaining and having in the operator's possession at all times while transporting it, appropriate evidence of ownership or an impound authorization properly executed by the private person or public official having control over the property on which the unauthorized vehicle was found;

(2) Forging the signature of the registered or legal owner on a certificate of title, or forging the signature of any autho-

rized person on documents pertaining to unauthorized or abandoned vehicles or automobile hulks;

(3) Failing to comply with the statutes and rules relating to the processing and sale of abandoned vehicles;

(4) Failing to accept bids on any abandoned vehicle offered at public sale;

(5) Failing to transmit to the state surplus funds derived from the sale of an abandoned vehicle;

(6) Selling, disposing of, or having in his possession, without notifying law enforcement officials, a vehicle that he knows or has reason to know has been stolen or illegally appropriated without the consent of the owner;

(7) Failing to comply with the statutes and rules relating to the transfer of ownership of vehicles or other procedures after public sale; or

(8) Failing to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after the assessment becomes final.

All orders by the director made under this chapter are subject to the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 111 § 16; 1985 c 377 § 20.]

46.55.210 Cease and desist order. Whenever it appears to the director that any registered tow truck operator or a person offering towing services has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule adopted hereunder, the director may issue an order directing the operator or person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending a hearing. The temporary order shall remain in effect until ten days after the hearing is held and shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice. [1987 c 311 § 17; 1985 c 377 § 21.]

46.55.220 Refusal to issue license, grounds for. If an application for a license to conduct business as a registered tow truck operator is filed by any person whose license has previously been canceled for cause by the department, or if the department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been canceled for cause, the department, after a hearing, of which the applicant has been given twenty days' notice in writing and at which the applicant may appear in person or by counsel and present testimony, may refuse to issue such a person a license to conduct business as a registered tow truck operator. [1987 c 311 § 18; 1985 c 377 § 22.]

JUNK VEHICLE DISPOSITION

46.55.230 Junk vehicles—Removal, disposal, sale—Penalties—Cleanup restitution payment. (1)(a) Notwithstanding any other provision of law, any law enforcement officer having jurisdiction, or any employee or officer of a jurisdictional health department acting pursuant to RCW 70.95.240, or any person authorized by the director shall

inspect and may authorize the disposal of an abandoned junk vehicle. The person making the inspection shall record the make and vehicle identification number or license number of the vehicle if available, and shall also verify that the approximate value of the junk vehicle is equivalent only to the approximate value of the parts.

(b) A tow truck operator may authorize the disposal of an abandoned junk vehicle if the vehicle has been abandoned two or more times, the registered ownership information has not changed since the first abandonment, and the registered owner is also the legal owner.

(2) The law enforcement officer or department representative shall provide information on the vehicle's registered and legal owner to the landowner.

(3) Upon receiving information on the vehicle's registered and legal owner, the landowner shall mail a notice to the registered and legal owners shown on the records of the department. The notification shall describe the redemption procedure and the right to arrange for the removal of the vehicle.

(4) If the vehicle remains unclaimed more than fifteen days after the landowner has mailed notification to the registered and legal owner, the landowner may dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(5) If no information on the vehicle's registered and legal owner is found in the records of the department, the landowner may immediately dispose of the vehicle or sign an affidavit of sale to be used as a title document.

(6) It is a gross misdemeanor for a person to abandon a junk vehicle on property. If a junk vehicle is abandoned, the vehicle's registered owner shall also pay a cleanup restitution payment equal to twice the costs incurred in the removal of the junk vehicle. The court shall distribute one-half of the restitution payment to the landowner of the property upon which the junk vehicle is located, and one-half of the restitution payment to the law enforcement agency or jurisdictional health department investigating the incident.

(7) For the purposes of this section, the term "landowner" includes a legal owner of private property, a person with possession or control of private property, or a public official having jurisdiction over public property.

(8) A person complying in good faith with the requirements of this section is immune from any liability arising out of an action taken or omission made in the compliance. [2002 c 279 § 13; 2001 c 139 § 3; 2000 c 154 § 4; 1991 c 292 § 2; 1987 c 311 § 19; 1985 c 377 § 23.]

Severability—2000 c 154: See note following RCW 70.93.030.

LOCAL REGULATION

46.55.240 Local ordinances—Requirements. (1) A city, town, or county that adopts an ordinance or resolution concerning unauthorized, abandoned, or impounded vehicles shall include the applicable provisions of this chapter.

(a) A city, town, or county may, by ordinance, authorize other impound situations that may arise locally upon the public right-of-way or other publicly owned or controlled property.

(b) A city, town, or county ordinance shall contain language that establishes a written form of authorization to

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impound, which may include a law enforcement notice of infraction or citation, clearly denoting the agency's authorization to impound.

(c) A city, town, or county may, by ordinance, provide for release of an impounded vehicle by means of a promissory note in lieu of immediate payment, if at the time of redemption the legal or registered owner requests a hearing on the validity of the impoundment. If the municipal ordinance directs the release of an impounded vehicle before the payment of the impoundment charges, the municipality is responsible for the payment of those charges to the registered tow truck operator within thirty days of the hearing date.

(d) The hearing specified in RCW 46.55.120(2) and in this section may be conducted by an administrative hearings officer instead of in the district court. A decision made by an administrative hearing officer may be appealed to the district court for final judgment.

(2) A city, town, or county may adopt an ordinance establishing procedures for the abatement and removal as public nuisances of junk vehicles or parts thereof from private property. Costs of removal may be assessed against the registered owner of the vehicle if the identity of the owner can be determined, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.101, or the costs may be assessed against the owner of the property on which the vehicle is stored. A city, town, or county may also provide for the payment to the tow truck operator or wrecker as a part of a neighborhood revitalization program.

(3) Ordinances pertaining to public nuisances shall contain:

(a) A provision requiring notice to the last registered owner of record and the property owner of record that a hearing may be requested and that if no hearing is requested, the vehicle will be removed;

(b) A provision requiring that if a request for a hearing is received, a notice giving the time, location, and date of the hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record unless the vehicle is in such condition that identification numbers are not available to determine ownership;

(c) A provision that the ordinance shall not apply to (i) a vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property or (ii) a vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130;

(d) A provision that the owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with his reasons for the denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then the local agency shall not assess costs of administration or removal of the

vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the owner;

(e) A provision that after notice has been given of the intent of the city, town, or county to dispose of the vehicle and after a hearing, if requested, has been held, the vehicle or part thereof shall be removed at the request of a law enforcement officer with notice to the Washington state patrol and the department of licensing that the vehicle has been wrecked. The city, town, or county may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or may transfer such vehicle or parts to another governmental body provided such disposal shall be only as scrap.

(4) A registered disposer under contract to a city or county for the impounding of vehicles shall comply with any administrative regulations adopted by the city or county on the handling and disposing of vehicles. [1994 c 176 § 2; 1991 c 292 § 3; 1989 c 111 § 17; 1987 c 311 § 20; 1985 c 377 § 24.]

VEHICLE IMMOBILIZATION

46.55.300 Vehicle immobilization. (1) A property owner shall not immobilize any vehicle owned by a person other than the property owner.

(2) This section does not apply to property owned by the state or any unit of local government.

(3) A violation of this section is a gross misdemeanor. [2005 c 88 § 1.]

MISCELLANEOUS

46.55.900 Severability—1985 c 377. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 377 § 26.]

46.55.901 Headings not part of law—1985 c 377. Headings and captions used in this act are not any part of the law. [1985 c 377 § 27.]

46.55.902 Effective date—1985 c 377. This act shall take effect on January 1, 1986. [1985 c 377 § 31.]

46.55.910 Chapter not applicable to certain activities of department of transportation. This chapter does not apply to the state department of transportation to the extent that it may remove vehicles that are traffic hazards from bridges and the mountain passes without prior authorization. If such a vehicle is removed, the department shall immediately notify the appropriate local law enforcement agency, and the vehicle shall be processed in accordance with RCW 46.55.110. [1989 c 111 § 18.]

Chapter 46.61 RCW RULES OF THE ROAD

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OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

46.61.005 Chapter refers to vehicles upon highways—Exceptions. The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(1) Where a different place is specifically referred to in a given section.

(2) The provisions of RCW 46.52.010 through 46.52.090, 46.61.500 through 46.61.525, and 46.61.5249 shall apply upon highways and elsewhere throughout the state. [1997 c 66 § 13; 1990 c 291 § 4; 1965 ex.s. c 155 § 1.]

46.61.015 Obedience to police officers, flaggers, or firefighters—Penalty. (1) No person shall willfully fail or refuse to comply with any lawful order or direction of any duly authorized flagger or any police officer or firefighter invested by law with authority to direct, control, or regulate traffic.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 244; 2000 c 239 § 4; 1995 c 50 § 1; 1975 c 62 § 17; 1965 ex.s. c 155 § 3.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

Captions not law—2000 c 239: See note following RCW 49.17.350.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.020 Refusal to give information to or cooperate with officer—Penalty. (1) It is unlawful for any person while operating or in charge of any vehicle to refuse when requested by a police officer to give his or her name and address and the name and address of the owner of such vehicle, or for such person to give a false name and address, and it is likewise unlawful for any such person to refuse or neglect to stop when signaled to stop by any police officer or to refuse upon demand of such police officer to produce his or her certificate of license registration of such vehicle, his or her insurance identification card, or his or her vehicle driver's license or to refuse to permit such officer to take any such license, card, or certificate for the purpose of examination thereof or to refuse to permit the examination of any equipment of such vehicle or the weighing of such vehicle or to refuse or neglect to produce the certificate of license registration of such vehicle, insurance card, or his or her vehicle driver's license when requested by any court. Any police officer shall on request produce evidence of his or her authorization as such.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 245; 1995 c 50 § 2; 1989 c 353 § 6; 1967 c 32 § 65; 1961 c 12 § 46.56.190. Prior: 1937 c 189 § 126; RRS § 6360-126; 1927 c 309 § 38; RRS § 6362-38. Formerly RCW 46.56.190.]

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Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

46.61.021 Duty to obey law enforcement officer—Authority of officer. (1) Any person requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to stop.

(2) Whenever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction.

(3) Any person requested to identify himself or herself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself or herself and give his or her current address. [2006 c 270 § 1; 1997 1st sp.s. c 1 § 1; 1989 c 353 § 7; 1979 ex.s. c 136 § 4.]

Effective date—1997 1st sp.s. c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [September 17, 1997]." [1997 1st sp.s. c 1 § 2.]

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.022 Failure to obey officer—Penalty. Any person who willfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer or to comply with RCW 46.61.021(3), is guilty of a misdemeanor. [1979 ex.s. c 136 § 5.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.024 Attempting to elude police vehicle—Defense—License revocation. (1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.

(2) It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

(3) The license or permit to drive or any nonresident driving privilege of a person convicted of a violation of this section shall be revoked by the department of licensing. [2003 c 101 § 1; 1983 c 80 § 1; 1982 1st ex.s. c 47 § 25; 1979 ex.s. c 75 § 1.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

(2008 Ed.)

46.61.025 Persons riding animals or driving animal-drawn vehicles. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter except those provisions of this chapter which by their very nature can have no application. [1965 ex.s. c 155 § 4.]

46.61.030 Persons working on highway right-of-way—Exceptions. Unless specifically made applicable, the provisions of this chapter except those contained in RCW 46.61.500 through 46.61.520 shall not apply to persons, motor vehicles and other equipment while engaged in work within the right-of-way of any highway but shall apply to such persons and vehicles when traveling to or from such work. [1969 c 76 § 1; 1965 ex.s. c 155 § 5.]

46.61.035 Authorized emergency vehicles. (1) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of an authorized emergency vehicle may:

- (a) Park or stand, irrespective of the provisions of this chapter;
- (b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;
- (c) Exceed the maximum speed limits so long as he does not endanger life or property;
- (d) Disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of visual signals meeting the requirements of RCW 46.37.190, except that: (a) An authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle; (b) authorized emergency vehicles shall use audible signals when necessary to warn others of the emergency nature of the situation but in no case shall they be required to use audible signals while parked or standing.

(4) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others. [1969 c 23 § 1; 1965 ex.s. c 155 § 6.]

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

46.61.050 Obedience to and required traffic control devices. (1) The driver of any vehicle, every bicyclist, and every pedestrian shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exception granted the driver of an authorized emergency vehicle in this chapter.

(2) No provision of this chapter for which official traffic control devices are required shall be enforced against an

alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic control devices are required, such section shall be effective even though no devices are erected or in place.

(3) Whenever official traffic control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(4) Any official traffic control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence. [1975 c 62 § 18; 1965 ex.s. c 155 § 7.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

Bicycle awareness program: RCW 43.43.390.

46.61.055 Traffic control signal legend. Whenever traffic is controlled by traffic control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word or legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication

(a) Vehicle operators facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicle operators turning right or left shall stop to allow other vehicles lawfully within the intersection control area to complete their movements. Vehicle operators turning right or left shall also stop for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(b) Vehicle operators facing a green arrow signal, shown alone or in combination with another indication, may enter the intersection control area only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Vehicle operators shall stop to allow other vehicles lawfully within the intersection control area to complete their movements. Vehicle operators shall also stop for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(c) Unless otherwise directed by a pedestrian control signal, as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication

(a) Vehicle operators facing a steady circular yellow or yellow arrow signal are thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection. Vehicle operators shall stop for

pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(b) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 shall not enter the roadway.

(3) Steady red indication

(a) Vehicle operators facing a steady circular red signal alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection control area and shall remain standing until an indication to proceed is shown. However, the vehicle operators facing a steady circular red signal may, after stopping proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(b) Unless otherwise directed by a pedestrian control signal as provided in RCW 46.61.060 as now or hereafter amended, pedestrians facing a steady circular red signal alone shall not enter the roadway.

(c) Vehicle operators facing a steady red arrow indication may not enter the intersection control area to make the movement indicated by such arrow, and unless entering the intersection control area to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line, but if none, before entering a crosswalk on the near side of the intersection control area, or if none, then before entering the intersection control area and shall remain standing until an indication to make the movement indicated by such arrow is shown. However, the vehicle operators facing a steady red arrow indication may, after stopping proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way street or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area as required by RCW 46.61.235(1).

(d) Unless otherwise directed by a pedestrian signal, pedestrians facing a steady red arrow signal indication shall not enter the roadway.

(4) If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any

stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal. [1993 c 153 § 2; 1990 c 241 § 2; 1975 c 62 § 19; 1965 ex.s. c 155 § 8.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.060 Pedestrian control signals. Whenever pedestrian control signals exhibiting the words "Walk" or the walking person symbol or "Don't Walk" or the hand symbol are operating, the signals shall indicate as follows:

(1) WALK or walking person symbol—Pedestrians facing such signal may cross the roadway in the direction of the signal. Vehicle operators shall stop for pedestrians who are lawfully moving within the intersection control area on such signal as required by RCW 46.61.235(1).

(2) Steady or flashing DON'T WALK or hand symbol—Pedestrians facing such signal shall not enter the roadway. Vehicle operators shall stop for pedestrians who have begun to cross the roadway before the display of either signal as required by RCW 46.61.235(1).

(3) Pedestrian control signals having the "Wait" legend in use on August 6, 1965, shall be deemed authorized signals and shall indicate the same as the "Don't Walk" legend. Whenever such pedestrian control signals are replaced the legend "Wait" shall be replaced by the legend "Don't Walk" or the hand symbol. [1993 c 153 § 3; 1990 c 241 § 3; 1975 c 62 § 20; 1965 ex.s. c 155 § 9.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.065 Flashing signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) FLASHING RED (STOP SIGNAL). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) FLASHING YELLOW (CAUTION SIGNAL). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in RCW 46.61.340. [1975 c 62 § 21; 1965 ex.s. c 155 § 10.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.070 Lane-direction-control signals. When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but shall not enter or travel in any lane over which a red signal is shown. [1965 ex.s. c 155 § 11.]

46.61.072 Special traffic control signals—Legend.

Whenever special traffic control signals exhibit a downward green arrow, a yellow X, or a red X indication, such signal indication shall have the following meaning:

(1) A steady downward green arrow means that a driver is permitted to drive in the lane over which the arrow signal is located.

(2) A steady yellow X or flashing red X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made, and to avoid occupying that lane when a steady red X is displayed.

(3) A flashing yellow X means that a driver is permitted to use a lane over which the signal is located for a left turn, using proper caution.

(4) A steady red X means that a driver shall not drive in the lane over which the signal is located, and that this indication shall modify accordingly the meaning of all other traffic controls present. The driver shall obey all other traffic controls and follow normal safe driving practices. [1975 c 62 § 49.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.075 Display of unauthorized signs, signals, or markings. (1) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice. [1965 ex.s. c 155 § 12.]

46.61.080 Interference with official traffic-control devices or railroad signs or signals. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof. [1965 ex.s. c 155 § 13.]

Interference with traffic-control signals or railroad signs or signals: RCW 47.36.130.

46.61.085 Traffic control signals or devices upon city streets forming part of state highways—Approval by department of transportation. No traffic control signal or device may be erected or maintained upon any city street designated as forming a part of the route of a primary state highway or secondary state highway unless first approved by the

state department of transportation. [1984 c 7 § 62; 1965 ex.s. c 155 § 14.]

Severability—1984 c 7: See note following RCW 47.01.141.

Local authorities to provide stop signs at intersections with increased speed highways: RCW 46.61.435.

**DRIVING ON RIGHT SIDE OF ROADWAY—
OVERTAKING AND PASSING—
USE OF ROADWAY**

46.61.100 Keep right except when passing, etc. (1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(c) Upon a roadway divided into three marked lanes and providing for two-way movement traffic under the rules applicable thereon;

(d) Upon a street or highway restricted to one-way traffic; or

(e) Upon a highway having three lanes or less, when approaching a stationary authorized emergency vehicle, tow truck or other vehicle providing roadside assistance while operating warning lights with three hundred sixty degree visibility, or police vehicle as described under RCW 46.61.212(2).

(2) Upon all roadways having two or more lanes for traffic moving in the same direction, all vehicles shall be driven in the right-hand lane then available for traffic, except (a) when overtaking and passing another vehicle proceeding in the same direction, (b) when traveling at a speed greater than the traffic flow, (c) when moving left to allow traffic to merge, or (d) when preparing for a left turn at an intersection, exit, or into a private road or driveway when such left turn is legally permitted. On any such roadway, a vehicle or combination over ten thousand pounds shall be driven only in the right-hand lane except under the conditions enumerated in (a) through (d) of this subsection.

(3) No vehicle towing a trailer or no vehicle or combination over ten thousand pounds may be driven in the left-hand lane of a limited access roadway having three or more lanes for traffic moving in one direction except when preparing for a left turn at an intersection, exit, or into a private road or driveway when a left turn is legally permitted. This subsection does not apply to a vehicle using a high occupancy vehicle lane. A high occupancy vehicle lane is not considered the left-hand lane of a roadway. The department of transportation, in consultation with the Washington state patrol, shall adopt rules specifying (a) those circumstances where it is permissible for other vehicles to use the left lane in case of emergency or to facilitate the orderly flow of traffic, and (b) those segments of limited access roadway to be exempt from this subsection due to the operational characteristics of the roadway.

(4) It is a traffic infraction to drive continuously in the left lane of a multilane roadway when it impedes the flow of other traffic.

(5) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, a vehicle shall not be driven to the left of the center line of the roadway except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection (1)(b) of this section. However, this subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway. [2007 c 83 § 2; 1997 c 253 § 1; 1986 c 93 § 2; 1972 ex.s. c 33 § 1; 1969 ex.s. c 281 § 46; 1967 ex.s. c 145 § 58; 1965 ex.s. c 155 § 15.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Legislative intent—1986 c 93: "It is the intent of the legislature, in this 1985 [1986] amendment of RCW 46.61.100, that the left-hand lane on any state highway with two or more lanes in the same direction be used primarily as a passing lane." [1986 c 93 § 1.]

Information on proper use of left-hand lane: RCW 28A.220.050, 46.20.095, 46.82.430, 47.36.260.

46.61.105 Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible. [1975 c 62 § 22; 1965 ex.s. c 155 § 16.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.110 Overtaking on the left. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

(1) The driver of a vehicle overtaking other traffic proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken traffic.

(2) The driver of a vehicle approaching a pedestrian or bicycle that is on the roadway or on the right-hand shoulder or bicycle lane of the roadway shall pass to the left at a safe distance to clearly avoid coming into contact with the pedestrian or bicyclist, and shall not again drive to the right side of the roadway until safely clear of the overtaken pedestrian or bicyclist.

(3) Except when overtaking and passing on the right is permitted, overtaken traffic shall give way to the right in favor of an overtaking vehicle on audible signal and shall not increase speed until completely passed by the overtaking vehicle. [2005 c 396 § 1; 1965 ex.s. c 155 § 17.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.115 When overtaking on the right is permitted.

(1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

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(b) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway. [1975 c 62 § 23; 1965 ex.s. c 155 § 18.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.120 Limitations on overtaking on the left. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing other traffic proceeding in the same direction unless authorized by the provisions of RCW 46.61.100 through 46.61.160 and 46.61.212 and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any traffic approaching from the opposite direction or any traffic overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching traffic. [2007 c 83 § 3; 2005 c 396 § 2; 1965 ex.s. c 155 § 19.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.125 Further limitations on driving to left of center of roadway. (1) No vehicle shall be driven on the left side of the roadway under the following conditions:

(a) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event other traffic might approach from the opposite direction;

(b) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(c) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct or tunnel;

(d) When a bicycle or pedestrian is within view of the driver and is approaching from the opposite direction, or is present, in the roadway, shoulder, or bicycle lane within a distance unsafe to the bicyclist or pedestrian due to the width or condition of the roadway, shoulder, or bicycle lane.

(2) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in RCW 46.61.100(1)(b), nor to the driver of a vehicle turning left into or from an alley, private road or driveway. [2005 c 396 § 3; 1972 ex.s. c 33 § 2; 1965 ex.s. c 155 § 20.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.126 Pedestrians and bicyclists—Legal duties. Nothing in RCW 46.61.110, 46.61.120, or 46.61.125 relieves pedestrians and bicyclists of their legal duties while traveling on public highways. [2005 c 396 § 4.]

46.61.130 No-passing zones. (1) The state department of transportation and the local authorities are authorized to determine those portions of any highway under their respec-

tive jurisdictions where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones. When such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1) of this section, no driver may at any time drive on the left side of the roadway within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length.

(3) This section does not apply under the conditions described in RCW 46.61.100(1)(b), nor to the driver of a vehicle turning left into or from an alley, private road, or driveway. [1984 c 7 § 63; 1972 ex.s. c 33 § 3; 1965 ex.s. c 155 § 21.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.135 One-way roadways and rotary traffic islands. (1) The state department of transportation and the local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic control devices.

(2) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic control devices.

(3) A vehicle passing around a rotary traffic island shall be driven only to the right of such island. [1984 c 7 § 64; 1975 c 62 § 24; 1965 ex.s. c 155 § 22.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.140 Driving on roadways laned for traffic. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(3) Official traffic-control devices may be erected directing slow moving or other specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway

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and drivers of vehicles shall obey the directions of every such device.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device. [1965 ex.s. c 155 § 23.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.145 Following too closely. (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions. [1965 ex.s. c 155 § 24.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.150 Driving on divided highways. Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section or by a median island not less than eighteen inches wide formed either by solid yellow pavement markings or by a yellow crosshatching between two solid yellow lines so installed as to control vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section, or median island, except through an opening in such physical barrier or dividing section or space or median island, or at a crossover or intersection established by public authority. [1972 ex.s. c 33 § 4; 1965 ex.s. c 155 § 25.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.155 Restricted access. No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by public authority. [1965 ex.s. c 155 § 26.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.160 Restrictions on limited-access highway—Use by bicyclists. The department of transportation may by order, and local authorities may by ordinance or resolution, with respect to any limited access highway under their

respective jurisdictions prohibit the use of any such highway by funeral processions, or by parades, pedestrians, bicycles or other nonmotorized traffic, or by any person operating a motor-driven cycle. Bicyclists may use the right shoulder of limited-access highways except where prohibited. The department of transportation may by order, and local authorities may by ordinance or resolution, with respect to any limited-access highway under their respective jurisdictions prohibit the use of the shoulders of any such highway by bicycles within urban areas or upon other sections of the highway where such use is deemed to be unsafe.

The department of transportation or the local authority adopting any such prohibitory regulation shall erect and maintain official traffic control devices on the limited access roadway on which such regulations are applicable, and when so erected no person may disobey the restrictions stated on such devices. [1982 c 55 § 5; 1975 c 62 § 25; 1965 ex.s. c 155 § 27.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.165 High occupancy vehicle lanes. The state department of transportation and the local authorities are authorized to reserve all or any portion of any highway under their respective jurisdictions, including any designated lane or ramp, for the exclusive or preferential use of public transportation vehicles or private motor vehicles carrying no fewer than a specified number of passengers when such limitation will increase the efficient utilization of the highway or will aid in the conservation of energy resources. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all times or at specified times of day or on specified days. Violation of a restriction of highway usage prescribed by the appropriate authority under this section is a traffic infraction. [1999 c 206 § 1; 1998 c 245 § 90; 1991 sp.s. c 15 § 67; 1984 c 7 § 65; 1974 ex.s. c 133 § 2.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

Severability—1984 c 7: See note following RCW 47.01.141.

Limited access facilities: RCW 47.52.025.

RIGHT-OF-WAY

46.61.180 Vehicle approaching intersection. (1) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(2) The right-of-way rule declared in subsection (1) of this section is modified at arterial highways and otherwise as stated in this chapter. [1975 c 62 § 26; 1965 ex.s. c 155 § 28.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.183 Nonfunctioning signal lights. Except when directed to proceed by a flagger, police officer, or firefighter, the driver of a vehicle approaching an intersection controlled by a traffic control signal that is temporarily without power on all approaches or is not displaying any green, red, or yellow indication to the approach the vehicle is on, shall con-

sider the intersection to be an all-way stop. After stopping, the driver shall yield the right-of-way in accordance with RCW 46.61.180(1) and 46.61.185. [1999 c 200 § 1.]

46.61.185 Vehicle turning left. The driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard. [1965 ex.s. c 155 § 29.]

46.61.190 Vehicle entering stop or yield intersection. (1) Preferential right-of-way may be indicated by stop signs or yield signs as authorized in RCW 47.36.110.

(2) Except when directed to proceed by a duly authorized flagger, or a police officer, or a firefighter vested by law with authority to direct, control, or regulate traffic, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and after having stopped shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.

(3) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering a marked crosswalk on the near side of the intersection or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the roadway, and then after slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways: PROVIDED, That if such a driver is involved in a collision with a vehicle in the intersection or junction of roadways, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of the driver's failure to yield right-of-way. [2000 c 239 § 5; 1975 c 62 § 27; 1965 ex.s. c 155 § 30.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Captions not law—2000 c 239: See note following RCW 49.17.350.

Severability—1975 c 62: See note following RCW 36.75.010.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.195 Arterial highways designated—Stopping on entering. All state highways are hereby declared to be arterial highways as respects all other public highways or private ways, except that the state department of transportation has the authority to designate any county road or city street as an arterial having preference over the traffic on the state highway if traffic conditions will be improved by such action.

Those city streets designated by the state department of transportation as forming a part of the routes of state highways through incorporated cities and towns are declared to be arterial highways as respects all other city streets or private ways.

The governing authorities of incorporated cities and towns may designate any street as an arterial having preference over the traffic on a state highway if the change is first approved in writing by the state department of transportation. The local authorities making such a change in arterial designation shall do so by proper ordinance or resolution and shall erect or cause to be erected and maintained standard stop signs, or "Yield" signs, to accomplish this change in arterial designation.

The operator of any vehicle entering upon any arterial highway from any other public highway or private way shall come to a complete stop before entering the arterial highway when stop signs are erected as provided by law. [1984 c 7 § 66; 1963 ex.s. c 3 § 48; 1961 c 12 § 46.60.330. Prior: 1955 c 146 § 5; 1947 c 200 § 14; 1937 c 189 § 105; Rem. Supp. 1947 § 6360-105. Formerly RCW 46.60.330.]

Severability—1984 c 7: See note following RCW 47.01.141.

City streets subject to increased speed, designation as arterials: RCW 46.61.435.

Stop signs, "Yield" signs—Duties of persons using highway: RCW 47.36.110.

46.61.200 Stop intersections other than arterial may be designated. In addition to the points of intersection of any public highway with any arterial public highway that is constituted by law or by any proper authorities of this state or any city or town of this state, the state department of transportation with respect to state highways, and the proper authorities with respect to any other public highways, have the power to determine and designate any particular intersection, or any particular highways, roads, or streets or portions thereof, at any intersection with which vehicles shall be required to stop before entering such intersection. Upon the determination and designation of such points at which vehicles will be required to come to a stop before entering the intersection, the proper authorities so determining and designating shall cause to be posted and maintained proper signs of the standard design adopted by the state department of transportation indicating that the intersection has been so determined and designated and that vehicles entering it are required to stop. It is unlawful for any person operating any vehicle when entering any intersection determined, designated, and bearing the required sign to fail and neglect to bring the vehicle to a complete stop before entering the intersection. [1984 c 7 § 67; 1961 c 12 § 46.60.340. Prior: 1937 c 189 § 106; RRS § 6360-106; 1927 c 284 § 1; RRS § 6362-41a. Formerly RCW 46.60.340.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.202 Stopping when traffic obstructed. No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles,

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pedestrians, or railroad trains notwithstanding any traffic control signal indications to proceed. [1975 c 62 § 48.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.205 Vehicle entering highway from private road or driveway. The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles lawfully approaching on said highway. [1990 c 250 § 88; 1965 ex.s. c 155 § 31.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1990 c 250: See note following RCW 46.16.301.

46.61.210 Operation of vehicles on approach of emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of RCW 46.37.190, or of a police vehicle properly and lawfully making use of an audible signal only the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(2) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. [1965 ex.s. c 155 § 32.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.212 Approaching stationary emergency vehicles, tow trucks, and police vehicles. The driver of any motor vehicle, upon approaching a stationary authorized emergency vehicle that is making use of audible and/or visual signals meeting the requirements of RCW 46.37.190, a tow truck that is making use of visual red lights meeting the requirements of RCW 46.37.196, other vehicles providing roadside assistance that are making use of warning lights with three hundred sixty degree visibility, or a police vehicle properly and lawfully displaying a flashing, blinking, or alternating emergency light or lights, shall:

(1) On a highway having four or more lanes, at least two of which are intended for traffic proceeding in the same direction as the approaching vehicle, proceed with caution and, if reasonable, with due regard for safety and traffic conditions, yield the right-of-way by making a lane change or moving away from the lane or shoulder occupied by the stationary authorized emergency vehicle or police vehicle;

(2) On a highway having less than four lanes, proceed with caution, reduce the speed of the vehicle, and, if reasonable, with due regard for safety and traffic conditions, and under the rules of this chapter, yield the right-of-way by passing to the left at a safe distance and simultaneously yield the right-of-way to all vehicles traveling in the proper direction upon the highway; or

(3) If changing lanes or moving away would be unreasonable or unsafe, proceed with due caution and reduce the speed of the vehicle. [2007 c 83 § 1; 2005 c 413 § 1.]

46.61.215 Highway construction and maintenance.

(1) The driver of a vehicle shall yield the right-of-way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic control devices.

(2) The driver of a vehicle shall yield the right-of-way to any authorized vehicle obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of RCW 46.37.300. [1975 c 62 § 40.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.220 Transit vehicles. (1) The driver of a vehicle shall yield the right-of-way to a transit vehicle traveling in the same direction that has signalled and is reentering the traffic flow.

(2) Nothing in this section shall operate to relieve the driver of a transit vehicle from the duty to drive with due regard for the safety of all persons using the roadway. [1993 c 401 § 1.]

PEDESTRIANS' RIGHTS AND DUTIES

46.61.230 Pedestrians subject to traffic regulations.

Pedestrians shall be subject to traffic-control signals at intersections as provided in RCW 46.61.060, and at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter. [1965 ex.s. c 155 § 33.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.235 Crosswalks. (1) The operator of an approaching vehicle shall stop and remain stopped to allow a pedestrian or bicycle to cross the roadway within an unmarked or marked crosswalk when the pedestrian or bicycle is upon or within one lane of the half of the roadway upon which the vehicle is traveling or onto which it is turning. For purposes of this section "half of the roadway" means all traffic lanes carrying traffic in one direction of travel, and includes the entire width of a one-way roadway.

(2) No pedestrian or bicycle shall suddenly leave a curb or other place of safety and walk, run, or otherwise move into the path of a vehicle which is so close that it is impossible for the driver to stop.

(3) Subsection (1) of this section does not apply under the conditions stated in RCW 46.61.240(2).

(4) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian or bicycle to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle. [2000 c 85 § 1; 1993 c 153 § 1; 1990 c 241 § 4; 1965 ex.s. c 155 § 34.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.240 Crossing at other than crosswalks. (1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(2) Where curb ramps exist at or adjacent to intersections or at marked crosswalks in other locations, disabled persons may enter the roadway from the curb ramps and cross the roadway within or as closely as practicable to the crosswalk. All other pedestrian rights and duties as defined elsewhere in this chapter remain applicable.

(3) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(4) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(5) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(6) No pedestrian shall cross a roadway at an unmarked crosswalk where an official sign prohibits such crossing. [1990 c 241 § 5; 1965 ex.s. c 155 § 35.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.245 Drivers to exercise care. Notwithstanding the foregoing provisions of this chapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or incapacitated person upon a roadway. [1965 ex.s. c 155 § 36.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Blind pedestrians: Chapter 70.84 RCW.

46.61.250 Pedestrians on roadways. (1) Where sidewalks are provided it is unlawful for any pedestrian to walk or otherwise move along and upon an adjacent roadway. Where sidewalks are provided but wheelchair access is not available, disabled persons who require such access may walk or otherwise move along and upon an adjacent roadway until they reach an access point in the sidewalk.

(2) Where sidewalks are not provided any pedestrian walking or otherwise moving along and upon a highway shall, when practicable, walk or move only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction and upon meeting an oncoming vehicle shall move clear of the roadway. [1990 c 241 § 6; 1965 ex.s. c 155 § 37.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.255 Pedestrians soliciting rides or business. (1) No person shall stand in or on a public roadway or alongside thereof at any place where a motor vehicle cannot safely stop off the main traveled portion thereof for the purpose of soliciting a ride for himself or for another from the occupant of any vehicle.

(2) It shall be unlawful for any person to solicit a ride for himself or another from within the right-of-way of any limited access facility except in such areas where permission to do so is given and posted by the highway authority of the

state, county, city or town having jurisdiction over the highway.

(3) The provisions of subsections (1) and (2) above shall not be construed to prevent a person upon a public highway from soliciting, or a driver of a vehicle from giving a ride where an emergency actually exists, nor to prevent a person from signaling or requesting transportation from a passenger carrier for the purpose of becoming a passenger thereon for hire.

(4) No person shall stand in a roadway for the purpose of soliciting employment or business from the occupant of any vehicle.

(5) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

(6)(a) Except as provided in (b) of this subsection, the state preempts the field of the regulation of hitchhiking in any form, and no county, city, or town shall take any action in conflict with the provisions of this section.

(b) A county, city, or town may regulate or prohibit hitchhiking in an area in which it has determined that prostitution is occurring and that regulating or prohibiting hitchhiking will help to reduce prostitution in the area. [1989 c 288 § 1; 1972 ex.s. c 38 § 1; 1965 ex.s. c 155 § 38.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.260 Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone. [1965 ex.s. c 155 § 39.]

46.61.261 Sidewalks, crosswalks—Pedestrians, bicycles. The driver of a vehicle shall yield the right-of-way to any pedestrian or bicycle on a sidewalk. The rider of a bicycle shall yield the right-of-way to a pedestrian on a sidewalk or crosswalk. [2000 c 85 § 2; 1975 c 62 § 41.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.264 Pedestrians yield to emergency vehicles.

(1) Upon the immediate approach of an authorized emergency vehicle making use of an audible signal meeting the requirements of RCW 46.37.380 subsection (4) and visual signals meeting the requirements of RCW 46.37.190, or of a police vehicle meeting the requirements of RCW 46.61.035 subsection (3), every pedestrian shall yield the right-of-way to the authorized emergency vehicle.

(2) This section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor from the duty to exercise due care to avoid colliding with any pedestrian. [1975 c 62 § 42.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.266 Pedestrians under the influence of alcohol or drugs. A law enforcement officer may offer to transport a pedestrian who appears to be under the influence of alcohol or any drug and who is walking or moving along or within the

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right-of-way of a public roadway, unless the pedestrian is to be taken into protective custody under RCW 70.96A.120.

The law enforcement officer offering to transport an intoxicated pedestrian under this section shall:

(1) Transport the intoxicated pedestrian to a safe place; or

(2) Release the intoxicated pedestrian to a competent person.

The law enforcement officer shall take no action if the pedestrian refuses this assistance. No suit or action may be commenced or prosecuted against the law enforcement officer, law enforcement agency, the state of Washington, or any political subdivision of the state for any act resulting from the refusal of the pedestrian to accept this assistance. [1990 c 241 § 7; 1987 c 11 § 1; 1975 c 62 § 43.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.269 Passing beyond bridge or grade crossing barrier prohibited. (1) No pedestrian shall enter or remain upon any bridge or approach thereto beyond a bridge signal gate, or barrier indicating a bridge is closed to through traffic, after a bridge operation signal indication has been given.

(2) No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed. [1975 c 62 § 44.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING

46.61.290 Required position and method of turning at intersections. The driver of a vehicle intending to turn shall do so as follows:

(1) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. Whenever practicable the left turn shall be made to the left of the center of the intersection and so as to leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as the vehicle on the roadway being entered.

(3) Two-way left turn lanes.

(a) The department of transportation and local authorities in their respective jurisdictions may designate a two-way left turn lane on a roadway. A two-way left turn lane is near the center of the roadway set aside for use by vehicles making left turns in either direction from or into the roadway.

(b) Two-way left turn lanes shall be designated by distinctive uniform roadway markings. The department of transportation shall determine and prescribe standards and specifications governing type, length, width, and positioning of the distinctive permanent markings. The standards and specifications developed shall be filed with the code reviser in accordance with the procedures set forth in the administrative pro-

cedure act, chapter 34.05 RCW. On and after July 1, 1971, permanent markings designating a two-way left turn lane shall conform to such standards and specifications.

(c) Upon a roadway where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from either direction, no vehicles may turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. No vehicle may travel further than three hundred feet within the lane. A signal, either electric or manual, for indicating a left turn movement, shall be made at least one hundred feet before the actual left turn movement is made.

(4) The department of transportation and local authorities in their respective jurisdictions may cause official traffic-control devices to be placed and thereby require and direct that a different course from that specified in this section be traveled by turning vehicles, and when the devices are so placed no driver of a vehicle may turn a vehicle other than as directed and required by the devices. [1997 c 202 § 1. Prior: 1984 c 12 § 1; 1984 c 7 § 68; 1975 c 62 § 28; 1969 ex.s. c 281 § 61; 1965 ex.s. c 155 § 40.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.295 "U" turns. (1) The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic.

(2) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet. [1975 c 62 § 29; 1965 ex.s. c 155 § 41.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

Limited access highways: RCW 47.52.120.

46.61.300 Starting parked vehicle. No person shall start a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety. [1965 ex.s. c 155 § 42.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.305 When signals required—Improper use prohibited. (1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

(2) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(3) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(4) The signals provided for in RCW 46.61.310 subsection (2), shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section. [1975 c 62 § 30; 1965 ex.s. c 155 § 43.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.310 Signals by hand and arm or signal lamps.

(1) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (2) hereof.

(2) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurements shall apply to any single vehicle, also to any combination of vehicles. [1965 ex.s. c 155 § 44.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.315 Method of giving hand and arm signals.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

- (1) Left turn. Hand and arm extended horizontally.
- (2) Right turn. Hand and arm extended upward.
- (3) Stop or decrease speed. Hand and arm extended downward. [1965 ex.s. c 155 § 45.]

SPECIAL STOPS REQUIRED

46.61.340 Approaching train signal. (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and shall not proceed until the crossing can be made safely. The foregoing requirements shall apply when:

- (a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
- (b) A crossing gate is lowered or when a human flagger gives or continues to give a signal of the approach or passage of a railroad train;

(c) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. [2000 c 239 § 6; 1965 ex.s. c 155 § 46.]

Captions not law—2000 c 239: See note following RCW 49.17.350.

46.61.345 All vehicles must stop at certain railroad grade crossings. The state department of transportation and local authorities within their respective jurisdictions are

authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs at those crossings. When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad and shall proceed only upon exercising due care. [1984 c 7 § 69; 1965 ex.s. c 155 § 47.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.350 Certain vehicles must stop at all railroad grade crossings—Exceptions. (1) The driver of any motor vehicle carrying passengers for hire, other than a passenger car, or of any school bus or private carrier bus carrying any school child or other passenger, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossing, and the driver shall not shift gears while crossing the track or tracks.

(2) This section shall not apply at:

(a) Any railroad grade crossing at which traffic is controlled by a police officer or a duly authorized flagman;

(b) Any railroad grade crossing at which traffic is regulated by a traffic control signal;

(c) Any railroad grade crossing protected by crossing gates or an alternately flashing light signal intended to give warning of the approach of a railroad train;

(d) Any railroad grade crossing at which an official traffic control device as designated by the utilities and transportation commission pursuant to RCW 81.53.060 gives notice that the stopping requirement imposed by this section does not apply. [1977 c 78 § 1; 1975 c 62 § 31; 1970 ex.s. c 100 § 7; 1965 ex.s. c 155 § 48.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.355 Moving heavy equipment at railroad grade crossings—Notice of intended crossing. (1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to the station agent of such railroad located nearest the intended crossing sufficiently in advance to allow such railroad a reasonable time to prescribe proper protection for such crossing.

(3) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop

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the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagger or otherwise of the immediate approach of a railroad train or car. If a flagger is provided by the railroad, movement over the crossing shall be under the flagger's direction. [2000 c 239 § 7; 1975 c 62 § 32; 1965 ex.s. c 155 § 49.]

Captions not law—2000 c 239: See note following RCW 49.17.350.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.365 Emerging from alley, driveway, or building. The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway. [1965 ex.s. c 155 § 51.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.370 Overtaking or meeting school bus—Duties of bus driver. (1) The driver of a vehicle upon overtaking or meeting from either direction any school bus which has stopped on the roadway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such school bus resumes motion or the visual signals are no longer activated.

(2) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150 need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(3) The driver of a vehicle upon a highway with three or more marked traffic lanes need not stop upon meeting a school bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging school children.

(4) The driver of a school bus shall actuate the visual signals required by RCW 46.37.190 only when such bus is stopped on the roadway for the purpose of receiving or discharging school children.

(5) The driver of a school bus may stop completely off the roadway for the purpose of receiving or discharging school children only when the school children do not have to cross the roadway. The school bus driver shall actuate the hazard warning lamps as defined in RCW 46.37.215 before loading or unloading school children at such stops.

(6) A person found to have committed an infraction of subsection (1) of this section shall be assessed a monetary penalty equal to twice the total penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended. Fifty percent of the money so collected shall be

deposited into the school zone safety account in the custody of the state treasurer and disbursed in accordance with *RCW 46.61.440(3). [1997 c 80 § 1; 1990 c 241 § 8; 1965 ex.s. c 155 § 52.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

***Reviser's note:** RCW 46.61.440 was amended by 2003 c 192 § 1, changing subsection (3) to subsection (4).

Bus routes: RCW 28A.160.115.

46.61.371 School bus stop sign violators—Identification by vehicle owner. If a law enforcement officer investigating a violation of RCW 46.61.370 has reasonable cause to believe that a violation has occurred, the officer may request the owner of the motor vehicle to supply information identifying the driver of the vehicle at the time the violation occurred. When requested, the owner of the motor vehicle shall identify the driver to the best of the owner's ability. The owner of the vehicle is not required to supply identification information to the law enforcement officer if the owner believes the information is self-incriminating. [1992 c 39 § 1.]

46.61.372 School bus stop sign violators—Report by bus driver—Law enforcement investigation. (1) The driver of a school bus who observes a violation of RCW 46.61.370 may prepare a written report on a form provided by the state patrol or another law enforcement agency indicating that a violation has occurred. The driver of the school bus or a school official may deliver the report to a law enforcement officer of the state, county, or municipality in which the violation occurred but not more than seventy-two hours after the violation occurred. The driver shall include in the report the time and location at which the violation occurred, the vehicle license plate number, and a description of the vehicle involved in the violation.

(2) The law enforcement officer shall initiate an investigation of the reported violation within ten working days after receiving the report described in subsection (1) of this section by contacting the owner of the motor vehicle involved in the reported violation and requesting the owner to supply information identifying the driver. Failure to investigate within the ten working day period does not prohibit further investigation or prosecution. If, after an investigation, the law enforcement officer is able to identify the driver and has reasonable cause to believe a violation of RCW 46.61.370 has occurred, the law enforcement officer shall prepare a notice of traffic infraction and have it served upon the driver of the vehicle. [1992 c 39 § 2.]

46.61.375 Overtaking or meeting private carrier bus—Duties of bus driver. (1) The driver of a vehicle upon overtaking or meeting from either direction any private carrier bus which has stopped on the roadway for the purpose of receiving or discharging any passenger shall stop the vehicle before reaching such private carrier bus when there is in operation on said bus a visual signal as specified in RCW 46.37.190 and said driver shall not proceed until such bus resumes motion or the visual signals are no longer activated.

(2) The driver of a vehicle upon a highway divided into separate roadways as provided in RCW 46.61.150 need not

stop upon meeting a private carrier bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging passengers.

(3) The driver of a vehicle upon a highway with three or more lanes need not stop upon meeting a private carrier bus which is proceeding in the opposite direction and is stopped for the purpose of receiving or discharging passengers.

(4) The driver of a private carrier bus shall actuate the visual signals required by RCW 46.37.190 only when such bus is stopped on the roadway for the purpose of receiving or discharging passengers.

(5) The driver of a private carrier bus may stop a private carrier bus completely off the roadway for the purpose of receiving or discharging passengers only when the passengers do not have to cross the roadway. The private carrier bus driver shall actuate the hazard warning lamps as defined in RCW 46.37.215 before loading or unloading passengers at such stops. [1990 c 241 § 9; 1970 ex.s. c 100 § 8.]

46.61.380 Rules for design, marking, and mode of operating school buses. (1) The state superintendent of public instruction shall adopt and enforce rules not inconsistent with the law of this state to govern the design, marking, and mode of operation of all school buses owned and operated by any school district or privately owned and operated under contract or otherwise with any school district in this state for the transportation of school children.

(2) School districts shall not be prohibited from placing or displaying a flag of the United States on a school bus when it does not interfere with the vehicle's safe operation. The state superintendent of public instruction shall adopt and enforce rules not inconsistent with the law of this state to govern the size, placement, and display of the flag of the United States on all school buses referenced in subsection (1) of this section.

(3) Rules shall by reference be made a part of any such contract or other agreement with the school district. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district is subject to such rules. It is unlawful for any officer or employee of any school district or for any person operating any school bus under contract with any school district to violate any of the provisions of such rules. [2002 c 29 § 1; 1995 c 269 § 2501; 1984 c 7 § 70; 1961 c 12 § 46.48.150. Prior: 1937 c 189 § 131; RRS § 6360-131. Formerly RCW 46.48.150.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

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

Severability—1984 c 7: See note following RCW 47.01.141.

School buses

generally: Chapter 28A.160 RCW.

signs: RCW 46.37.193.

stop signal and lamps: RCW 46.37.190.

46.61.385 School patrol—Appointment—Authority—Finance—Insurance. The superintendent of public instruction, through the superintendent of schools of any school district, or other officer or board performing like functions with respect to the schools of any other educational administrative district, may cause to be appointed voluntary

adult recruits as supervisors and, from the student body of any public or private school or institution of learning, students, who shall be known as members of the "school patrol" and who shall serve without compensation and at the pleasure of the authority making the appointment.

The members of such school patrol shall wear an appropriate designation or insignia identifying them as members of the school patrol when in performance of their duties, and they may display "stop" or other proper traffic directional signs or signals at school crossings or other points where school children are crossing or about to cross a public highway, but members of the school patrol and their supervisors shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

School districts, at their discretion, may hire sufficient numbers of adults to serve as supervisors. Such adults shall be subordinate to and obey the orders of any peace officer present and having jurisdiction.

Any school district having a school patrol may purchase uniforms and other appropriate insignia, traffic signs and other appropriate materials, all to be used by members of such school patrol while in performance of their duties, and may pay for the same out of the general fund of the district.

It shall be unlawful for the operator of any vehicle to fail to stop his vehicle when directed to do so by a school patrol sign or signal displayed by a member of the school patrol engaged in the performance of his duty and wearing or displaying appropriate insignia, and it shall further be unlawful for the operator of a vehicle to disregard any other reasonable directions of a member of the school patrol when acting in performance of his duties as such.

School districts may expend funds from the general fund of the district to pay premiums for life and accident policies covering the members of the school patrol in their district while engaged in the performance of their school patrol duties.

Members of the school patrol shall be considered as employees for the purposes of RCW 28A.400.370. [1990 c 33 § 585; 1974 ex.s. c 47 § 1; 1961 c 12 § 46.48.160. Prior: 1953 c 278 § 1; 1937 c 189 § 130; RRS § 6360-130; 1927 c 309 § 42; RRS § 6362-42. Formerly RCW 46.48.160.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

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

SPEED RESTRICTIONS

46.61.400 Basic rule and maximum limits. (1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits.

- (a) Twenty-five miles per hour on city and town streets;
- (b) Fifty miles per hour on county roads;
- (c) Sixty miles per hour on state highways.

The maximum speed limits set forth in this section may be altered as authorized in RCW 46.61.405, 46.61.410, and 46.61.415.

(3) The driver of every vehicle shall, consistent with the requirements of subsection (1) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions. [1965 ex.s. c 155 § 54; 1963 c 16 § 1. Formerly RCW 46.48.011.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Saving of existing orders, etc., establishing speed limits—1963 c 16: "This act shall not repeal or invalidate existing orders and resolutions of the state highway commission or existing resolutions and ordinances of local authorities establishing speed limits within their respective jurisdictions." [1963 c 16 § 7. Formerly RCW 46.48.016.]

46.61.405 Decreases by secretary of transportation.

Whenever the secretary of transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater than is reasonable or safe with respect to a state highway under the conditions found to exist at any intersection or upon any other part of the state highway system or at state ferry terminals, or that a general reduction of any maximum speed set forth in RCW 46.61.400 is necessary in order to comply with a national maximum speed limit, the secretary may determine and declare a reasonable and safe lower maximum limit or a lower maximum limit which will comply with a national maximum speed limit, for any state highway, the entire state highway system, or any portion thereof, which shall be effective when appropriate signs giving notice thereof are erected. The secretary may also fix and regulate the speed of vehicles on any state highway within the maximum speed limit allowed by this chapter for special occasions including, but not limited to, local parades and other special events. Any such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the said signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective (a) when posted upon appropriate fixed or variable signs or (b) if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of RCW 46.61.410, as now or hereafter amended. [1987 c 397 § 3; 1977 ex.s. c 151 § 34; 1974 ex.s. c 103 § 1; 1970 ex.s. c 100 § 2; 1967 c 25 § 1; 1963 c 16 § 2. Formerly RCW 46.48.012.]

Intent—1987 c 397: See note following RCW 46.61.410.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.410 Increases by secretary of transportation—Maximum speed limit for trucks—Auto stages—Signs

and notices. (1)(a) Subject to subsection (2) of this section the secretary may increase the maximum speed limit on any highway or portion thereof to not more than seventy miles per hour in accordance with the design speed thereof (taking into account all safety elements included therein), or whenever the secretary determines upon the basis of an engineering and traffic investigation that such greater speed is reasonable and safe under the circumstances existing on such part of the highway.

(b) The greater maximum limit established under (a) of this subsection shall be effective when appropriate signs giving notice thereof are erected, or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

(c) Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon said signs or in the case of auto stages, as indicated in said written notice; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

(2) The maximum speed limit for vehicles over ten thousand pounds gross weight and vehicles in combination except auto stages shall not exceed sixty miles per hour and may be established at a lower limit by the secretary as provided in RCW 46.61.405.

(3) The word "trucks" used by the department on signs giving notice of maximum speed limits means vehicles over ten thousand pounds gross weight and all vehicles in combination except auto stages.

(4) Whenever the secretary establishes maximum speed limits for auto stages lower than the maximum limits for automobiles, the secretary shall cause to be mailed notice thereof to each auto transportation company holding a certificate of public convenience and necessity issued by the Washington utilities and transportation commission. The notice shall be mailed to the chief place of business within the state of Washington of each auto transportation company or if none then its chief place of business without the state of Washington. [1996 c 52 § 1; 1987 c 397 § 4; 1977 ex.s. c 151 § 35; 1974 ex.s. c 103 § 2; 1970 ex.s. c 100 § 1; 1969 ex.s. c 12 § 1; 1965 ex.s. c 155 § 55; 1963 c 16 § 3. Formerly RCW 46.48.013.]

Intent—1987 c 397: "It is the intent of the legislature to increase the speed limit to sixty-five miles per hour on those portions of the rural interstate highway system where the increase would be safe and reasonable and is allowed by federal law. It is also the intent of the legislature that the sixty-five miles per hour speed limit be strictly enforced." [1987 c 397 § 1.]

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.415 When local authorities may alter maximum limits. (1) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering

and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.440 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which

- (a) Decreases the limit at intersections; or
- (b) Increases the limit but not to more than sixty miles per hour; or
- (c) Decreases the limit but not to less than twenty miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under RCW 46.61.400(2) but shall not exceed sixty miles per hour.

(3) The secretary of transportation is authorized to establish speed limits on county roads and city and town streets as shall be necessary to conform with any federal requirements which are a prescribed condition for the allocation of federal funds to the state.

(4) Any altered limit established as hereinbefore authorized shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(5) Any alteration of maximum limits on state highways within incorporated cities or towns by local authorities shall not be effective until such alteration has been approved by the secretary of transportation. [1977 ex.s. c 151 § 36; 1974 ex.s. c 103 § 3; 1963 c 16 § 4. Formerly RCW 46.48.014.]

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.419 Private roads—Speed enforcement. State, local, or county law enforcement personnel may enforce speeding violations under RCW 46.61.400 on private roads within a community organized under chapter 64.38 RCW if:

(1) A majority of the homeowner's association's board of directors votes to authorize the issuance of speeding infractions on its private roads, and declares a speed limit not lower than twenty miles per hour;

(2) A written agreement regarding the speeding enforcement is signed by the homeowner's association president and the chief law enforcement official of the city or county within whose jurisdiction the private road is located;

(3) The homeowner's association has provided written notice to all of the homeowners describing the new authority to issue speeding infractions; and

(4) Signs have been posted declaring the speed limit at all vehicle entrances to the community. [2003 c 193 § 1.]

46.61.425 Minimum speed regulation—Passing slow moving vehicle. (1) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable

movement of traffic except when reduced speed is necessary for safe operation or in compliance with law: PROVIDED, That a person following a vehicle driving at less than the legal maximum speed and desiring to pass such vehicle may exceed the speed limit, subject to the provisions of RCW 46.61.120 on highways having only one lane of traffic in each direction, at only such a speed and for only such a distance as is necessary to complete the pass with a reasonable margin of safety.

(2) Whenever the secretary of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway unreasonably impede the normal movement of traffic, the secretary or such local authority may determine and declare a minimum speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected. No person shall drive a vehicle slower than such minimum speed limit except when necessary for safe operation or in compliance with law. [1977 ex.s. c 151 § 37; 1969 c 135 § 1; 1967 c 25 § 2; 1963 c 16 § 6. Formerly RCW 46.48.015.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.427 Slow-moving vehicle to pull off roadway.

On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow moving vehicle, behind which five or more vehicles are formed in a line, shall turn off the roadway wherever sufficient area for a safe turn-out exists, in order to permit the vehicles following to proceed. As used in this section a slow moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. [1973 c 88 § 1.]

46.61.428 Slow-moving vehicle driving on shoulders, when. (1) The state department of transportation and local authorities are authorized to determine those portions of any two-lane highways under their respective jurisdictions on which drivers of slow-moving vehicles may safely drive onto improved shoulders for the purpose of allowing overtaking vehicles to pass and may by appropriate signs indicate the beginning and end of such zones.

(2) Where signs are in place to define a driving-on-shoulder zone as set forth in subsection (1) of this section, the driver of a slow-moving vehicle may drive onto and along the shoulder within the zone but only for the purpose of allowing overtaking vehicles to pass and then shall return to the roadway.

(3) Signs erected to define a driving-on-shoulder zone take precedence over pavement markings for the purpose of allowing the movements described in subsection (2) of this section. [1984 c 7 § 71; 1977 ex.s. c 39 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

46.61.430 Authority of secretary of transportation to fix speed limits on limited access facilities exclusive—Local regulations. Notwithstanding any law to the contrary or inconsistent herewith, the secretary of transportation shall

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have the power and the duty to fix and regulate the speed of vehicles within the maximum speed limit allowed by law for state highways, designated as limited access facilities, regardless of whether a portion of said highway is within the corporate limits of a city or town. No governing body or authority of such city or town or other political subdivision may have the power to pass or enforce any ordinance, rule, or regulation requiring a different rate of speed, and all such ordinances, rules, and regulations contrary to or inconsistent therewith now in force are void and of no effect. [1977 ex.s. c 151 § 38; 1974 ex.s. c 103 § 4; 1961 c 12 § 46.48.041. Prior: 1955 c 177 § 5. Formerly RCW 46.48.041.]

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.435 Local authorities to provide "stop" or "yield" signs at intersections with increased speed highways—Designated as arterials. The governing body or authority of any such city or town or political subdivision shall place and maintain upon each and every highway intersecting a highway where an increased speed is permitted, as provided in this chapter, appropriate stop or yield signs, sufficient to be read at any time by any person upon approaching and entering the highway upon which such increased speed is permitted and such city street or such portion thereof as is subject to the increased speed shall be an arterial highway. [1975 c 62 § 33; 1961 c 12 § 46.48.046. Prior: 1951 c 28 § 4; prior: 1937 c 189 § 66, part; RRS § 6360-66, part; 1927 c 309 § 5, part; 1921 c 96 § 41, part; 1919 c 59 § 13, part; 1917 c 155 § 20, part; 1915 c 142 § 34, part; RRS § 6362-5, part. Formerly RCW 46.48.046.]

Severability—1975 c 62: See note following RCW 36.75.010.

Designation of city streets as arterials, stopping on entering: RCW 46.61.195.

Traffic control signals or devices upon city streets forming part of state highways: RCW 46.61.085.

46.61.440 Maximum speed limit when passing school or playground crosswalks—Penalty, disposition of proceeds. (1) Subject to RCW 46.61.400(1), and except in those instances where a lower maximum lawful speed is provided by this chapter or otherwise, it shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour when operating any vehicle upon a highway either inside or outside an incorporated city or town when passing any marked school or playground crosswalk when such marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs. The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk.

(2) A county or incorporated city or town may create a school or playground speed zone on a highway bordering a marked school or playground, in which zone it is unlawful for a person to operate a vehicle at a speed in excess of twenty miles per hour. The school or playground speed zone may extend three hundred feet from the border of the school or playground property; however, the speed zone may only include area consistent with active school or playground use.

(3) A person found to have committed any infraction relating to speed restrictions within a school or playground speed zone shall be assessed a monetary penalty equal to

twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

(4) The school zone safety account is created in the custody of the state treasurer. Fifty percent of the moneys collected under subsection (3) of this section shall be deposited into the account. Expenditures from the account may be used only by the Washington traffic safety commission solely to fund projects in local communities to improve school zone safety, pupil transportation safety, and student safety in school bus loading and unloading areas. Only the director of the traffic safety commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures until July 1, 1999, after which date moneys in the account may be spent only after appropriation. [2003 c 192 § 1; 1997 c 80 § 2; 1996 c 114 § 1; 1975 c 62 § 34; 1963 c 16 § 5; 1961 c 12 § 46.48.023. Prior: 1951 c 28 § 9; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360-64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362-3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.023.]

Effective date—1996 c 114: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 1996]." [1996 c 114 § 2.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.445 Due care required. Compliance with speed requirements of this chapter under the circumstances hereinabove set forth shall not relieve the operator of any vehicle from the further exercise of due care and caution as further circumstances shall require. [1961 c 12 § 46.48.025. Prior: 1951 c 28 § 11; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360-64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362-3, part; 1909 c 249 § 279, part; Rem. & Bal. 2531, part. Formerly RCW 46.48.025.]

Duty to use due care: RCW 46.61.400(1).

46.61.450 Maximum speed, weight, or size in traversing bridges, elevated structures, tunnels, underpasses—Posting limits. It shall be unlawful for any person to operate a vehicle or any combination of vehicles over any bridge or other elevated structure or through any tunnel or underpass constituting a part of any public highway at a rate of speed or with a gross weight or of a size which is greater at any time than the maximum speed or maximum weight or size which can be maintained or carried with safety over any such bridge or structure or through any such tunnel or underpass when such bridge, structure, tunnel, or underpass is sign posted as hereinafter provided. The secretary of transportation, if it be a bridge, structure, tunnel, or underpass upon a state highway, or the governing body or authorities of any county, city, or town, if it be upon roads or streets under their jurisdiction, may restrict the speed which may be maintained or the gross weight or size which may be operated upon or over any such bridge or elevated structure or through any such tunnel or underpass with safety thereto. The secretary or the governing

body or authorities of any county, city, or town having jurisdiction shall determine and declare the maximum speed or maximum gross weight or size which such bridge, elevated structure, tunnel, or underpass can withstand or accommodate and shall cause suitable signs stating such maximum speed or maximum gross weight, or size, or either, to be erected and maintained on the right hand side of such highway, road, or street and at a distance of not less than one hundred feet from each end of such bridge, structure, tunnel, or underpass and on the approach thereto: PROVIDED, That in the event that any such bridge, elevated structure, tunnel, or underpass is upon a city street designated by the department of transportation as forming a part of the route of any state highway through any such incorporated city or town the determination of any maximum speed or maximum gross weight or size which such bridge, elevated structure, tunnel, or underpass can withstand or accommodate shall not be enforceable at any speed, weight, or size less than the maximum allowed by law, unless with the approval in writing of the secretary. Upon the trial of any person charged with a violation of this section, proof of either violation of maximum speed or maximum weight, or size, or either, and the distance and location of such signs as are required, shall constitute conclusive evidence of the maximum speed or maximum weight, or size, or either, which can be maintained or carried with safety over such bridge or elevated structure or through such tunnel or underpass. [2006 c 334 § 20; 1977 ex.s. c 151 § 39; 1961 c 12 § 46.48.080. Prior: 1937 c 189 § 70; RRS § 6360-70. Formerly RCW 46.48.080.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.455 Vehicles with solid or hollow cushion tires. Except for vehicles equipped with temporary-use spare tires that meet federal standards, it shall be unlawful to operate any vehicle equipped or partly equipped with solid rubber tires or hollow center cushion tires, or to operate any combination of vehicles any part of which is equipped or partly equipped with solid rubber tires or hollow center cushion tires, so long as solid rubber tires or hollow center cushion tires may be used under the provisions of this title, upon any public highway of this state at a greater rate of speed than ten miles per hour: PROVIDED, That the temporary-use spare tires are installed and used in accordance with the manufacturer's instructions. [1990 c 105 § 3; 1961 c 12 § 46.48.110. Prior: 1947 c 200 § 11; 1937 c 189 § 73; Rem. Supp. 1947 § 6360-73. Formerly RCW 46.48.110.]

46.61.460 Special speed limitation on motor-driven cycle. No person shall operate any motor-driven cycle at any time mentioned in RCW 46.37.020 at a speed greater than thirty-five miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead. [1965 ex.s. c 155 § 57.]

46.61.465 Exceeding speed limit evidence of reckless driving. The unlawful operation of a vehicle in excess of the maximum lawful speeds provided in this chapter at the point

of operation and under the circumstances described shall be prima facie evidence of the operation of a motor vehicle in a reckless manner by the operator thereof. [1961 c 12 § 46.48.026. Prior: 1951 c 28 § 12; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360-64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362-3, part; 1909 c 249 § 279, part; Rem. & Bal. §2531, part. Formerly RCW 46.48.026.]

46.61.470 Speed traps defined, certain types permitted—Measured courses, speed measuring devices, timing from aircraft. (1) No evidence as to the speed of any vehicle operated upon a public highway by any person arrested for violation of any of the laws of this state regarding speed or of any orders, rules, or regulations of any city or town or other political subdivision relating thereto shall be admitted in evidence in any court at a subsequent trial of such person in case such evidence relates to or is based upon the maintenance or use of a speed trap except as provided in subsection (2) of this section. A "speed trap," within the meaning of this section, is a particular section of or distance on any public highway, the length of which has been or is measured off or otherwise designated or determined, and the limits of which are within the vision of any officer or officers who calculate the speed of a vehicle passing through such speed trap by using the lapsed time during which such vehicle travels between the entrance and exit of such speed trap.

(2) Evidence shall be admissible against any person arrested or issued a notice of a traffic infraction for violation of any of the laws of this state or of any orders, rules, or regulations of any city or town or other political subdivision regarding speed if the same is determined by a particular section of or distance on a public highway, the length of which has been accurately measured off or otherwise designated or determined and either: (a) The limits of which are controlled by a mechanical, electrical, or other device capable of measuring or recording the speed of a vehicle passing within such limits; or (b) a timing device is operated from an aircraft, which timing device when used to measure the elapsed time of a vehicle passing over such a particular section of or distance upon a public highway indicates the speed of a vehicle.

(3) The exceptions of subsection (2) of this section are limited to devices or observations with a maximum error of not to exceed five percent using the lapsed time during which such vehicle travels between such limits, and such limits shall not be closer than one-fourth mile. [1981 c 105 § 1; 1961 c 12 § 46.48.120. Prior: 1937 c 189 § 74; RRS § 6360-74; 1927 c 309 § 7; RRS § 6362-7. Formerly RCW 46.48.120.]

RECKLESS DRIVING,
DRIVING UNDER THE INFLUENCE,
VEHICULAR HOMICIDE AND ASSAULT

46.61.500 Reckless driving—Penalty. (1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment of not more than one year and by a fine of not more than five thousand dollars.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days. [1990 c 291 § 1; 1979 ex.s. c 136 § 85; 1967 c 32 § 67; 1965 ex.s. c 155 § 59.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in reckless driving: RCW 10.31.100.

Criminal history and driving record: RCW 46.61.513.

Embracing another while driving as reckless driving: RCW 46.61.665.

Excess speed as prima facie evidence of reckless driving: RCW 46.61.465.

Racing of vehicles on public highways, reckless driving: RCW 46.61.530.

Revocation of license, reckless driving: RCW 46.20.285.

46.61.502 Driving under the influence. (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of (i) vehicular homicide while under the influence of intoxicating liquor or any drug,

RCW 46.61.520(1)(a), (ii) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection. [2008 c 282 § 20; 2006 c 73 § 1; 1998 c 213 § 3; 1994 c 275 § 2; 1993 c 328 § 1; 1987 c 373 § 2; 1986 c 153 § 2; 1979 ex.s. c 176 § 1.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2006 c 73: "This act takes effect July 1, 2007." [2006 c 73 § 19.]

Effective date—1998 c 213: See note following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding, purpose—1987 c 373: "The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgement that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 § 1.]

Severability—1987 c 373: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 373 § 8.]

Severability—1979 ex.s. c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 176 § 8.]

Business operation of vessel or vehicle while intoxicated: RCW 9.91.020.

Criminal history and driving record: RCW 46.61.513.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 79A.60.040.

46.61.503 Driver under twenty-one consuming alcohol—Penalties. (1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol if the person operates or is in physical control of a motor vehicle within this state and the person:

(a) Is under the age of twenty-one;

(b) Has, within two hours after operating or being in physical control of the motor vehicle, an alcohol concentration of at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving or being in physical control and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be in violation of subsection (1) of this section within two hours after driving or being in physical control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) Analyses of blood or breath samples obtained more than two hours after the alleged driving or being in physical control may be used as evidence that within two hours of the alleged driving or being in physical control, a person had an alcohol concentration in violation of subsection (1) of this section.

(4) A violation of this section is a misdemeanor. [1998 c 213 § 4; 1998 c 207 § 5; 1998 c 41 § 8; 1995 c 332 § 2; 1994 c 275 § 10. Formerly RCW 46.20.309.]

Reviser's note: This section was amended by 1998 c 41 § 8, 1998 c 207 § 5, and by 1998 c 213 § 4, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 213: See note following RCW 46.20.308.

Effective date—1998 c 207: See note following RCW 46.61.5055.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.61.504 Physical control of vehicle under the influence. (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used

as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of (i) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), (ii) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection. [2008 c 282 § 21; 2006 c 73 § 2; 1998 c 213 § 5; 1994 c 275 § 3; 1993 c 328 § 2; 1987 c 373 § 3; 1986 c 153 § 3; 1979 ex.s. c 176 § 2.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—1998 c 213: See note following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Criminal history and driving record: RCW 46.61.513.

46.61.5054 Alcohol violators—Additional fee—Distribution. (1)(a) In addition to penalties set forth in *RCW 46.61.5051 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055 thereafter, a one hundred twenty-five dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of funding the Washington state toxicology laboratory and the Washington state patrol for grants and activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(b) Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay.

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall assess the one hundred twenty-five dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.

(2) The fee assessed under subsection (1) of this section shall be collected by the clerk of the court and distributed as follows:

(a) Forty percent shall be subject to distribution under RCW **3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

(b) The remainder of the fee shall be forwarded to the state treasurer who shall, through June 30, 1997, deposit: Fifty percent in the death investigations' account to be used

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solely for funding the state toxicology laboratory blood or breath testing programs; and fifty percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs. Effective July 1, 1997, the remainder of the fee shall be forwarded to the state treasurer who shall deposit: Fifteen percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and eighty-five percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(3) This section applies to any offense committed on or after July 1, 1993. [1995 c 398 § 15; 1995 c 332 § 13; 1994 c 275 § 7.]

Reviser's note: *(1) RCW 46.61.5051, 46.61.5052, and 46.61.5053 were repealed by 1995 c 332 § 21, effective September 1, 1995.

***(2) RCW 3.46.120 was repealed by 2008 c 227 § 12, effective July 1, 2008.

(3) This section was amended by 1995 c 332 § 13 and by 1995 c 398 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.61.5055 Alcohol violators—Penalty schedule. (*Effective until January 1, 2009.*) (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dol-

lars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308

there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has four or more prior offenses within ten years, or who has ever previously been convicted of a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug or RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, shall be punished in accordance with chapter 9.94A RCW.

(5) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(6) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(7) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(8) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (8), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(9) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(10)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical con-

trol of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(11) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

(12) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

(13) For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years of the arrest for the current offense. [2007 c 474 § 1; 2006 c 73 § 3; 2004 c 95 § 13; 2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 § 1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

Effective date—2007 c 474: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 474 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—1999 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 5 § 2.]

Effective date—1999 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 16, 1999]." [1999 c 5 § 3.]

Effective date—1998 c 214: "This act takes effect January 1, 1999." [1998 c 214 § 6.]

Effective date—1998 c 211: "This act takes effect January 1, 1999." [1998 c 211 § 7.]

Short title—Finding—Intent—Effective date—1998 c 210: See notes following RCW 46.20.720.

Effective date—1998 c 207: "This act takes effect January 1, 1999." [1998 c 207 § 12.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Effective date—1995 1st sp.s. c 17: See note following RCW 46.20.355.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.61.5055 Alcohol violators—Penalty schedule. (*Effective January 1, 2009.*) (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of

RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent.

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if: (a) The person has four or more prior offenses within ten years; or (b) the person has ever previ-

ously been convicted of: (i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug; (ii) a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug; or (iii) an out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection.

(5)(a) The court shall require any person convicted of an alcohol-related violation of RCW 46.61.502 or 46.61.504 to apply for an ignition interlock driver's license from the department under *RCW 46.20.385 and to have a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) The installation of an ignition interlock device is not necessary on vehicles owned by a person's employer and driven as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer during working hours.

(c) An ignition interlock device imposed under this section shall be calibrated to prevent a motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more.

(d) The court may waive the requirement that a person obtain an ignition interlock driver's license and operate only vehicles equipped with a functioning ignition interlock device if the court makes a specific finding in writing that the devices are not reasonably available in the local area, that the person does not operate a vehicle, or the person is not eligible to receive an ignition interlock driver's license under RCW 46.20.385.

(e) When the requirement that a person obtain an ignition interlock driver's license and operate only vehicles equipped with a functioning ignition interlock device is waived by the court, the court shall order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring. The county or municipality where the penalty is being imposed shall determine the cost.

(f) The period of time for which ignition interlock use or alcohol monitoring is required will be as follows:

(i) For a person who has not previously been restricted under this section, a period of one year;

(ii) For a person who has previously been restricted under (f)(i) of this subsection, a period of five years;

(iii) For a person who has previously been restricted under (f)(ii) of this subsection, a period of ten years.

(6) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(7) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(8) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place

the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11)(a) In addition to any nonsuspendable and nondeferable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(12) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that

the combination does not exceed three hundred sixty-five days.

(13) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

(14) For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense; and

(c) "Within ten years" means that the arrest for a prior offense occurred within ten years of the arrest for the current offense. [2008 c 282 § 14; 2007 c 474 § 1; 2006 c 73 § 3; 2004 c 95 § 13; 2003 c 103 § 1. Prior: 1999 c 324 § 5; 1999 c 274 § 6; 1999 c 5 § 1; prior: 1998 c 215 § 1; 1998 c 214 § 1; 1998 c 211 § 1; 1998 c 210 § 4; 1998 c 207 § 1; 1998 c 206 § 1; prior: 1997 c 229 § 11; 1997 c 66 § 14; 1996 c 307 § 3; 1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

***Reviser's note:** The reference to RCW 46.20.385 appears to be erroneous. A reference to RCW 46.20.720 was apparently intended.

Effective date—2008 c 282: See note following RCW 46.20.308.

Effective date—2007 c 474: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 474 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—1999 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 5 § 2.]

Effective date—1999 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 16, 1999]." [1999 c 5 § 3.]

Effective date—1998 c 214: "This act takes effect January 1, 1999." [1998 c 214 § 6.]

Effective date—1998 c 211: "This act takes effect January 1, 1999." [1998 c 211 § 7.]

Short title—Finding—Intent—Effective date—1998 c 210: See notes following RCW 46.20.720.

Effective date—1998 c 207: "This act takes effect January 1, 1999." [1998 c 207 § 12.]

Effective date—1997 c 229: See note following RCW 10.05.090.

Effective date—1995 1st sp.s. c 17: See note following RCW 46.20.355.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.61.5056 Alcohol violators—Information school—Evaluation and treatment. (1) A person subject to alcohol assessment and treatment under RCW 46.61.5055 shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a program approved by the department of social and health services, as determined by the court. The court shall notify the department of licensing whenever it orders a person to complete a course or treatment program under this section.

(2) A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a program approved by the department of social and health services.

(3) Standards for approval for alcohol treatment programs shall be prescribed by the department of social and health services. The department of social and health services shall periodically review the costs of alcohol information schools and treatment programs.

(4) Any agency that provides treatment ordered under RCW 46.61.5055, shall immediately report to the appropriate probation department where applicable, otherwise to the court, and to the department of licensing any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the department of licensing and the department of social and health services of any failure by an agency to so report noncompliance. Any agency with knowledge of noncompliance that fails to so report shall be fined two hundred fifty dollars by the department of social and health services. Upon three such failures by an agency within one year, the department of social and health services shall revoke the agency's approval under this section.

(5) The department of licensing and the department of social and health services may adopt such rules as are necessary to carry out this section. [1995 c 332 § 14; 1994 c 275 § 9.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.61.50571 Alcohol violators—Mandatory appearances. (1) A defendant who is charged with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be required to appear in person before a judicial officer within one judicial day after the arrest if the defendant is served with a citation or complaint at the time of the arrest. A court may by local court rule waive the requirement for appearance within one judicial day if it provides for the appearance at the earliest practicable day following arrest and establishes the method for identifying that day in the rule.

(2) A defendant who is charged with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, and who is not served with a citation or complaint at the time of the incident, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived. [2000 c 52 § 1; 1999 c 114 § 1; 1998 c 214 § 5.]

Effective date—1998 c 214: See note following RCW 46.61.5055.

46.61.5058 Alcohol violators—Vehicle seizure and forfeiture. (1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, if such person has a prior offense within seven years as defined in RCW 46.61.5055, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of the charge. The prohibition against transfer of title shall not be stayed pending the determination of an appeal from the conviction.

(2008 Ed.)

(a) A vehicle encumbered by a bona fide security interest may be transferred to the secured party or to a person designated by the secured party;

(b) A leased or rented vehicle may be transferred to the lessor, rental agency, or to a person designated by the lessor or rental agency; and

(c) A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest in the vehicle unless it is established that (i) in the case of a purchase by a third party or vehicle dealer, such party or dealer had actual notice that the vehicle was subject to the prohibition prior to the purchase, or (ii) in the case of a security interest, the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

(2) On conviction for a violation of either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance where the person convicted has a prior offense within seven years as defined in RCW 46.61.5055, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to this section.

(3) A vehicle subject to forfeiture under this chapter may be seized by a law enforcement officer of this state upon process issued by a court of competent jurisdiction. Seizure of a vehicle may be made without process if the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) Seizure under subsection (3) of this section automatically commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized vehicle to be served within fifteen days after the seizure on the owner of the vehicle seized, on the person in charge of the vehicle, and on any person having a known right or interest in the vehicle, including a community property interest. The notice of seizure may be served by any method authorized by law or court rule, including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected on a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the vehicle is deemed forfeited.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized vehicle within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020, the hearing shall be before the chief law enforcement officer of

the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the vehicle is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the vehicle involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the legal owner or the person claiming to have the lawful right to possession of the vehicle. The seizing law enforcement agency shall promptly return the vehicle to the claimant upon a determination by the administrative law judge or court that the claimant is the present legal owner under Title 46 RCW or is lawfully entitled to possession of the vehicle.

(7) When a vehicle is forfeited under this chapter the seizing law enforcement agency may sell the vehicle, retain it for official use, or upon application by a law enforcement agency of this state release the vehicle to that agency for the exclusive use of enforcing this title; provided, however, that the agency shall first satisfy any bona fide security interest to which the vehicle is subject under subsection (1)(a) or (c) of this section.

(8) When a vehicle is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the vehicle, the disposition of the vehicle, the value of the vehicle at the time of seizure, and the amount of proceeds realized from disposition of the vehicle.

(9) Each seizing agency shall retain records of forfeited vehicles for at least seven years.

(10) Each seizing agency shall file a report including a copy of the records of forfeited vehicles with the state treasurer each calendar quarter.

(11) The quarterly report need not include a record of a forfeited vehicle that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(12) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of vehicles forfeited during the preceding calendar year. Money remitted shall be deposited in the public safety and education account.

(13) The net proceeds of a forfeited vehicle is the value of the forfeitable interest in the vehicle after deducting the cost of satisfying a bona fide security interest to which the vehicle is subject at the time of seizure; and in the case of a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(14) The value of a sold forfeited vehicle is the sale price. The value of a retained forfeited vehicle is the fair market value of the vehicle at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing. A seizing agency may, but need not, use an independent qualified appraiser to determine the value of retained vehicles. If an appraiser is used, the value of the vehicle appraised is net of the cost of the appraisal. [1998 c 207 § 2; 1995 c 332 § 6; 1994 c 139 § 1.]

Effective date—1998 c 207: See note following RCW 46.61.5055.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

46.61.506 Persons under influence of intoxicating liquor or drug—Evidence—Tests—Information concerning tests. (1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of the simulator solution as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The simulator external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney. [2004 c 68 § 4; 1998 c 213 § 6; 1995 c 332 § 18; 1994 c 275 § 26; 1987 c 373 § 4; 1986 c 153 § 4; 1979 ex.s. c 176 § 5; 1975 1st ex.s. c 287 § 1; 1969 c 1 § 3 (Initiative Measure No. 242, approved November 5, 1968).]

Rules of court: *Evidence of Breathalyzer, BAC Verifier, simulator solution tests—CrRLJ 6.13.*

Finding—Intent—2004 c 68: See note following RCW 46.20.308.

Effective date—1998 c 213: See note following RCW 46.20.308.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

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Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

Severability, implied consent law—1969 c 1: See RCW 46.20.911.

Arrest of driver under influence of intoxicating liquor or drugs: RCW 10.31.100.

46.61.508 Liability of medical personnel withdrawing blood. No physician, registered nurse, qualified technician, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, or qualified technician, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of RCW 46.20.308, as now or hereafter amended: PROVIDED, That nothing in this section shall relieve any physician, registered nurse, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care. [1977 ex.s. c 143 § 1.]

46.61.513 Criminal history and driving record. (1) Immediately before the court defers prosecution under RCW 10.05.020, dismisses a charge, or orders a sentence for any offense listed in subsection (2) of this section, the court and prosecutor shall verify the defendant's criminal history and driving record. The order shall include specific findings as to the criminal history and driving record. For purposes of this section, the criminal history shall include all previous convictions and orders of deferred prosecution, as reported through the judicial information system or otherwise available to the court or prosecutor, current to within the period specified in subsection (3) of this section before the date of the order. For purposes of this section, the driving record shall include all information reported to the court by the department of licensing.

(2) The offenses to which this section applies are violations of: (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504 or an equivalent local ordinance; (c) RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug; (d) RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug; and (e) RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

(3) The periods applicable to previous convictions and orders of deferred prosecution are: (a) One working day, in the case of previous actions of courts that fully participate in the state judicial information system; and (b) seven calendar days, in the case of previous actions of courts that do not fully participate in the judicial information system. For purposes of this subsection, "fully participate" means regularly providing records to and receiving records from the system by electronic means on a daily basis. [1998 c 211 § 5.]

Effective date—1998 c 211: See note following RCW 46.61.5055.

46.61.5151 Sentences—Intermittent fulfillment—Restrictions. A sentencing court may allow a person con-

victed of a nonfelony violation of RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.5055 in nonconsecutive or intermittent time periods. However, any mandatory minimum sentence under RCW 46.61.5055 shall be served consecutively unless suspended or deferred as otherwise provided by law. [2006 c 73 § 18; 1995 c 332 § 15; 1994 c 275 § 39; 1983 c 165 § 33.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.5152 Attendance at program focusing on victims. In addition to penalties that may be imposed under RCW 46.61.5055, the court may require a person who is convicted of a nonfelony violation of RCW 46.61.502 or 46.61.504 or who enters a deferred prosecution program under RCW 10.05.020 based on a nonfelony violation of RCW 46.61.502 or 46.61.504, to attend an educational program focusing on the emotional, physical, and financial suffering of victims who were injured by persons convicted of driving while under the influence of intoxicants. [2006 c 73 § 17; 1998 c 41 § 9; 1994 c 275 § 40; 1992 c 64 § 1.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Intent—Construction—Effective date—1998 c 41: See notes following RCW 46.20.265.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

46.61.516 Qualified probation department defined. A qualified probation department means a probation department for a district or municipal court that has a sufficient number of qualified alcohol assessment officers who meet the requirements of a qualified alcoholism counselor as provided by rule of the department of social and health services, except that the required hours of supervised work experience in an alcoholism agency may be satisfied by completing an equivalent number of hours of supervised work doing alcohol assessments within a probation department. [1983 c 150 § 2.]

46.61.517 Refusal of test—Admissibility as evidence. The refusal of a person to submit to a test of the alcohol or drug concentration in the person's blood or breath under RCW 46.20.308 is admissible into evidence at a subsequent criminal trial. [2001 c 142 § 1; 1987 c 373 § 5; 1986 c 64 § 2; 1985 c 352 § 21; 1983 c 165 § 27.]

Legislative finding, purpose—Severability—1987 c 373: See notes following RCW 46.61.502.

Severability—1985 c 352: See note following RCW 10.05.010.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

46.61.519 Alcoholic beverages—Drinking or open container in vehicle on highway—Exceptions. (1) It is a traffic infraction to drink any alcoholic beverage in a motor vehicle when the vehicle is upon a highway.

(2) It is a traffic infraction for a person to have in his possession while in a motor vehicle upon a highway, a bottle,

can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.

(3) It is a traffic infraction for the registered owner of a motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle when the vehicle is upon a highway, a bottle, can, or other receptacle containing an alcoholic beverage which has been opened or a seal broken or the contents partially removed, unless the container is kept in the trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle does not have a trunk. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers.

(4) This section does not apply to a public conveyance that has been commercially chartered for group use or to the living quarters of a motor home or camper or, except as otherwise provided by RCW 66.44.250 or local law, to any passenger for compensation in a for-hire vehicle licensed under city, county, or state law, or to a privately-owned vehicle operated by a person possessing a valid operator's license endorsed for the appropriate classification under chapter 46.25 RCW in the course of his usual employment transporting passengers at the employer's direction: PROVIDED, That nothing in this subsection shall be construed to authorize possession or consumption of an alcoholic beverage by the operator of any vehicle while upon a highway. [1989 c 178 § 26; 1984 c 274 § 1; 1983 c 165 § 28.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Ignition interlocks, biological, technical devices: RCW 46.20.710 through 46.20.750.

46.61.5191 Local ordinances not prohibited. Nothing in RCW 46.61.519 or RCW 46.61.5191 prohibits any city or town from enacting a local ordinance that proscribes the acts proscribed by those sections and that provides penalties equal to or greater than the penalties provided in those sections. [1984 c 274 § 2.]

46.61.5195 Disguising alcoholic beverage container. (1) It is a traffic infraction to incorrectly label the original container of an alcoholic beverage and to then violate RCW 46.61.519.

(2) It is a traffic infraction to place an alcoholic beverage in a container specifically labeled by the manufacturer of the container as containing a nonalcoholic beverage and to then violate RCW 46.61.519. [1984 c 274 § 3.]

Ignition interlocks, biological, technical devices: RCW 46.20.710 through 46.20.750.

46.61.520 Vehicular homicide—Penalty. (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the driving of any vehicle by any person, the driver is guilty of vehicular homicide if the driver was operating a motor vehicle:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502; or

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) Vehicular homicide is a class A felony punishable under chapter 9A.20 RCW, except that, for a conviction under subsection (1)(a) of this section, an additional two years shall be added to the sentence for each prior offense as defined in RCW 46.61.5055. [1998 c 211 § 2; 1996 c 199 § 7; 1991 c 348 § 1; 1983 c 164 § 1; 1975 1st ex.s. c 287 § 3; 1973 2nd ex.s. c 38 § 2; 1970 ex.s. c 49 § 5; 1965 ex.s. c 155 § 63; 1961 c 12 § 46.56.040. Prior: 1937 c 189 § 120; RRS § 6360-120. Formerly RCW 46.56.040.]

Effective date—1998 c 211: See note following RCW 46.61.5055.

Severability—1996 c 199: See note following RCW 9.94A.505.

Effective date—1991 c 348: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 348 § 5.]

Severability—1973 2nd ex.s. c 38: See note following RCW 69.50.101.

Severability—1970 ex.s. c 49: See note following RCW 9.69.100.

Criminal history and driving record: RCW 46.61.513.

Ignition interlocks, biological, technical devices: RCW 46.20.710 through 46.20.750.

Suspension or revocation of license upon conviction of vehicular homicide or assault: RCW 46.20.285, 46.20.291.

46.61.522 Vehicular assault—Penalty. (1) A person is guilty of vehicular assault if he or she operates or drives any vehicle:

(a) In a reckless manner and causes substantial bodily harm to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, and causes substantial bodily harm to another; or

(c) With disregard for the safety of others and causes substantial bodily harm to another.

(2) Vehicular assault is a class B felony punishable under chapter 9A.20 RCW.

(3) As used in this section, "substantial bodily harm" has the same meaning as in RCW 9A.04.110. [2001 c 300 § 1; 1996 c 199 § 8; 1983 c 164 § 2.]

Severability—1996 c 199: See note following RCW 9.94A.505.

Criminal history and driving record: RCW 46.61.513.

Ignition interlocks, biological, technical devices: RCW 46.20.710 through 46.20.750.

46.61.524 Vehicular homicide, assault—Evaluation, treatment of drug or alcohol problem. (Effective until August 1, 2009.) (1) A person convicted under RCW 46.61.502(6), 46.61.504(6), 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community custody imposed under RCW 9.94A.545 or community placement imposed under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the per-

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son is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter 348, Laws of 1991 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

(2) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. [2006 c 73 § 16; 2001 c 64 § 7; 2000 c 28 § 40; 1991 c 348 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Headings and captions not law—Effective date—Severability—2000 c 28: See RCW 9.94A.920, 9.94A.921, and 9.94A.922.

Effective date—1991 c 348: See note following RCW 46.61.520.

46.61.524 Vehicular homicide, assault—Revocation of driving privilege—Eligibility for reinstatement. (Effective August 1, 2009.) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department designated pursuant to RCW 9.94A.703(4)(b), and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. [2008 c 231 § 46; 2006 c 73 § 16; 2001 c 64 § 7; 2000 c 28 § 40; 1991 c 348 § 2.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2006 c 73: See note following RCW 46.61.502.

Technical correction bill—2000 c 28: See note following RCW 9.94A.015.

Headings and captions not law—Effective date—Severability—2000 c 28: See RCW 9.94A.920, 9.94A.921, and 9.94A.922.

Effective date—1991 c 348: See note following RCW 46.61.520.

46.61.5249 Negligent driving—First degree. (1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negli-

gent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal drug.

(b) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an illegal drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.

(c) Negligent driving in the first degree is a misdemeanor.

(2) For the purposes of this section:

(a) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(b) "Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(i) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(ii) Is shown by other evidence to have recently consumed liquor.

(c) "Exhibiting the effects of having consumed an illegal drug" means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug and either:

(i) Is in possession of an illegal drug; or

(ii) Is shown by other evidence to have recently consumed an illegal drug.

(d) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings, or a legend drug under chapter 69.41 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section. [1997 c 66 § 4.]

Criminal history and driving record: RCW 46.61.513.

46.61.525 Negligent driving—Second degree. (1)(a) A person is guilty of negligent driving in the second degree if, under circumstances not constituting negligent driving in the first degree, he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.

(b) It is an affirmative defense to negligent driving in the second degree that must be proved by the defendant by a preponderance of the evidence, that the driver was operating the motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent.

(c) Negligent driving in the second degree is a traffic infraction and is subject to a penalty of two hundred fifty dollars.

(2) For the purposes of this section, "negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(3) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section. [1997 c 66 § 5; 1996 c 307 § 1; 1979 ex.s. c 136 § 86; 1967 c 32 § 69; 1961 c 12 § 46.56.030. Prior: 1939 c 154 § 1; RRS § 6360-118 1/2. Formerly RCW 46.56.030.]

Rules of court: *Negligent driving cases—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in negligent driving: RCW 10.31.100.

Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 79A.60.040.

46.61.527 Roadway construction zones. (1) The secretary of transportation shall adopt standards and specifications for the use of traffic control devices in roadway construction zones on state highways. A roadway construction zone is an area where construction, repair, or maintenance work is being conducted by public employees or private contractors, on or adjacent to any public roadway.

(2) No person may drive a vehicle in a roadway construction zone at a speed greater than that allowed by traffic control devices.

(3) A person found to have committed any infraction relating to speed restrictions in a roadway construction zone shall be assessed a monetary penalty equal to twice the penalty assessed under RCW 46.63.110. This penalty may not be waived, reduced, or suspended.

(4) A person who drives a vehicle in a roadway construction zone in such a manner as to endanger or be likely to endanger any persons or property, or who removes, evades, or intentionally strikes a traffic safety or control device is guilty of reckless endangerment of roadway workers. A violation of this subsection is a gross misdemeanor punishable under chapter 9A.20 RCW.

(5) The department shall suspend for sixty days the license or permit to drive or a nonresident driving privilege of a person convicted of reckless endangerment of roadway workers. [1994 c 141 § 1.]

Effective date—1994 c 141: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1994]." [1994 c 141 § 3.]

46.61.530 Racing of vehicles on highways—Reckless driving—Exception. No person or persons may race any motor vehicle or motor vehicles upon any public highway of this state. Any person or persons who wilfully compare or contest relative speeds by operation of one or more motor vehicles shall be guilty of racing, which shall constitute reckless driving under RCW 46.61.500, whether or not such

speed is in excess of the maximum speed prescribed by law: PROVIDED HOWEVER, That any comparison or contest of the accuracy with which motor vehicles may be operated in terms of relative speeds not in excess of the posted maximum speed does not constitute racing. [1979 ex.s. c 136 § 87; 1961 c 12 § 46.48.050. Prior: 1937 c 189 § 67; RRS § 6360-67; 1921 c 96 § 32; 1915 c 142 § 25; RRS § 6344. Formerly RCW 46.48.050.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in racing of vehicles: RCW 10.31.100.

46.61.535 Advertising of unlawful speed—Reckless driving. It shall be unlawful for any manufacturer, dealer, distributor, or any person, firm, or corporation to publish or advertise or offer for publication or advertisement, or to consent or cause to be published or advertised, the time consumed or speed attained by a vehicle between given points or over given or designated distances upon any public highways of this state when such published or advertised time consumed or speed attained shall indicate an average rate of speed between given points or over a given or designated distance in excess of the maximum rate of speed allowed between such points or at a rate of speed which would constitute reckless driving between such points. Violation of any of the provisions of this section shall be prima facie evidence of reckless driving and shall subject such person, firm, or corporation to the penalties in such cases provided. [1979 ex.s. c 136 § 88; 1961 c 12 § 46.48.060. Prior: 1937 c 189 § 68; RRS § 6360-68. Formerly RCW 46.48.060.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.540 "Drugs," what included. The word "drugs", as used in RCW 46.61.500 through 46.61.535, shall include but not be limited to those drugs and substances regulated by chapters 69.41 and 69.50 RCW. [1975 1st ex.s. c 287 § 5.]

STOPPING, STANDING, AND PARKING

46.61.560 Stopping, standing, or parking outside business or residence districts. (1) Outside of incorporated cities and towns no person may stop, park, or leave standing any vehicle, whether attended or unattended, upon the roadway.

(2) Subsection (1) of this section and RCW 46.61.570 and 46.61.575 do not apply to the driver of any vehicle that is disabled in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the vehicle in such position. The driver shall nonetheless arrange for the prompt removal of the vehicle as required by RCW 46.61.590.

(3) Subsection (1) of this section does not apply to the driver of a public transit vehicle who temporarily stops the vehicle upon the roadway for the purpose of and while actually engaged in receiving or discharging passengers at a marked transit vehicle stop zone approved by the state department of transportation or a county upon highways under their respective jurisdictions.

(4) Subsection (1) of this section and RCW 46.61.570 and 46.61.575 do not apply to the driver of a solid waste collection company or recycling company vehicle who temporarily stops the vehicle as close as practical to the right edge of the right-hand shoulder of the roadway or right edge of the roadway if no shoulder exists for the purpose of and while actually engaged in the collection of solid waste or recyclables, or both, under chapters 81.77, 35.21, and 35A.21 RCW or by contract under RCW 36.58.030 [36.58.040]. [1991 c 319 § 408; 1984 c 7 § 72; 1979 ex.s. c 178 § 20; 1977 c 24 § 2; 1965 ex.s. c 155 § 64.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—Part headings not law—1991 c 319: See RCW 70.95F.900 and 70.95F.901.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1979 ex.s. c 178: See note following RCW 46.61.590.

Limited access highways: RCW 47.52.120.

Unattended motor vehicles: RCW 46.61.600.

46.61.570 Stopping, standing, or parking prohibited in specified places—Reserving portion of highway prohibited. (1) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall:

- (a) Stop, stand, or park a vehicle:
 - (i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
 - (ii) On a sidewalk or street planting strip;
 - (iii) Within an intersection;
 - (iv) On a crosswalk;
 - (v) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless official signs or markings indicate a different no-parking area opposite the ends of a safety zone;
 - (vi) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
 - (vii) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
 - (viii) On any railroad tracks;
 - (ix) In the area between roadways of a divided highway including crossovers; or
 - (x) At any place where official signs prohibit stopping.
- (b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:
 - (i) In front of a public or private driveway or within five feet of the end of the curb radius leading thereto;
 - (ii) Within fifteen feet of a fire hydrant;
 - (iii) Within twenty feet of a crosswalk;
 - (iv) Within thirty feet upon the approach to any flashing signal, stop sign, yield sign, or traffic control signal located at the side of a roadway;
 - (v) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of said entrance when properly signposted; or
 - (vi) At any place where official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers:

(i) Within fifty feet of the nearest rail of a railroad crossing; or

(ii) At any place where official signs prohibit parking.

(2) Parking or standing shall be permitted in the manner provided by law at all other places except a time limit may be imposed or parking restricted at other places but such limitation and restriction shall be by city ordinance or county resolution or order of the secretary of transportation upon highways under their respective jurisdictions.

(3) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as is unlawful.

(4) It shall be unlawful for any person to reserve or attempt to reserve any portion of a highway for the purpose of stopping, standing, or parking to the exclusion of any other like person, nor shall any person be granted such right. [1977 ex.s. c 151 § 40; 1975 c 62 § 35; 1965 ex.s. c 155 § 66.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

Severability—1975 c 62: See note following RCW 36.75.010.

Limited access highways: RCW 47.52.120.

46.61.575 Additional parking regulations. (1) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder.

(2) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within twelve inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder, or with its left-hand wheels within twelve inches of the left-hand curb or as close as practicable to the left edge of the left-hand shoulder.

(3) Local authorities may by ordinance or resolution permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the secretary of transportation has determined by order that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The secretary with respect to highways under his or her jurisdiction may place official traffic control devices prohibiting, limiting, or restricting the stopping, standing, or parking of vehicles on any highway where the secretary has determined by order, such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. No person shall stop, stand, or park any vehicle in violation of the restrictions indicated by such devices. [1977 ex.s. c 151 § 41; 1975 c 62 § 36; 1965 ex.s. c 155 § 67.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

[Title 46 RCW—page 262]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.577 Regulations governing parking facilities.

The secretary of transportation may adopt regulations governing the use and control of park and ride lots and other parking facilities operated by the department of transportation, including time limits for the parking of vehicles. [1981 c 185 § 1.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.581 Parking spaces for persons with disabilities—Indication, access—Failure, penalty. A parking space or stall for a person with a disability shall be indicated by a vertical sign with the international symbol of access, whose colors are white on a blue background, described under RCW 70.92.120. The sign may include additional language such as, but not limited to, an indication of the amount of the monetary penalty defined in RCW 46.16.381 for parking in the space without a valid permit.

Failure of the person owning or controlling the property where required parking spaces are located to erect and maintain the sign is a class 2 civil infraction under chapter 7.80 RCW for each parking space that should be so designated. The person owning or controlling the property where the required parking spaces are located shall ensure that the parking spaces are not blocked or made inaccessible, and failure to do so is a class 2 civil infraction. [2005 c 390 § 1; 1998 c 294 § 2; 1988 c 74 § 1; 1984 c 154 § 4.]

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

Accessible parking spaces required: RCW 70.92.140.

Special parking for persons with disabilities—Unauthorized use: RCW 46.16.381.

46.61.582 Free parking for persons with disabilities.

Any person who meets the criteria for special parking privileges under RCW 46.16.381 shall be allowed free of charge to park a vehicle being used to transport that person for unlimited periods of time in parking zones or areas including zones or areas with parking meters which are otherwise restricted as to the length of time parking is permitted. This section does not apply to those zones or areas in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. The person shall obtain and display a special placard or license plate under RCW 46.16.381 to be eligible for the privileges under this section. [1991 c 339 § 25; 1984 c 154 § 5.]

Intent—Application—Severability—1984 c 154: See notes following RCW 46.16.381.

46.61.583 Special plate or card issued by another jurisdiction. A special license plate or card issued by another state or country that indicates an occupant of the vehicle is disabled, entitles the vehicle on or in which it is displayed and being used to transport the disabled person to the same overtime parking privileges granted under this chapter to a vehicle with a similar special license plate or card issued by this state. [1991 c 339 § 26; 1984 c 51 § 2.]

46.61.585 Winter recreational parking areas—Special permit required. Except when necessary to avoid con-

flict with other traffic, or in compliance with law or the directions of a police officer or official traffic control device, no person shall park a vehicle in an area designated by an official sign that it is a winter recreational parking area unless such vehicle displays, in accordance with regulations adopted by the parks and recreation commission, a special winter recreational area parking permit or permits. [1990 c 49 § 4; 1975 1st ex.s. c 209 § 5.]

Severability—1975 1st ex.s. c 209: See note following RCW 79A.05.225.

Winter recreational parking areas: RCW 79A.05.225 through 79A.05.255.

46.61.587 Winter recreational parking areas—Penalty. Any violation of RCW 79A.05.240 or 46.61.585 or any rule adopted by the parks and recreation commission to enforce the provisions thereof is a civil infraction as provided in chapter 7.84 RCW. [1999 c 249 § 501; 1984 c 258 § 329; 1977 c 57 § 1; 1975 1st ex.s. c 209 § 6.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1999 c 249: See note following RCW 79A.05.010.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

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

Severability—1975 1st ex.s. c 209: See note following RCW 79A.05.225.

46.61.590 Unattended motor vehicle—Removal from highway. It is unlawful for the operator of a vehicle to leave the vehicle unattended within the limits of any highway unless the operator of the vehicle arranges for the prompt removal of the vehicle. [1979 ex.s. c 178 § 1.]

Severability—1979 ex.s. c 178: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 178 § 23.]

Towing and impoundment: Chapter 46.55 RCW.

MISCELLANEOUS RULES

46.61.600 Unattended motor vehicle. (1) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway.

(2) The most recent driver of a motor vehicle which the driver has left standing unattended, who learns that the vehicle has become set in motion and has struck another vehicle or property, or has caused injury to any person, shall comply with the requirements of:

(a) RCW 46.52.010 if his vehicle strikes an unattended vehicle or property adjacent to a public highway; or

(b) RCW 46.52.020 if his vehicle causes damage to an attended vehicle or other property or injury to any person.

(3) Any person failing to comply with subsection (2)(b) of this section shall be subject to the sanctions set forth in RCW 46.52.020. [1980 c 97 § 2; 1965 ex.s. c 155 § 68.]

Effective date—1980 c 97: See note following RCW 46.52.020.

(2008 Ed.)

46.61.605 Limitations on backing. (1) The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(2) The driver of a vehicle shall not back the same upon any shoulder or roadway of any limited access highway. [1965 ex.s. c 155 § 69.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.606 Driving on sidewalk prohibited—Exception. No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway. [1975 c 62 § 45.]

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.608 Operating motorcycles on roadways laned for traffic. (1) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(2) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(3) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(4) Motorcycles shall not be operated more than two abreast in a single lane.

(5) Subsections (2) and (3) of this section shall not apply to police officers in the performance of their official duties. [1975 c 62 § 46.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.610 Riding on motorcycles. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator: PROVIDED, HOWEVER, That the motorcycle must contain foot pegs, of a type approved by the *equipment commission, for each person such motorcycle is designed to carry. [1975 c 62 § 37; 1967 c 232 § 5; 1965 ex.s. c 155 § 70.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

***Reviser's note:** The duties of the commission on equipment were transferred to the state patrol by 1987 c 330 (see RCW 46.37.005).

Severability—1975 c 62: See note following RCW 36.75.010.

Equipment regulations for motorcycles, motor-driven cycles, mopeds, or electric-assisted bicycles: RCW 46.37.530, 46.37.535.

Mopeds: RCW 46.16.630, 46.61.710, 46.61.720.

46.61.611 Motorcycles—Maximum height for handlebars. No person shall operate on a public highway a motorcycle in which the handlebars or grips are more than thirty inches higher than the seat or saddle for the operator. [1999 c 275 § 1; 1967 c 232 § 6.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.612 Riding on motorcycles—Position of feet.

No person shall ride a motorcycle in a position where both feet are placed on the same side of the motorcycle. [1967 c 232 § 7.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.613 Motorcycles—Temporary suspension of restrictions for parades or public demonstrations. The provisions of RCW 46.37.530 and 46.61.610 through 46.61.612 may be temporarily suspended by the chief of the Washington state patrol, or his designee, with respect to the operation of motorcycles within their respective jurisdictions in connection with a parade or public demonstration. [1967 c 232 § 8.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.614 Riding on motorcycles—Clinging to other vehicles. No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a roadway. [1975 c 62 § 47.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.615 Obstructions to driver's view or driving mechanism. (1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle. [1965 ex.s. c 155 § 71.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.620 Opening and closing vehicle doors. No person shall open the door of a motor vehicle on the side adjacent to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with the movement of other traffic, nor shall any person leave a door open on the side of a vehicle adjacent to moving traffic for a period of time longer than necessary to load or unload passengers. [1965 ex.s. c 155 § 72.]

46.61.625 Riding in trailers or towed vehicles. (1) No person or persons shall occupy any trailer while it is being moved upon a public highway, except a person occupying a proper position for steering a trailer designed to be steered from a rear-end position.

(2) No person or persons may occupy a vehicle while it is being towed by a tow truck as defined in RCW 46.55.010. [1999 c 398 § 9; 1995 c 360 § 10; 1965 ex.s. c 155 § 73.]

46.61.630 Coasting prohibited. (1) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

(2) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged. [1965 ex.s. c 155 § 74.]

[Title 46 RCW—page 264]

46.61.635 Following fire apparatus prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or stop such vehicle within five hundred feet of any fire apparatus stopped in answer to a fire alarm. [1975 c 62 § 38; 1965 ex.s. c 155 § 75.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.640 Crossing fire hose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command. [1965 ex.s. c 155 § 76.]

46.61.645 Throwing materials on highway prohibited—Removal. (1) Any person who drops, or permits to be dropped or thrown, upon any highway any material shall immediately remove the same or cause it to be removed.

(2) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle. [2003 c 337 § 5; 1965 ex.s. c 155 § 77.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

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

Lighted material, disposal of: RCW 76.04.455.

Littering: Chapter 70.93 RCW.

46.61.655 Dropping load, other materials—Covering. (1) No vehicle shall be driven or moved on any public highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction.

(2) No person may operate on any public highway any vehicle with any load unless the load and such covering as required thereon by subsection (3) of this section is securely fastened to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

(3) Any vehicle operating on a paved public highway with a load of dirt, sand, or gravel susceptible to being dropped, spilled, leaked, or otherwise escaping therefrom shall be covered so as to prevent spillage. Covering of such loads is not required if six inches of freeboard is maintained within the bed.

(4)(a) Any person operating a vehicle from which any glass or objects have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon such public highway shall immediately cause the public highway to be cleaned of all such glass or objects and shall pay any costs therefor.

(b) Any vehicle with deposits of mud, rocks, or other debris on the vehicle's body, fenders, frame, undercarriage, wheels, or tires shall be cleaned of such material before the operation of the vehicle on a paved public highway.

(5) The state patrol may make necessary rules to carry into effect the provisions of this section, applying such provi-

sions to specific conditions and loads and prescribing means, methods, and practices to effectuate such provisions.

(6) Nothing in this section may be construed to prohibit a public maintenance vehicle from dropping sand on a highway to enhance traction, or sprinkling water or other substances to clean or maintain a highway.

(7)(a)(i) A person is guilty of failure to secure a load in the first degree if he or she, with criminal negligence, fails to secure a load or part of a load to his or her vehicle in compliance with subsection (1), (2), or (3) of this section and causes substantial bodily harm to another.

(ii) Failure to secure a load in the first degree is a gross misdemeanor.

(b)(i) A person is guilty of failure to secure a load in the second degree if he or she, with criminal negligence, fails to secure a load or part of a load to his or her vehicle in compliance with subsection (1) or (2) of this section and causes damage to property of another.

(ii) Failure to secure a load in the second degree is a misdemeanor.

(c) A person who fails to secure a load or part of a load to his or her vehicle in compliance with subsection (1), (2), or (3) of this section is guilty of an infraction if such failure does not amount to a violation of (a) or (b) of this subsection. [2005 c 431 § 1; 1990 c 250 § 56; 1986 c 89 § 1; 1971 ex.s. c 307 § 22; 1965 ex.s. c 52 § 1; 1961 c 12 § 46.56.135. Prior: 1947 c 200 § 3, part; 1937 c 189 § 44, part; Rem. Supp. 1947 § 6360-44, part. Formerly RCW 46.56.135.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1971 ex.s. c 307: See RCW 70.93.900.

Littering: Chapter 70.93 RCW.

Transporting waste to landfills: RCW 70.93.097.

46.61.660 Carrying persons or animals on outside part of vehicle. It shall be unlawful for any person to transport any living animal on the running board, fenders, hood, or other outside part of any vehicle unless suitable harness, cage or enclosure be provided and so attached as to protect such animal from falling or being thrown therefrom. It shall be unlawful for any person to transport any persons upon the running board, fenders, hood or other outside part of any vehicle, except that this provision shall not apply to authorized emergency vehicles or to solid waste collection vehicles that are engaged in collecting solid waste or recyclables on route at speeds of twenty miles per hour or less. [1997 c 190 § 1; 1961 c 12 § 46.56.070. Prior: 1937 c 189 § 115; RRS § 6360-115. Formerly RCW 46.56.070.]

46.61.665 Embracing another while driving. It shall be unlawful for any person to operate a motor vehicle upon the highways of this state when such person has in his or her embrace another person which prevents the free and unhampered operation of such vehicle. Operation of a motor vehicle in violation of this section is prima facie evidence of reckless driving. [1979 ex.s. c 136 § 89; 1961 c 12 § 46.56.100. Prior: 1937 c 189 § 117; RRS § 6360-117; 1927 c 309 § 49; RRS § 6362-49. Formerly RCW 46.56.100.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

(2008 Ed.)

46.61.667 Using a wireless communications device while driving. (1) Except as provided in subsection (2) of this section, a person operating a moving motor vehicle while holding a wireless communications device to his or her ear is guilty of a traffic infraction.

(2) Subsection (1) of this section does not apply to a person operating:

(a) An authorized emergency vehicle, or a tow truck responding to a disabled vehicle;

(b) A moving motor vehicle using a wireless communications device in hands-free mode;

(c) A moving motor vehicle using a hand-held wireless communications device to:

(i) Report illegal activity;

(ii) Summon medical or other emergency help;

(iii) Prevent injury to a person or property;

(d) A moving motor vehicle while using a hearing aid.

(3) Subsection (1) of this section does not restrict the operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.

(4) For purposes of this section, "hands-free mode" means the use of a wireless communications device with a speaker phone, headset, or earpiece.

(5) The state preempts the field of regulating the use of wireless communications devices in motor vehicles, and this section supersedes any local laws, ordinances, orders, rules, or regulations enacted by a political subdivision or municipality to regulate the use of wireless communications devices by the operator of a motor vehicle.

(6) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(7) Infractions that result from the use of a wireless communications device while operating a motor vehicle under this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under this section shall not be made available to insurance companies or employers. [2007 c 417 § 2.]

Intent—2007 c 417: "The use of wireless communications devices by motorists has increased in recent years. While wireless communications devices have assisted with quick reporting of road emergencies, their use has also contributed to accidents and other mishaps on Washington state roadways. When motorists hold a wireless communications device in one hand and drive with the other, their chances of becoming involved in a traffic mishap increase. It is the legislature's intent to phase out the use of hand-held wireless communications devices by motorists while operating a vehicle." [2007 c 417 § 1.]

Effective date—2007 c 417: "This act takes effect July 1, 2008." [2007 c 417 § 3.]

46.61.668 Sending, reading, or writing a text message while driving. (1) Except as provided in subsection (2) of this section, a person operating a moving motor vehicle who, by means of an electronic wireless communications device, other than a voice-activated global positioning or navigation system that is permanently affixed to the vehicle, sends, reads, or writes a text message, is guilty of a traffic infraction. A person does not send, read, or write a text message when he

or she reads, selects, or enters a phone number or name in a wireless communications device for the purpose of making a phone call.

(2) Subsection (1) of this section does not apply to a person operating:

- (a) An authorized emergency vehicle; or
- (b) A moving motor vehicle while using an electronic wireless communications device to:
 - (i) Report illegal activity;
 - (ii) Summon medical or other emergency help;
 - (iii) Prevent injury to a person or property; or
 - (iv) Relay information between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.

(3) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(4) Infractions under this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under this section shall not be made available to insurance companies or employers. [2007 c 416 § 1.]

Effective date—2007 c 416: "This act takes effect January 1, 2008." [2007 c 416 § 2.]

46.61.670 Driving with wheels off roadway. It shall be unlawful to operate or drive any vehicle or combination of vehicles over or along any pavement or gravel or crushed rock surface on a public highway with one wheel or all of the wheels off the roadway thereof, except as permitted by RCW 46.61.428 or for the purpose of stopping off such roadway, or having stopped thereat, for proceeding back onto the pavement, gravel or crushed rock surface thereof. [1977 ex.s. c 39 § 2; 1961 c 12 § 46.56.130. Prior: 1937 c 189 § 96; RRS § 6360-96. Formerly RCW 46.56.130.]

46.61.675 Causing or permitting vehicle to be unlawfully operated. It shall be unlawful for the owner, or any other person, in employing or otherwise directing the operator of any vehicle to require or knowingly to permit the operation of such vehicle upon any public highway in any manner contrary to the law. [1961 c 12 § 46.56.200. Prior: 1937 c 189 § 148; RRS § 6360-148. Formerly RCW 46.56.200.]

46.61.680 Lowering passenger vehicle below legal clearance—Penalty. It is unlawful to operate any passenger motor vehicle which has been modified from the original design so that any portion of such passenger vehicle other than the wheels has less clearance from the surface of a level roadway than the clearance between the roadway and the lowermost portion of any rim of any wheel the tire on which is in contact with such roadway.

Violation of the provisions of this section is a traffic infraction. [1979 ex.s. c 136 § 90; 1961 c 151 § 1. Formerly RCW 46.56.220.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.61.685 Leaving children unattended in standing vehicle with motor running—Penalty. (1) It is unlawful for any person, while operating or in charge of a vehicle, to park or willfully allow such vehicle to stand upon a public highway or in a public place with its motor running, leaving a minor child or children under the age of sixteen years unattended in the vehicle.

(2) Any person violating this section is guilty of a misdemeanor. Upon a second or subsequent conviction for a violation of this section, the department shall revoke the operator's license of such person. [2003 c 53 § 246; 1990 c 250 § 57; 1961 c 151 § 2. Formerly RCW 46.56.230.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

Severability—1990 c 250: See note following RCW 46.16.301.

Leaving children unattended in parked automobile while entering tavern, etc.: RCW 9.91.060.

46.61.687 Child passenger restraint required—Conditions—Exceptions—Penalty for violation—Dismissal—Noncompliance not negligence—Immunity. (1) Whenever a child who is less than sixteen years of age is being transported in a motor vehicle that is in operation and that is required by RCW 46.37.510 to be equipped with a safety belt system in a passenger seating position, or is being transported in a neighborhood electric vehicle or medium-speed electric vehicle that is in operation, the driver of the vehicle shall keep the child properly restrained as follows:

(a) A child must be restrained in a child restraint system, if the passenger seating position equipped with a safety belt system allows sufficient space for installation, until the child is eight years old, unless the child is four feet nine inches or taller. The child restraint system must comply with standards of the United States department of transportation and must be secured in the vehicle in accordance with instructions of the vehicle manufacturer and the child restraint system manufacturer.

(b) A child who is eight years of age or older or four feet nine inches or taller shall be properly restrained with the motor vehicle's safety belt properly adjusted and fastened around the child's body or an appropriately fitting child restraint system.

(c) The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(2) Enforcement of subsection (1) of this section is subject to a visual inspection by law enforcement to determine if the child restraint system in use is appropriate for the child's individual height, weight, and age. The visual inspection for usage of a child restraint system must ensure that the child restraint system is being used in accordance with the instruction of the vehicle and the child restraint system manufacturers. The driver of a vehicle transporting a child who is under thirteen years old shall transport the child in the back seat positions in the vehicle where it is practical to do so.

(3) A person violating subsection (1) of this section may be issued a notice of traffic infraction under chapter 46.63 RCW. If the person to whom the notice was issued presents proof of acquisition of an approved child passenger restraint

system or a child booster seat, as appropriate, within seven days to the jurisdiction issuing the notice and the person has not previously had a violation of this section dismissed, the jurisdiction shall dismiss the notice of traffic infraction.

(4) Failure to comply with the requirements of this section shall not constitute negligence by a parent or legal guardian. Failure to use a child restraint system shall not be admissible as evidence of negligence in any civil action.

(5) This section does not apply to: (a) For hire vehicles, (b) vehicles designed to transport sixteen or less passengers, including the driver, operated by auto transportation companies, as defined in RCW 81.68.010, (c) vehicles providing customer shuttle service between parking, convention, and hotel facilities, and airport terminals, and (d) school buses.

(6) As used in this section, "child restraint system" means a child passenger restraint system that meets the Federal Motor Vehicle Safety Standards set forth in 49 C.F.R. 571.213.

(7) The requirements of subsection (1) of this section do not apply in any seating position where there is only a lap belt available and the child weighs more than forty pounds.

(8)(a) Except as provided in (b) of this subsection, a person who has a current national certification as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(b) The immunity provided in this subsection does not apply to a certified child passenger safety technician who is employed by a retailer of child passenger restraint systems and who, during his or her hours of employment and while being compensated, provides inspection, adjustment, or educational services regarding child passenger restraint systems. [2007 c 510 § 4. Prior: 2005 c 415 § 1; 2005 c 132 § 1; 2003 c 353 § 5; 2000 c 190 § 2; 1994 c 100 § 1; 1993 c 274 § 1; 1987 c 330 § 745; 1983 c 215 § 2.]

Effective date—2007 c 510: See note following RCW 46.04.320.

Effective date—2005 c 132 § 1: "Section 1 of this act takes effect June 1, 2007." [2005 c 132 § 3.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Intent—2000 c 190: "The legislature recognizes that fewer than five percent of all drivers use child booster seats for children over the age of four years. The legislature also recognizes that seventy-one percent of deaths resulting from car accidents could be eliminated if every child under the age of sixteen used an appropriate child safety seat, booster seat, or seat belt. The legislature further recognizes the National Transportation Safety Board's recommendations that promote the use of booster seats to increase the safety of children under eight years of age. Therefore, it is the legislature's intent to decrease deaths and injuries to children by promoting safety education and injury prevention measures, as well as increasing public awareness on ways to maximize the protection of children in vehicles." [2000 c 190 § 1.]

Short title—2000 c 190: "This act may be known and cited as the Anton Skeen Act." [2000 c 190 § 5.]

Effective date—2000 c 190: "This act takes effect July 1, 2002." [2000 c 190 § 6.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1983 c 215: See note following RCW 46.37.505.

Standards for child passenger restraint systems: RCW 46.37.505.

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46.61.6871 Child passenger safety technician—Immunity. A person who has a current national certification as a child passenger safety technician and who in good faith provides inspection, adjustment, or educational services regarding child passenger restraint systems is not liable for civil damages resulting from any act or omission in providing the services, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2005 c 132 § 2.]

46.61.688 Safety belts, use required—Penalties—Exemptions. (1) For the purposes of this section, the term "motor vehicle" includes:

(a) "Buses," meaning motor vehicles with motive power, except trailers, designed to carry more than ten passengers;

(b) "Multipurpose passenger vehicles," meaning motor vehicles with motive power, except trailers, designed to carry ten persons or less that are constructed either on a truck chassis or with special features for occasional off-road operation;

(c) "Neighborhood electric vehicle," meaning a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour and conforms to federal regulations under 49 C.F.R. Sec. 571.500;

(d) "Medium-speed electric vehicle" meaning a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than thirty miles per hour but not more than thirty-five miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500;

(e) "Passenger cars," meaning motor vehicles with motive power, except multipurpose passenger vehicles, motorcycles, or trailers, designed for carrying ten passengers or less; and

(f) "Trucks," meaning motor vehicles with motive power, except trailers, designed primarily for the transportation of property.

(2) This section only applies to motor vehicles that meet the manual seat belt safety standards as set forth in federal motor vehicle safety standard 208 and to neighborhood electric vehicles and medium-speed electric vehicles. This section does not apply to a vehicle occupant for whom no safety belt is available when all designated seating positions as required by federal motor vehicle safety standard 208 are occupied.

(3) Every person sixteen years of age or older operating or riding in a motor vehicle shall wear the safety belt assembly in a properly adjusted and securely fastened manner.

(4) No person may operate a motor vehicle unless all child passengers under the age of sixteen years are either: (a) Wearing a safety belt assembly or (b) are securely fastened into an approved child restraint device.

(5) A person violating this section shall be issued a notice of traffic infraction under chapter 46.63 RCW. A finding that a person has committed a traffic infraction under this section shall be contained in the driver's abstract but shall not be available to insurance companies or employers.

(6) Failure to comply with the requirements of this section does not constitute negligence, nor may failure to wear a

safety belt assembly be admissible as evidence of negligence in any civil action.

(7) This section does not apply to an operator or passenger who possesses written verification from a licensed physician that the operator or passenger is unable to wear a safety belt for physical or medical reasons.

(8) The state patrol may adopt rules exempting operators or occupants of farm vehicles, construction equipment, and vehicles that are required to make frequent stops from the requirement of wearing safety belts. [2007 c 510 § 5; 2003 c 353 § 4; 2002 c 328 § 2; (2002 c 328 § 1 expired July 1, 2002); 2000 c 190 § 3; 1990 c 250 § 58; 1986 c 152 § 1.]

Effective date—2007 c 510: See note following RCW 46.04.320.

Effective date—2003 c 353: See note following RCW 46.04.320.

Expiration date—2002 c 328 § 1: "Section 1 of this act expires July 1, 2002." [2002 c 328 § 3.]

Effective date—2002 c 328 § 2: "Section 2 of this act takes effect July 1, 2002." [2002 c 328 § 4.]

Intent—Short title—Effective date—2000 c 190: See notes following RCW 46.61.687.

Severability—1990 c 250: See note following RCW 46.16.301.

Study of effectiveness—1986 c 152: "The traffic safety commission shall undertake a study of the effectiveness of section 1 of this act and shall report its finding to the legislative transportation committee by January 1, 1989." [1986 c 152 § 3.]

Physicians—Immunity from liability regarding safety belts: RCW 4.24.235.

Seat belts and shoulder harnesses, required equipment: RCW 46.37.510.

46.61.6885 Child restraints, seatbelts—Educational campaign. The traffic safety commission shall conduct an educational campaign using all available methods to raise public awareness of the importance of properly restraining child passengers and the value of seatbelts to adult motorists. The traffic safety commission shall report to the transportation committees of the legislature on the campaign and results observed on the highways. The first report is due December 1, 2000, and annually thereafter. [2000 c 190 § 4.]

Intent—Short title—Effective date—2000 c 190: See notes following RCW 46.61.687.

46.61.690 Violations relating to toll facilities. Any person who uses a toll bridge, toll tunnel, toll road, or toll ferry, and the approaches thereto, operated by the state of Washington, the department of transportation, a political subdivision or municipal corporation empowered to operate toll facilities, or an entity operating a toll facility under a contract with the department of transportation, a political subdivision, or municipal corporation, at the entrance to which appropriate signs have been erected to notify both pedestrian and vehicular traffic that it is entering a toll facility or its approaches and is subject to the payment of tolls at the designated station for collecting tolls, commits a traffic infraction if:

(1) The person does not pay, refuses to pay, evades, or attempts to evade the payment of such tolls, or uses or attempts to use any spurious, counterfeit, or stolen ticket, coupon, token, or electronic device for payment of any such tolls, or

(2) The person turns, or attempts to turn, the vehicle around in the bridge, tunnel, loading terminal, approach, or

toll plaza where signs have been erected forbidding such turns, or

(3) The person refuses to move a vehicle through the toll facility after having come within the area where signs have been erected notifying traffic that it is entering the area where toll is collectible or where vehicles may not turn around and where vehicles are required to pass through the toll facility for the purpose of collecting tolls. [2004 c 231 § 1; 1983 c 247 § 1; 1979 ex.s. c 136 § 91; 1961 c 259 § 1. Formerly RCW 46.56.240.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1961 c 259: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 259 § 2.]

Toll collection systems—Photo enforcement systems: RCW 46.63.160.

46.61.700 Parent or guardian shall not authorize or permit violation by a child or ward. The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter. [1965 ex.s. c 155 § 78.]

Reviser's note: This section was enacted just before sections about the operation of bicycles and play vehicles and was accordingly so codified in 1965. Other sections enacted later have been codified under the numbers remaining between RCW 46.61.700 and 46.61.750. The section appears in the Uniform Vehicle Code (1962) as part of the first section of Article XII—Operation of Bicycles and Play Vehicles.

Captions used herein, not part of the law: RCW 46.61.990.

Unlawful to allow unauthorized child or ward to drive: RCW 46.20.024.

46.61.710 Mopeds, EPAMDs, electric-assisted bicycles, motorized foot scooters—General requirements and operation. (1) No person shall operate a moped upon the highways of this state unless the moped has been assigned a moped registration number and displays a moped permit in accordance with the provisions of RCW 46.16.630.

(2) Notwithstanding any other provision of law, a moped may not be operated on a bicycle path or trail, bikeway, equestrian trail, or hiking or recreational trail.

(3) Operation of a moped, electric personal assistive mobility device, or an electric-assisted bicycle on a fully controlled limited access highway is unlawful. Operation of a moped or an electric-assisted bicycle on a sidewalk is unlawful.

(4) Removal of any muffling device or pollution control device from a moped is unlawful.

(5) Subsections (1), (2), and (4) of this section do not apply to electric-assisted bicycles. Electric-assisted bicycles and motorized foot scooters may have access to highways of the state to the same extent as bicycles. Subject to subsection (6) of this section, electric-assisted bicycles and motorized foot scooters may be operated on a multipurpose trail or bicycle lane, but local jurisdictions may restrict or otherwise limit the access of electric-assisted bicycles and motorized foot scooters, and state agencies may regulate the use of motorized foot scooters on facilities and properties under their jurisdiction and control.

(6) Subsections (1) and (4) of this section do not apply to motorized foot scooters. Subsection (2) of this section applies to motorized foot scooters when the bicycle path,

trail, bikeway, equestrian trail, or hiking or recreational trail was built or is maintained with federal highway transportation funds. Additionally, any new trail or bicycle path or readily identifiable existing trail or bicycle path not built or maintained with federal highway transportation funds may be used by persons operating motorized foot scooters only when appropriately signed.

(7) A person operating an electric personal assistive mobility device (EPAMD) shall obey all speed limits and shall yield the right-of-way to pedestrians and human-powered devices at all times. An operator must also give an audible signal before overtaking and passing a pedestrian. Except for the limitations of this subsection, persons operating an EPAMD have all the rights and duties of a pedestrian.

(8) The use of an EPAMD may be regulated in the following circumstances:

(a) A municipality and the department of transportation may prohibit the operation of an EPAMD on public highways within their respective jurisdictions where the speed limit is greater than twenty-five miles per hour;

(b) A municipality may restrict the speed of an EPAMD in locations with congested pedestrian or nonmotorized traffic and where there is significant speed differential between pedestrians or nonmotorized traffic and EPAMD operators. The areas in this subsection must be designated by the city engineer or designee of the municipality. Municipalities shall not restrict the speed of an EPAMD in the entire community or in areas in which there is infrequent pedestrian traffic;

(c) A state agency or local government may regulate the operation of an EPAMD within the boundaries of any area used for recreation, open space, habitat, trails, or conservation purposes. [2003 c 353 § 10; 2002 c 247 § 7; 1997 c 328 § 5; 1979 ex.s. c 213 § 8.]

Effective date—2003 c 353: See note following RCW 46.04.320.

Legislative review—2002 c 247: See note following RCW 46.04.1695.

46.61.720 Mopeds—Safety standards. Mopeds shall comply with those federal motor vehicle safety standards established under the national traffic vehicle safety act of 1966 (15 U.S.C. Sec. 1381, et seq.) which are applicable to a motor-driven cycle, as that term is defined in such federal standards. [1979 ex.s. c 213 § 9.]

Mopeds

drivers' licenses, motorcycle endorsement, moped exemption: RCW 46.20.500.

registration: RCW 46.16.630.

46.61.723 Medium-speed electric vehicles. (1) Except as provided in subsection (3) of this section, a person may operate a medium-speed electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less if:

(a) The person does not operate a medium-speed electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a medium-speed electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter 46.16 RCW;

(c) The person does not operate a medium-speed electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a medium-speed electric vehicle subject to registration under chapter 46.16 RCW on a highway of this state unless the person is insured under a motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a medium-speed electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a medium-speed electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities under subsection (3) of this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of medium-speed electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with this title, except that:

(a) Local authorities may not authorize the operation of medium-speed electric vehicles on streets and highways that are part of the state highway system subject to Title 47 RCW;

(b) Local authorities may not prohibit the operation of medium-speed electric vehicles upon highways of this state having a speed limit of thirty-five miles per hour or less; and

(c) Local authorities may not establish requirements for the registration and licensing of medium-speed electric vehicles. [2007 c 510 § 3.]

Effective date—2007 c 510: See note following RCW 46.04.320.

46.61.725 Neighborhood electric vehicles. (1) Absent prohibition by local authorities authorized under this section and except as prohibited elsewhere in this section, a person may operate a neighborhood electric vehicle upon a highway of this state having a speed limit of thirty-five miles per hour or less if:

(a) The person does not operate a neighborhood electric vehicle upon state highways that are listed in chapter 47.17 RCW;

(b) The person does not operate a neighborhood electric vehicle upon a highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates in compliance with chapter 46.16 RCW;

(c) The person does not operate a neighborhood electric vehicle upon a highway of this state without first obtaining a valid driver's license issued to Washington residents in compliance with chapter 46.20 RCW;

(d) The person does not operate a neighborhood electric vehicle subject to registration under chapter 46.16 RCW on a highway of this state unless the person is insured under a

motor vehicle liability policy in compliance with chapter 46.30 RCW; and

(e) The person operating a neighborhood electric vehicle does not cross a roadway with a speed limit in excess of thirty-five miles per hour, unless the crossing begins and ends on a roadway with a speed limit of thirty-five miles per hour or less and occurs at an intersection of approximately ninety degrees, except that the operator of a neighborhood electric vehicle must not cross an uncontrolled intersection of streets and highways that are part of the state highway system subject to Title 47 RCW unless that intersection has been authorized by local authorities provided elsewhere in this section.

(2) Any person who violates this section commits a traffic infraction.

(3) This section does not prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of their police power, from regulating the operation of neighborhood electric vehicles on streets and highways under their jurisdiction by resolution or ordinance of the governing body, if the regulation is consistent with the provisions of this title, except that:

(a) Local authorities may not authorize the operation of neighborhood electric vehicles on streets and highways that are part of the state highway system subject to the provisions of Title 47 RCW;

(b) Local authorities may not prohibit the operation of neighborhood electric vehicles upon highways of this state having a speed limit of twenty-five miles per hour or less; and

(c) Local authorities are prohibited from establishing any requirements for the registration and licensing of neighborhood electric vehicles. [2003 c 353 § 3.]

Effective date—2003 c 353: See note following RCW 46.04.320.

46.61.730 Wheelchair conveyances. (1) No person may operate a wheelchair conveyance on any public roadway with a posted speed limit in excess of thirty-five miles per hour.

(2) No person other than a wheelchair-bound person may operate a wheelchair conveyance on a public roadway.

(3) Every wheelchair-bound person operating a wheelchair conveyance upon a roadway is granted all the rights and is subject to all the duties applicable to the driver of a vehicle by this chapter, except those provisions that by their nature can have no application.

(4) A violation of this section is a traffic infraction. [1983 c 200 § 5.]

Severability—1983 c 200: See note following RCW 46.04.710.

Wheelchair conveyances

definitions: RCW 46.04.710.

licensing: RCW 46.16.640.

operator's license: RCW 46.20.109.

safety standards: RCW 46.37.610.

46.61.735 Ferry queues—Violations—Exemptions.

(1) It is a traffic infraction for a driver of a motor vehicle intending to board a Washington state ferry, to: (a) Block a residential driveway while waiting to board the ferry; or (b) move in front of another vehicle in a queue already waiting to board the ferry, without the authorization of a state ferry system employee. Vehicles qualifying for preferential loading privileges under rules adopted by the department of transpor-

tation are exempt from this section. In addition to any other penalty imposed for a violation of this section, the driver will be directed to immediately move the motor vehicle to the end of the queue of vehicles waiting to board the ferry. Violations of this section are not part of the vehicle driver's driving record under RCW 46.52.101 and 46.52.120.

(2) Subsection (1) of this section does not apply to a driver of a motor vehicle intending to board the Keller Ferry on state route No. 21. [2007 c 423 § 1.]

46.61.740 Theft of motor vehicle fuel. (1) Any person who refuses to pay or evades payment for motor vehicle fuel that is pumped into a motor vehicle is guilty of theft of motor vehicle fuel. A violation of this subsection is a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) The court shall order the department to suspend the person's license, permit, or nonresident privilege to drive for a period specified by the court of up to six months. [2001 c 325 § 1.]

OPERATION OF NONMOTORIZED VEHICLES

46.61.750 Effect of regulations—Penalty. (1) It is a traffic infraction for any person to do any act forbidden or fail to perform any act required in RCW 46.61.750 through 46.61.780.

(2) These regulations applicable to bicycles apply whenever a bicycle is operated upon any highway or upon any bicycle path, subject to those exceptions stated herein. [1982 c 55 § 6; 1979 ex.s. c 136 § 92; 1965 ex.s. c 155 § 79.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Bicycle awareness program: RCW 43.43.390.

"Bicycle" defined: RCW 46.04.071.

46.61.755 Traffic laws apply to persons riding bicycles. (1) Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in RCW 46.61.750 through 46.61.780 and except as to those provisions of this chapter which by their nature can have no application.

(2) Every person riding a bicycle upon a sidewalk or crosswalk must be granted all of the rights and is subject to all of the duties applicable to a pedestrian by this chapter. [2000 c 85 § 3; 1965 ex.s. c 155 § 80.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.758 Hand signals. All hand signals required of persons operating bicycles shall be given in the following manner:

(1) Left turn. Left hand and arm extended horizontally beyond the side of the bicycle;

(2) Right turn. Left hand and arm extended upward beyond the side of the bicycle, or right hand and arm extended horizontally to the right side of the bicycle;

(3) Stop or decrease speed. Left hand and arm extended downward beyond the side of the bicycle.

The hand signals required by this section shall be given before initiation of a turn. [1982 c 55 § 8.]

46.61.760 Riding on bicycles. (1) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(2) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. [1965 ex.s. c 155 § 81.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.765 Clinging to vehicles. No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway. [1965 ex.s. c 155 § 82.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.770 Riding on roadways and bicycle paths. (1) Every person operating a bicycle upon a roadway at a rate of speed less than the normal flow of traffic at the particular time and place shall ride as near to the right side of the right through lane as is safe except as may be appropriate while preparing to make or while making turning movements, or while overtaking and passing another bicycle or vehicle proceeding in the same direction. A person operating a bicycle upon a roadway or highway other than a limited-access highway, which roadway or highway carries traffic in one direction only and has two or more marked traffic lanes, may ride as near to the left side of the left through lane as is safe. A person operating a bicycle upon a roadway may use the shoulder of the roadway or any specially designated bicycle lane if such exists.

(2) Persons riding bicycles upon a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. [1982 c 55 § 7; 1974 ex.s. c 141 § 14; 1965 ex.s. c 155 § 83.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Use of bicycles on limited-access highways: RCW 46.61.160.

46.61.775 Carrying articles. No person operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one hand upon the handle bars. [1965 ex.s. c 155 § 84.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.61.780 Lamps and other equipment on bicycles.

(1) Every bicycle when in use during the hours of darkness as defined in RCW 46.37.020 shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the state patrol which shall be visible from all distances up to six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector. A light-emitting diode flashing taillight visible from a distance of five hundred feet to the rear may also be used in addition to the red reflector.

(2) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on

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dry, level, clean pavement. [1998 c 165 § 17; 1987 c 330 § 746; 1975 c 62 § 39; 1965 ex.s. c 155 § 85.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Short title—1998 c 165: See note following RCW 43.59.010.

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1975 c 62: See note following RCW 36.75.010.

46.61.790 Intoxicated bicyclists. (1) A law enforcement officer may offer to transport a bicycle rider who appears to be under the influence of alcohol or any drug and who is walking or moving along or within the right-of-way of a public roadway, unless the bicycle rider is to be taken into protective custody under RCW 70.96A.120. The law enforcement officer offering to transport an intoxicated bicycle rider under this section shall:

(a) Transport the intoxicated bicycle rider to a safe place; or

(b) Release the intoxicated bicycle rider to a competent person.

(2) The law enforcement officer shall not provide the assistance offered if the bicycle rider refuses to accept it. No suit or action may be commenced or prosecuted against the law enforcement officer, law enforcement agency, the state of Washington, or any political subdivision of the state for any act resulting from the refusal of the bicycle rider to accept this assistance.

(3) The law enforcement officer may impound the bicycle operated by an intoxicated bicycle rider if the officer determines that impoundment is necessary to reduce a threat to public safety, and there are no reasonable alternatives to impoundment. The bicyclist will be given a written notice of when and where the impounded bicycle may be reclaimed. The bicycle may be reclaimed by the bicycle rider when the bicycle rider no longer appears to be intoxicated, or by an individual who can establish ownership of the bicycle. The bicycle must be returned without payment of a fee. If the bicycle is not reclaimed within thirty days, it will be subject to sale or disposal consistent with agency procedures. [2000 c 85 § 4.]

46.61.990 Recodification of sections—Organization of chapter—Construction. Sections 1 through 52 and 54 through 86 of chapter 155, Laws of 1965 ex. sess. are added to chapter 12, Laws of 1961 and shall constitute a new chapter in Title 46 of the Revised Code of Washington and sections 54, 55, and 63 as herein amended and RCW 46.48.012, 46.48.014, 46.48.015, 46.48.016, 46.48.023, 46.48.025, 46.48.026, 46.48.041, 46.48.046, 46.48.050, 46.48.060, 46.48.080, 46.48.110, 46.48.120, 46.48.150, 46.48.160, 46.48.340, 46.56.030, 46.56.070, 46.56.100, 46.56.130, 46.56.135, 46.56.190, 46.56.200, 46.56.210, 46.56.220, 46.56.230, 46.56.240, 46.60.260, 46.60.270, 46.60.330, and 46.60.340 shall be recodified as and be a part of said chapter. The sections of the new chapter shall be organized under the following captions: "OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS", "TRAFFIC SIGNS, SIGNALS AND MARKINGS", "DRIVING ON RIGHT SIDE OF ROADWAY—OVERTAKING AND PASSING—USE OF ROADWAY", "RIGHT-OF-WAY", "PEDESTRIANS"

RIGHTS AND DUTIES", "TURNING AND STARTING AND SIGNALS ON STOPPING AND TURNING", "SPECIAL STOPS REQUIRED", "SPEED RESTRICTIONS", "RECKLESS DRIVING, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG, AND NEGLIGENT HOMICIDE BY VEHICLE", "STOPPING, STANDING AND PARKING", "MISCELLANEOUS RULES", and "OPERATION OF NONMOTORIZED VEHICLES". Such captions shall not constitute any part of the law. [1991 c 290 § 5; 1991 c 214 § 3; 1965 ex.s. c 155 § 92.]

Reviser's note: This section was amended by 1991 c 214 § 3 and by 1991 c 290 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

46.61.991 Severability—1965 ex.s. c 155. If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 155 § 93.]

Chapter 46.63 RCW

DISPOSITION OF TRAFFIC INFRACTIONS

Sections

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46.63.151	Costs and attorney fees.
46.63.160	Toll collection systems—Photo enforcement systems.
46.63.170	Automated traffic safety cameras—Definition.

Additional statutory assessments: RCW 3.62.090, 46.64.055.

Traffic and civil infraction cases involving juveniles under age sixteen: RCW 13.40.250.

46.63.010 Legislative intent. It is the legislative intent in the adoption of this chapter in decriminalizing certain traffic offenses to promote the public safety and welfare on public highways and to facilitate the implementation of a uniform and expeditious system for the disposition of traffic infractions. [1979 ex.s. c 136 § 1.]

Effective date—1979 ex.s. c 136: "The provisions of chapter 136, Laws of 1979 ex. sess. and this 1980 act shall take effect on January 1, 1981, and shall apply to violations of the traffic laws committed on or after January 1, 1981." [1980 c 128 § 9; 1979 ex.s. c 136 § 111.]

Severability—1979 ex.s. c 136: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 136 § 110.]

46.63.020 Violations as traffic infractions—Exceptions. (Effective until January 1, 2009.) Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a non-highway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.410 relating to the violation of restrictions of an occupational or temporary restricted driver's license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(23) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(24) RCW 46.48.175 relating to the transportation of dangerous articles;

(25) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(26) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(27) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(30) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(31) RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;

(32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(33) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(35) RCW 46.61.500 relating to reckless driving;

(36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(39) RCW 46.61.522 relating to vehicular assault;

(40) RCW 46.61.5249 relating to first degree negligent driving;

(41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(42) RCW 46.61.530 relating to racing of vehicles on highways;

(43) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;

(44) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(45) RCW 46.61.740 relating to theft of motor vehicle fuel;

(46) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

(47) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(48) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(49) Chapter 46.65 RCW relating to habitual traffic offenders;

(50) RCW 46.68.010 relating to false statements made to obtain a refund;

(2008 Ed.)

(51) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(52) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(53) RCW 46.72A.060 relating to limousine carrier insurance;

(54) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

(55) RCW 46.72A.080 relating to false advertising by a limousine carrier;

(56) Chapter 46.80 RCW relating to motor vehicle wreckers;

(57) Chapter 46.82 RCW relating to driver's training schools;

(58) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(59) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [2005 c 431 § 2; 2005 c 323 § 3; 2005 c 183 § 10; 2004 c 95 § 14; 2003 c 33 § 4; 2001 c 325 § 4; 1999 c 86 § 6; 1998 c 294 § 3. Prior: 1997 c 229 § 13; 1997 c 66 § 8; prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Reviser's note: This section was amended by 2005 c 183 § 10, 2005 c 323 § 3, and by 2005 c 431 § 2, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Declaration and intent—Effective date—Application—2005 c 323: See notes following RCW 46.16.010.

Effective date—1997 c 229: See note following RCW 10.05.090.

Effective date—1995 1st sp.s. c 16: "This act shall take effect September 1, 1995." [1995 1st sp.s. c 16 § 2.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective date—1994 c 141: See note following RCW 46.61.527.

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—1987 c 388: See note following RCW 46.20.342.

Effective dates—1987 c 244: See note following RCW 46.12.020.

Severability—Effective date—1985 c 377: See RCW 46.55.900 and 46.55.902.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 19 § 7.]

Effective date—1980 c 148: See note following RCW 46.10.090.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.020 Violations as traffic infractions—Exceptions. (*Effective January 1, 2009.*) Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a non-highway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

(3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;

(4) RCW 46.10.130 relating to the operation of snowmobiles;

(5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;

(6) RCW 46.16.010 relating to the nonpayment of taxes and fees by failure to register a vehicle and falsifying residency when registering a motor vehicle;

(7) RCW 46.16.011 relating to permitting unauthorized persons to drive;

(8) RCW 46.16.160 relating to vehicle trip permits;

(9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;

(10) RCW 46.20.005 relating to driving without a valid driver's license;

(11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;

(12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;

(13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;

(14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;

(15) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license, temporary restricted driver's license, or ignition interlock driver's license;

(16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;

(17) RCW 46.20.750 relating to circumventing an ignition interlock device;

(18) RCW 46.25.170 relating to commercial driver's licenses;

(19) Chapter 46.29 RCW relating to financial responsibility;

(20) RCW 46.30.040 relating to providing false evidence of financial responsibility;

(21) RCW 46.37.435 relating to wrongful installation of sunscreening material;

(22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;

(23) RCW 46.37.671 through 46.37.675 relating to signal preemption devices;

(24) RCW 46.44.180 relating to operation of mobile home pilot vehicles;

(25) RCW 46.48.175 relating to the transportation of dangerous articles;

(26) RCW 46.52.010 relating to duty on striking an unattended car or other property;

(27) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(28) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

(29) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;

(30) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;

(31) RCW 46.55.035 relating to prohibited practices by tow truck operators;

(32) RCW 46.55.300 relating to vehicle immobilization;

(33) RCW 46.61.015 relating to obedience to police officers, flaggers, or firefighters;

(34) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;

(35) RCW 46.61.022 relating to failure to stop and give identification to an officer;

(36) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;

(37) RCW 46.61.500 relating to reckless driving;

(38) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;

(39) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;

(40) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

(41) RCW 46.61.522 relating to vehicular assault;

(42) RCW 46.61.5249 relating to first degree negligent driving;

(43) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;

(44) RCW 46.61.530 relating to racing of vehicles on highways;

(45) RCW 46.61.655(7) (a) and (b) relating to failure to secure a load;

(46) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(47) RCW 46.61.740 relating to theft of motor vehicle fuel;

(48) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(49) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

(50) Chapter 46.65 RCW relating to habitual traffic offenders;

(51) RCW 46.68.010 relating to false statements made to obtain a refund;

(52) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;

(53) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

(54) RCW 46.72A.060 relating to limousine carrier insurance;

(55) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;

(56) RCW 46.72A.080 relating to false advertising by a limousine carrier;

(57) Chapter 46.80 RCW relating to motor vehicle wreckers;

(58) Chapter 46.82 RCW relating to driver's training schools;

(59) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(60) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW. [2008 c 282 § 11. Prior: 2005 c 431 § 2; 2005 c 323 § 3; 2005 c 183 § 10; 2004 c 95 § 14; 2003 c 33 § 4; 2001 c 325 § 4; 1999 c 86 § 6; 1998 c 294 § 3; prior: 1997 c 229 § 13; 1997 c 66 § 8; prior: 1996 c 307 § 6; 1996 c 287 § 7; 1996 c 93 § 3; 1996 c 87 § 21; 1996 c 31 § 3; prior: 1995 1st sp.s. c 16 § 1; 1995 c 332 § 16; 1995 c 256 § 25; prior: 1994 c 275 § 33; 1994 c 141 § 2; 1993 c 501 § 8; 1992 c 32 § 4; 1991 c 339 § 27; prior: 1990 c 250 § 59; 1990 c 95 § 3; prior: 1989 c 353 § 8; 1989 c 178 § 27; 1989 c 111 § 20; prior: 1987 c 388 § 11; 1987 c 247 § 6; 1987 c 244 § 55; 1987 c 181 § 2; 1986 c 186 § 3; prior: 1985 c 377 § 28; 1985 c 353 § 2; 1985 c 302 § 7; 1983 c 164 § 6; 1982 c 10 § 12; prior: 1981 c 318 § 2; 1981 c 19 § 1; 1980 c 148 § 7; 1979 ex.s. c 136 § 2.]

Effective date—2008 c 282: See note following RCW 46.20.308.

Declaration and intent—Effective date—Application—2005 c 323: See notes following RCW 46.16.010.

Effective date—1997 c 229: See note following RCW 10.05.090.

Effective date—1995 1st sp.s. c 16: "This act shall take effect September 1, 1995." [1995 1st sp.s. c 16 § 2.]

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Effective date—1994 c 141: See note following RCW 46.61.527.

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—Effective date—1989 c 353: See RCW 46.30.900 and 46.30.901.

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Severability—1987 c 388: See note following RCW 46.20.342.

Effective dates—1987 c 244: See note following RCW 46.12.020.

Severability—Effective date—1985 c 377: See RCW 46.55.900 and 46.55.902.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 19 § 7.]

Effective date—1980 c 148: See note following RCW 46.10.090.

(2008 Ed.)

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.030 Notice of traffic infraction—Issuance—Abandoned vehicles. (1) A law enforcement officer has the authority to issue a notice of traffic infraction:

(a) When the infraction is committed in the officer's presence;

(b) When the officer is acting upon the request of a law enforcement officer in whose presence the traffic infraction was committed;

(c) If an officer investigating at the scene of a motor vehicle accident has reasonable cause to believe that the driver of a motor vehicle involved in the accident has committed a traffic infraction;

(d) When the infraction is detected through the use of a photo enforcement system under RCW 46.63.160; or

(e) When the infraction is detected through the use of an automated traffic safety camera under RCW 46.63.170.

(2) A court may issue a notice of traffic infraction upon receipt of a written statement of the officer that there is reasonable cause to believe that an infraction was committed.

(3) If any motor vehicle without a driver is found parked, standing, or stopped in violation of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, the officer finding the vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to the vehicle a notice of traffic infraction.

(4) In the case of failure to redeem an abandoned vehicle under RCW 46.55.120, upon receiving a complaint by a registered tow truck operator that has incurred costs in removing, storing, and disposing of an abandoned vehicle, an officer of the law enforcement agency responsible for directing the removal of the vehicle shall send a notice of infraction by certified mail to the last known address of the person responsible under RCW 46.55.105. The notice must be entitled "Littering—Abandoned Vehicle" and give notice of the monetary penalty. The officer shall append to the notice of infraction, on a form prescribed by the department of licensing, a notice indicating the amount of costs incurred as a result of removing, storing, and disposing of the abandoned vehicle, less any amount realized at auction, and a statement that monetary penalties for the infraction will not be considered as having been paid until the monetary penalty payable under this chapter has been paid and the court is satisfied that the person has made restitution in the amount of the deficiency remaining after disposal of the vehicle. [2007 c 101 § 1; 2005 c 167 § 2; 2004 c 231 § 2; 2002 c 279 § 14; 1995 c 219 § 5; 1994 c 176 § 3; 1987 c 66 § 2; 1980 c 128 § 10; 1979 ex.s. c 136 § 3.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.040 Jurisdiction of courts—Jurisdiction of college and university governing bodies. (1) All violations of state law, local law, ordinance, regulation, or resolution designated as traffic infractions in RCW 46.63.020 may be heard

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and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine traffic infractions pursuant to this chapter.

(3) Any city or town with a municipal court may contract with the county to have traffic infractions committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine traffic infractions pursuant to this chapter.

(5) Any district or municipal court may refer juveniles age sixteen or seventeen who are enrolled in school to a youth court, as defined in RCW 3.72.005 or 13.40.020, for traffic infractions.

(6) The boards of regents of the state universities, and the boards of trustees of the regional universities and of The Evergreen State College have the authority to hear and determine traffic infractions under RCW 28B.10.560. [2002 c 237 § 20; 1984 c 258 § 137; 1983 c 221 § 2; 1979 ex.s. c 136 § 6.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.050 Training of judicial officers. All judges and court commissioners adjudicating traffic infractions shall complete such training requirements as are promulgated by the supreme court. [1979 ex.s. c 136 § 7.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.060 Notice of traffic infraction—Determination final unless contested—Form. (1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle license;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and

that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license or driving privilege will be suspended by the department until any penalties imposed pursuant to this chapter have been satisfied; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation, refusal of the department to renew the vehicle license, until any penalties imposed pursuant to this chapter have been satisfied. [2006 c 270 § 2; 1993 c 501 § 9; 1984 c 224 § 2; 1982 1st ex.s. c 14 § 2; 1980 c 128 § 1; 1979 ex.s. c 136 § 8.]

Severability—Effective date—1984 c 224: See notes following RCW 46.16.216.

Effective date—1982 1st ex.s. c 14: "This act shall take effect on July 1, 1984, and shall apply to violations of traffic laws committed on or after July 1, 1984." [1982 1st ex.s. c 14 § 7.]

Severability—1982 1st ex.s. c 14: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 14 § 6.]

Effective date—1980 c 128: "Sections 1 through 8 and 10 through 16 of this act shall take effect on January 1, 1981, and shall apply to violations of the traffic laws committed on or after January 1, 1981. Section 9 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1980 c 128 § 18.]

Severability—1980 c 128: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 128 § 17.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.070 Response to notice—Contesting determination—Hearing—Failure to respond or appear. (1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of

infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5)(a) Except as provided in (b) and (c) of this subsection, in hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has not been determined to have committed another traffic infraction, the court may dismiss the infraction.

(b) A person may not receive more than one deferral within a seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

(c) A person who is the holder of a commercial driver's license or who was operating a commercial motor vehicle at the time of the violation may not receive a deferral under this section.

(6) If any person issued a notice of traffic infraction:

(a) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing. [2006 c 327 § 7; 2004 c 187 § 10; 2000 c 110 § 1; 1993 c 501 § 10; 1984 c 224 § 3; 1982 1st ex.s. c 14 § 3; 1980 c 128 § 2; 1979 ex.s. c 136 § 9.]

Effective date—2004 c 187 §§ 1, 5, 7, 8, and 10: See note following RCW 46.20.308.

Severability—Effective date—1984 c 224: See notes following RCW 46.16.216.

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.073 Rental vehicles. (1) In the event a traffic infraction is based on a vehicle's identification, and the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction may be issued, provide a written notice to the rental car business

that a notice of infraction may be issued to the rental car business if the rental car business does not, within thirty days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty. For the purpose of this subsection, a "traffic infraction based on a vehicle's identification" includes, but is not limited to, parking infractions, high occupancy toll lane violations, and violations recorded by automated traffic safety cameras.

(2) In the event a parking infraction is issued by a private parking facility and is based on a vehicle's identification, and the registered owner of the vehicle is a rental car business, the parking facility shall, before a notice of infraction may be issued, provide a written notice to the rental car business if the rental car business does not, within thirty days of receiving the written notice, provide to the parking facility by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft.

Timely mailing of this statement to the parking facility relieves a rental car business of any liability under this chapter for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty. For the purpose of this subsection, a "parking infraction based on a vehicle's identification" is limited to parking infractions occurring on a private parking facility's premises. [2007 c 372 § 1; 2005 c 331 § 2.]

46.63.075 Toll evasion—Presumption. (1) In a traffic infraction case involving an infraction detected through the use of a photo enforcement system under RCW 46.63.160, or detected through the use of an automated traffic safety camera under RCW 46.63.170, proof that the particular vehicle described in the notice of traffic infraction was in violation of any such provision of RCW 46.63.160 or 46.63.170, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the

person in control of the vehicle at the point where, and for the time during which, the violation occurred.

(2) This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner. [2005 c 167 § 3; 2004 c 231 § 3.]

46.63.080 Hearings—Rules of procedure—Counsel.

(1) Procedures for the conduct of all hearings provided for in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel.

(3) The attorney representing the state, county, city, or town may appear in any proceedings under this chapter but need not appear, notwithstanding any statute or rule of court to the contrary. [1981 c 19 § 2; 1979 ex.s. c 136 § 10.]

Severability—1981 c 19: See note following RCW 46.63.020.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.090 Hearings—Contesting determination that infraction committed—Appeal. (1) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of traffic infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court.

(3) The burden of proof is upon the state to establish the commission of the infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument the court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed an order dismissing the notice shall be entered in the court's records. Where it has been established that the infraction was committed an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department in accordance with RCW 46.20.270 as now or hereafter amended.

(5) An appeal from the court's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure. [1980 c 128 § 3; 1979 ex.s. c 136 § 11.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.100 Hearings—Explanation of mitigating circumstances. (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding.

The person may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records. A record of the court's determination and order shall be furnished to the department in accordance with RCW 46.20.270 as now or hereafter amended.

(3) There may be no appeal from the court's determination or order. [1979 ex.s. c 136 § 12.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.105 City attorney, county prosecutor, or other prosecuting authority—Filing an infraction—Contribution, donation, payment. A city attorney, county prosecutor, or other prosecuting authority may not dismiss, amend, or agree not to file an infraction in exchange for a contribution, donation, or payment to any person, corporation, or organization. This does not prohibit:

(1) Contribution, donation, or payment to any specific fund authorized by state statute;

(2) The collection of costs associated with actual supervision, treatment, or collection of restitution under agreements to defer or divert; or

(3) Dismissal following payment that is authorized by any other statute. [2007 c 367 § 2.]

46.63.110 Monetary penalties. (1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size,

weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privilege until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the department has been notified that the court has entered into a new time payment or community restitution agreement with the person.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reason-

able fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed:

(a) A fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040;

(b) A fee of ten dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the Washington auto theft prevention authority account; and

(c) A fee of two dollars per infraction. Revenue from this fee shall be forwarded to the state treasurer for deposit in the traumatic brain injury account established in RCW 74.31.060.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter. [2007 c 356 § 8; 2007 c 199 § 28. Prior: 2005 c 413 § 2; 2005 c 320 § 2; 2005 c 288 § 8; 2003 c 380 § 2. Prior: 2002 c 279 § 15; 2002 c 175 § 36; 2001 c 289 § 2; 1997 c 331 § 3; 1993 c 501 § 11; 1986 c 213 § 2; 1984 c 258 § 330; prior: 1982 1st ex.s.

c 14 § 4; 1982 1st ex.s. c 12 § 1; 1982 c 10 § 13; prior: 1981 c 330 § 7; 1981 c 19 § 6; 1980 c 128 § 4; 1979 ex.s. c 136 § 13.]

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

Reviser's note: This section was amended by 2007 c 199 § 28 and by 2007 c 356 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—2007 c 356: See note following RCW 74.31.005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2005 c 288: See note following RCW 46.20.245.

Effective date—2002 c 175: See note following RCW 7.80.130.

Effective date—1997 c 331: See note following RCW 70.168.135.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

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

Effective date—Severability—1982 1st ex.s. c 14: See notes following RCW 46.63.060.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 330: See note following RCW 3.62.060.

Severability—1981 c 19: See note following RCW 46.63.020.

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Additional statutory assessments: RCW 3.62.090, 46.64.055.

46.63.120 Order of court—Civil nature—Waiver, reduction, suspension of penalty—Community restitution. (1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.

(2) The court may include in the order the imposition of any penalty authorized by the provisions of this chapter for the commission of an infraction. The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request the court may order performance of a number of hours of community restitution in lieu of a monetary penalty, at the rate of the then state minimum wage per hour. [2002 c 175 § 37; 1979 ex.s. c 136 § 14.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.63.130 Issue of process by court of limited jurisdiction. Notwithstanding any other provisions of law governing service of process in civil cases, a court of limited jurisdiction having jurisdiction over an alleged traffic infraction may issue process anywhere within the state. [1980 c 128 § 5.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

46.63.140 Presumption regarding stopped, standing, or parked vehicles. (1) In any traffic infraction case involving a violation of this title or equivalent administrative regulation or local law, ordinance, regulation, or resolution relat-

ing to the stopping, standing, or parking of a vehicle, proof that the particular vehicle described in the notice of traffic infraction was stopping, standing, or parking in violation of any such provision of this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which, the violation occurred.

(2) The foregoing stated presumption shall apply only when the procedure prescribed in RCW 46.63.030(3) has been followed. [1980 c 128 § 11.]

Effective date—Severability—1980 c 128: See notes following RCW 46.63.060.

46.63.151 Costs and attorney fees. Each party to a traffic infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in a traffic infraction case, except as provided for in RCW 46.30.020(2). [1991 sp.s. c 25 § 3; 1981 c 19 § 4.]

Severability—1981 c 19: See note following RCW 46.63.020.

46.63.160 Toll collection systems—Photo enforcement systems. (1) This section applies only to infractions issued under RCW 46.61.690 for toll collection evasion.

(2) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(3) Toll collection systems include manual cash collection, electronic toll collection, and photo enforcement systems.

(4) "Electronic toll collection system" means a system of collecting tolls or charges that is capable of charging the account of the toll patron the appropriate toll or charge by electronic transmission from the motor vehicle to the toll collection system, which information is used to charge the appropriate toll or charge to the patron's account.

(5) "Photo enforcement system" means a vehicle sensor installed to work in conjunction with an electronic toll collection system that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of a vehicle operated in violation of an infraction under this chapter.

(6) The use of a toll collection system is subject to the following requirements:

(a) The department of transportation shall adopt rules that allow an open standard for automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits. The rules must also allow for multiple vendors providing electronic payment devices or transponders as technology permits.

(b) The department of transportation may not sell, distribute, or make available in any way, the names and

addresses of electronic toll collection system account holders.

(7) The use of a photo enforcement system for issuance of notices of infraction is subject to the following requirements:

(a) Photo enforcement systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(b) A notice of infraction must be mailed to the registered owner of the vehicle or to the renter of a vehicle within sixty days of the violation. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo enforcement system, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, digital photographs, microphotographs, videotape, or other recorded images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction.

(c) Notwithstanding any other provision of law, all photographs, digital photographs, microphotographs, videotape, or other recorded images prepared under this chapter are for the exclusive use of the tolling agency and law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, digital photograph, microphotograph, videotape, or other recorded image may be used for any purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this chapter or verify that tolls are paid.

(d) All locations where a photo enforcement system is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by a photo enforcement system.

(8) Infractions detected through the use of photo enforcement systems are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of photo enforcement systems under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW *3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3).

(9) The penalty for an infraction detected through the use of a photo enforcement system shall be forty dollars plus an additional toll penalty. The toll penalty is equal to three times the cash toll for a standard passenger car during peak hours. Any reduction in the total penalty imposed shall be made proportionally between the forty-dollar penalty and the toll penalty. The court shall remit the toll penalty to the department of transportation or a private entity under contract with the department of transportation for deposit in the statewide account in which tolls are deposited for the tolling facility at which the violation occurred.

(10) If the registered owner of the vehicle is a rental car business the department of transportation or a law enforce-

ment agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of the mailing of the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable toll and fee.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction. [2007 c 372 § 2; 2007 c 101 § 2; 2004 c 231 § 6.]

Reviser's note: *(1) RCW 3.46.120 was repealed by 2008 c 227 § 12, effective July 1, 2008.

(2) This section was amended by 2007 c 101 § 2 and by 2007 c 372 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

46.63.170 Automated traffic safety cameras—Definition. (1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

(b) Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.

(c) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(d) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evi-

dencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(e) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(f) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(g) All locations where an automated traffic safety camera is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

(h) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW *3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this sub-

section must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device. [2007 c 372 § 3; 2005 c 167 § 1.]

*Reviser's note: RCW 3.46.120 was repealed by 2008 c 227 § 12, effective July 1, 2008.

Chapter 46.64 RCW ENFORCEMENT

Sections

46.64.010	Traffic citations—Record of—Cancellation prohibited—Penalty—Citation audit.
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46.64.060	Stopping motor vehicles for driver's license check, vehicle inspection and test—Purpose.
46.64.070	Stopping motor vehicles for driver's license check, vehicle inspection and test—Authorized—Powers additional.

46.64.010 Traffic citations—Record of—Cancellation prohibited—Penalty—Citation audit. (1) Every traffic enforcement agency in this state shall provide in appropriate form traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this section, or issued by an electronic device capable of producing a printed copy and electronic copies of the citations. The chief administrative officer of every such traffic enforcement agency shall be responsible for the issuance of such books or electronic devices and shall maintain a record of every such book and each citation contained therein and every such electronic device issued to individual members of the traffic enforcement agency and shall require and retain a receipt for every book and electronic device so issued.

(2) Every traffic enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a printed or electronic copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau. Upon the deposit of the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, the original or copy of such traffic citation may be disposed of only by trial in the court or other official action by a judge of the court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to the traffic violations bureau by the person to whom such traffic citation has been issued by the traffic enforcement officer.

(3) It shall be unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

(4) The chief administrative officer of every traffic enforcement agency shall require the return to him or her of a printed or electronic copy of every traffic citation issued by an officer under his or her supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator. Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his or her supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

(5) Any person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this section, is guilty of a misdemeanor.

(6) Every record of traffic citations required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the traffic enforcement agency is responsible. [2004 c 43 § 4; 2003 c 53 § 247; 1961 c 12 § 46.64.010. Prior: 1949 c 196 § 16; 1937 c 189 § 145; Rem. Supp. 1949 § 6360-145.]

Effective date—2004 c 43: See note following RCW 7.80.150.

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

46.64.015 Citation and notice to appear in court—Issuance—Contents—Arrest—Detention. Whenever any person is arrested for any violation of the traffic laws or regulations which is punishable as a misdemeanor or by imposition of a fine, the arresting officer may serve upon him or her a traffic citation and notice to appear in court. Such citation and notice shall conform to the requirements of RCW 46.64.010, and in addition, shall include spaces for the name and address of the person arrested, the license number of the vehicle involved, the driver's license number of such person, if any, the offense or violation charged, and the time and place where such person shall appear in court. Such spaces shall be filled with the appropriate information by the arresting officer. An officer may not serve or issue any traffic cita-

tion or notice for any offense or violation except either when the offense or violation is committed in his or her presence or when a person may be arrested pursuant to RCW 10.31.100, as now or hereafter amended. The detention arising from an arrest under this section may not be for a period of time longer than is reasonably necessary to issue and serve a citation and notice, except that the time limitation does not apply under any of the following circumstances:

(1) Where the arresting officer has probable cause to believe that the arrested person has committed any of the offenses enumerated in RCW 10.31.100(3);

(2) When the arrested person is a nonresident and is being detained for a hearing under RCW 46.64.035. [2006 c 270 § 3; 2004 c 43 § 5; 1987 c 345 § 2; 1985 c 303 § 11; 1979 ex.s. c 28 § 2; 1975-'76 2nd ex.s. c 95 § 2; 1975 c 56 § 1; 1967 c 32 § 70; 1961 c 12 § 46.64.015. Prior: 1951 c 175 § 1.]

Effective date—2004 c 43: See note following RCW 7.80.150.

46.64.018 Arrest without warrant for certain traffic offenses. See RCW 10.31.100.

46.64.025 Failure to appear—Notice to department. Whenever any person served with a traffic citation willfully fails to appear for a scheduled court hearing, the court in which the defendant failed to appear shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated. [2006 c 270 § 4; 1999 c 86 § 7; 1979 c 158 § 175; 1967 c 32 § 71; 1965 ex.s. c 121 § 23.]

Severability—1965 ex.s. c 121: See RCW 46.20.910.

Purpose—Construction—1965 ex.s. c 121: See note following RCW 46.20.021.

46.64.030 Procedure governing arrest and prosecution. The provisions of this title with regard to the apprehension and arrest of persons violating this title shall govern all police officers in making arrests without a warrant for violations of this title for offenses either committed in their presence or believed to have been committed based on probable cause pursuant to RCW 10.31.100, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for other like offenses. [1979 ex.s. c 28 § 3; 1975 c 56 § 2; 1967 c 32 § 72; 1961 c 12 § 46.64.030. Prior: 1937 c 189 § 147; RRS § 6360-147.]

46.64.035 Posting of security or bail by nonresident—Penalty. Any nonresident of the state of Washington who is issued a notice of infraction or a citation for a traffic offense may be required to post either a bond or cash security in the amount of the infraction penalty or to post bail. The court shall by January 1, 1990, accept, in lieu of bond or cash security, valid major credit cards issued by a bank or other financial institution or automobile club card guaranteed by an insurance company licensed to conduct business in the state. If payment is made by credit card the court is authorized to impose, in addition to any penalty or fine, an amount equal to

the charge to the court for accepting such cards. If the person cannot post the bond, cash security, or bail, he or she shall be taken to a magistrate or judge for a hearing at the first possible working time of the court. If the person refuses to comply with this section, he or she shall be guilty of a misdemeanor. This section does not apply to residents of states that have entered into a reciprocal agreement as outlined in RCW 46.23.020. [1987 c 345 § 3.]

46.64.040 Nonresident's use of highways—Resident leaving state—Secretary of state as attorney-in-fact. The acceptance by a nonresident of the rights and privileges conferred by law in the use of the public highways of this state, as evidenced by his or her operation of a vehicle thereon, or the operation thereon of his or her vehicle with his or her consent, express or implied, shall be deemed equivalent to and construed to be an appointment by such nonresident of the secretary of state of the state of Washington to be his or her true and lawful attorney upon whom may be served all lawful summons and processes against him or her growing out of any accident, collision, or liability in which such nonresident may be involved while operating a vehicle upon the public highways, or while his or her vehicle is being operated thereon with his or her consent, express or implied, and such operation and acceptance shall be a signification of the nonresident's agreement that any summons or process against him or her which is so served shall be of the same legal force and validity as if served on the nonresident personally within the state of Washington. Likewise each resident of this state who, while operating a motor vehicle on the public highways of this state, is involved in any accident, collision, or liability and thereafter at any time within the following three years cannot, after a due and diligent search, be found in this state appoints the secretary of state of the state of Washington as his or her lawful attorney for service of summons as provided in this section for nonresidents. Service of such summons or process shall be made by leaving two copies thereof with a fee established by the secretary of state by rule with the secretary of state of the state of Washington, or at the secretary of state's office, and such service shall be sufficient and valid personal service upon said resident or nonresident: PROVIDED, That notice of such service and a copy of the summons or process is forthwith sent by registered mail with return receipt requested, by plaintiff to the defendant at the last known address of the said defendant, and the plaintiff's affidavit of compliance herewith are appended to the process, together with the affidavit of the plaintiff's attorney that the attorney has with due diligence attempted to serve personal process upon the defendant at all addresses known to him or her of defendant and further listing in his or her affidavit the addresses at which he or she attempted to have process served. However, if process is forwarded by registered mail and defendant's endorsed receipt is received and entered as a part of the return of process then the foregoing affidavit of plaintiff's attorney need only show that the defendant received personal delivery by mail: PROVIDED FURTHER, That personal service outside of this state in accordance with the provisions of law relating to personal service of summons outside of this state shall relieve the plaintiff from mailing a copy of the summons or process by registered mail as hereinbefore provided. The secretary of state shall

forthwith send one of such copies by mail, postage prepaid, addressed to the defendant at the defendant's address, if known to the secretary of state. The court in which the action is brought may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee paid by the plaintiff to the secretary of state shall be taxed as part of his or her costs if he or she prevails in the action. The secretary of state shall keep a record of all such summons and processes, which shall show the day of service. [2003 c 223 § 1; 1993 c 269 § 16; 1982 c 35 § 197; 1973 c 91 § 1; 1971 ex.s. c 69 § 1; 1961 c 12 § 46.64.040. Prior: 1959 c 121 § 1; 1957 c 75 § 1; 1937 c 189 § 129; RRS § 6360-129.]

Rules of court: Cf. CR 12(a).

Effective date—1993 c 269: See note following RCW 23.86.070.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Deposit of fees in secretary of state's revolving fund: RCW 43.07.130.

46.64.048 Attempting, aiding, abetting, coercing, committing violations, punishable. Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of any act declared by this title to be a traffic infraction or a crime, whether individually or in connection with one or more other persons or as principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcefully, or willfully induces, causes, coerces, requires, permits or directs others to violate any provisions of this title is likewise guilty of such offense. [1990 c 250 § 60; 1961 c 12 § 46.56.210. Prior: 1937 c 189 § 149; RRS § 6360-149. Formerly RCW 46.61.695.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.64.050 General penalty. It is a traffic infraction for any person to violate any of the provisions of this title unless violation is by this title or other law of this state declared to be a felony, a gross misdemeanor, or a misdemeanor.

Unless another penalty is in this title provided, every person convicted of a misdemeanor for violation of any provisions of this title shall be punished accordingly. [1979 ex.s. c 136 § 93; 1975-'76 2nd ex.s. c 95 § 3; 1961 c 12 § 46.64.050. Prior: (i) 1937 c 189 § 150; RRS § 6360-150; 1927 c 309 § 53; RRS § 6362-53. (ii) 1937 c 188 § 82; RRS § 6312-82; 1921 c 108 § 16; RRS § 6378.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

46.64.055 Additional monetary penalty. (1) In addition to any other penalties imposed for conviction of a violation of this title that is a misdemeanor, gross misdemeanor, or felony, the court shall impose an additional penalty of fifty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this section by participation in the community restitution program.

(2) Revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this section to the state trea-

surer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this section must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060. [2002 c 175 § 38; 2001 c 289 § 3.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional statutory assessments: RCW 3.62.090.

46.64.060 Stopping motor vehicles for driver's license check, vehicle inspection and test—Purpose. The purpose of RCW 46.64.060 and 46.64.070 is to provide for the exercise of the police power of this state to protect the health and safety of its citizens by assuring that only qualified drivers and vehicles which meet minimum equipment standards shall operate upon the highways of this state. [1967 c 144 § 1.]

Severability—1967 c 144: "If any provision, clause or word of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision of application, and to this end the provisions of this act are declared to be severable." [1967 c 144 § 3.]

46.64.070 Stopping motor vehicles for driver's license check, vehicle inspection and test—Authorized—Powers additional. To carry out the purpose of RCW 46.64.060 and 46.64.070, officers of the Washington state patrol are hereby empowered during daylight hours and while using plainly marked state patrol vehicles to require the driver of any motor vehicle being operated on any highway of this state to stop and display his or her driver's license and/or to submit the motor vehicle being driven by such person to an inspection and test to ascertain whether such vehicle complies with the minimum equipment requirements prescribed by chapter 46.37 RCW, as now or hereafter amended. No criminal citation shall be issued for a period of ten days after giving a warning ticket pointing out the defect.

The powers conferred by RCW 46.64.060 and 46.64.070 are in addition to all other powers conferred by law upon such officers, including but not limited to powers conferred upon them as police officers pursuant to RCW 46.20.349 and powers conferred by chapter 46.32 RCW. [1999 c 6 § 26; 1973 2nd ex.s. c 22 § 1; 1967 c 144 § 2.]

Intent—1999 c 6: See note following RCW 46.04.168.

Severability—1967 c 144: See note following RCW 46.64.060.

Chapter 46.65 RCW

WASHINGTON HABITUAL TRAFFIC OFFENDERS ACT

Sections

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46.65.010 State policy enunciated. It is hereby declared to be the policy of the state of Washington:

(1) To provide maximum safety for all persons who travel or otherwise use the public highways of this state; and

(2) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state, the orders of her courts and the statutorily required acts of her administrative agencies; and

(3) To discourage repetition of criminal acts by individuals against the peace and dignity of the state and her political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of traffic laws. [1971 ex.s. c 284 § 3.]

Severability—1971 ex.s. c 284: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 284 § 17.]

46.65.020 Habitual offender defined. As used in this chapter, unless a different meaning is plainly required by the context, an habitual offender means any person, resident or nonresident, who has accumulated convictions or findings that the person committed a traffic infraction as defined in RCW 46.20.270, or, if a minor, has violations recorded with the department of licensing, for separate and distinct offenses as described in either subsection (1) or (2) below committed within a five-year period, as evidenced by the records maintained in the department of licensing: PROVIDED, That where more than one described offense is committed within a six-hour period such multiple offenses shall, on the first such occasion, be treated as one offense for the purposes of this chapter:

(1) Three or more convictions, singularly or in combination, of the following offenses:

(a) Vehicular homicide as defined in RCW 46.61.520;

(b) Vehicular assault as defined in RCW 46.61.522;

(c) Driving or operating a motor vehicle while under the influence of intoxicants or drugs;

(d) Driving a motor vehicle while his or her license, permit, or privilege to drive has been suspended or revoked as defined in RCW 46.20.342(1)(b);

(e) Failure of the driver of any vehicle involved in an accident resulting in the injury or death of any person or damage to any vehicle which is driven or attended by any person to immediately stop such vehicle at the scene of such accident or as close thereto as possible and to forthwith return to and in every event remain at, the scene of such accident until he has fulfilled the requirements of RCW 46.52.020;

(f) Reckless driving as defined in RCW 46.61.500;

(g) Being in physical control of a motor vehicle while under the influence of intoxicating liquor or any drug as defined in RCW 46.61.504; or

(h) Attempting to elude a pursuing police vehicle as defined in RCW 46.61.024;

(2) Twenty or more convictions or findings that the person committed a traffic infraction for separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle that are required to be reported to the department of licensing other than the offenses of driving with an expired driver's license and not having a driver's license in the operator's immediate possession. Such convictions or findings shall include those for offenses enumerated in subsection (1) of this section when taken with and added to those offenses described herein but shall not include convictions or findings for any nonmoving violation. No person may be considered an habitual offender under this subsection unless at least three convictions have occurred within the three hundred sixty-five days immediately preceding the last conviction.

The offenses included in subsections (1) and (2) of this section are deemed to include offenses under any valid town, city, or county ordinance substantially conforming to the provisions cited in subsections (1) and (2) or amendments thereto, and any federal law, or any law of another state, including subdivisions thereof, substantially conforming to the aforesaid state statutory provisions. [1991 c 293 § 7; 1983 c 164 § 7; 1981 c 188 § 1; 1979 ex.s. c 136 § 94; 1979 c 62 § 1; 1971 ex.s. c 284 § 4.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1979 c 62: "If any provision of this 1979 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 62 § 8.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.030 Transcript or abstract of conviction record certified—As prima facie evidence. The director of the department of licensing shall certify a transcript or abstract of the record of convictions and findings of traffic infractions as maintained by the department of licensing of any person whose record brings him or her within the definition of an habitual offender, as defined in RCW 46.65.020, to the hearing officer appointed in the event a hearing is requested. Such transcript or abstract may be admitted as evidence in any hearing or court proceeding and shall be prima facie evidence that the person named therein was duly convicted by the court wherein such conviction or holding was made of each offense shown by such transcript or abstract; and if such person denies any of the facts as stated therein, he or she shall have the burden of proving that such fact is untrue. [1983 c 209 § 1; 1979 ex.s. c 136 § 95; 1979 c 62 § 2; 1971 ex.s. c 284 § 5.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.060 Department findings—Revocation of license—Stay by department. If the department finds that such person is not an habitual offender under this chapter, the proceeding shall be dismissed, but if the department finds that such person is an habitual offender, the department shall revoke the operator's license for a period of seven years: PROVIDED, That the department may stay the date of the revocation if it finds that the traffic offenses upon which it is

based were caused by or are the result of alcoholism and/or drug addiction as evaluated by a program approved by the department of social and health services, and that since his or her last offense he or she has undertaken and followed a course of treatment for alcoholism and/or drug treatment in a program approved by the department of social and health services; such stay shall be subject to terms and conditions as are deemed reasonable by the department. Said stay shall continue as long as there is no further conviction for any of the offenses listed in RCW 46.65.020(1). Upon a subsequent conviction for any offense listed in RCW 46.65.020(1) or violation of any of the terms or conditions of the original stay order, the stay shall be removed and the department shall revoke the operator's license for a period of seven years. [1999 c 274 § 7; 1985 c 101 § 2; 1981 c 188 § 2; 1979 c 62 § 3; 1973 1st ex.s. c 83 § 1; 1971 ex.s. c 284 § 8.]

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.065 Revocation of habitual offender's license—Request for hearing, scope—Right to appeal. (1) Whenever a person's driving record, as maintained by the department, brings him or her within the definition of an habitual traffic offender, as defined in RCW 46.65.020, the department shall forthwith notify the person of the revocation in writing by certified mail at his or her address of record as maintained by the department. If the person is a nonresident of this state, notice shall be sent to the person's last known address. Notices of revocation shall inform the recipient thereof of his or her right to a formal hearing and specify the steps which must be taken in order to obtain a hearing. Within fifteen days after the notice has been given, the person may, in writing, request a formal hearing. If such a request is not made within the prescribed time the right to a hearing is waived. A request for a hearing stays the effectiveness of the revocation.

(2) Upon receipt of a request for a hearing, the department shall schedule a hearing in the county in which the person making the request resides, and if [the] person is a nonresident of this state, the hearing shall be held in Thurston county. The department shall give at least ten days notice of the hearing to the person.

(3) The scope of the hearings provided by this section is limited to the issues of whether the certified transcripts or abstracts of the convictions, as maintained by the department, show that the requisite number of violations have been accumulated within the prescribed period of time as set forth in RCW 46.65.020 and whether the terms and conditions for granting stays, as provided in RCW 46.65.060, have been met.

(4) Upon receipt of the hearing officer's decision, an aggrieved party may appeal to the superior court of the county in which he or she resides, or, in the case of a nonresident of this state, in the superior court of Thurston county, for review of the revocation. Notice of appeal must be filed within thirty days after receipt of the hearing officer's decision or the right to appeal is waived. Review by the court shall be de novo and without a jury.

(5) The filing of a notice of appeal does not stay the effective date of the revocation. [1989 c 337 § 10; 1979 c 62 § 5.]

Severability—1979 c 62: See note following RCW 46.65.020.

46.65.070 Period during which habitual offender not to be issued license. No license to operate motor vehicles in Washington shall be issued to an habitual offender (1) for a period of seven years from the date of the license revocation except as provided in RCW 46.65.080, and (2) until the privilege of such person to operate a motor vehicle in this state has been restored by the department of licensing as provided in this chapter. [1998 c 214 § 2; 1990 c 250 § 62; 1979 c 62 § 4; 1971 ex.s. c 284 § 9.]

Effective date—1998 c 214: See note following RCW 46.61.5055.

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1979 c 62: See note following RCW 46.65.020.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.080 Four-year petition for license restoration—Reinstatement of driving privilege. At the end of four years, the habitual offender may petition the department of licensing for the return of his operator's license and upon good and sufficient showing, the department of licensing may, wholly or conditionally, reinstate the privilege of such person to operate a motor vehicle in this state. [1998 c 214 § 3; 1979 c 158 § 181; 1971 ex.s. c 284 § 10.]

Effective date—1998 c 214: See note following RCW 46.61.5055.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.100 Seven-year petition for license restoration—Reinstatement of driving privilege. At the expiration of seven years from the date of any final order finding a person to be an habitual offender and directing him not to operate a motor vehicle in this state, such person may petition the department of licensing for restoration of his privilege to operate a motor vehicle in this state. Upon receipt of such petition, and for good cause shown, the department of licensing shall restore to such person the privilege to operate a motor vehicle in this state upon such terms and conditions as the department of licensing may prescribe, subject to the provisions of chapter 46.29 RCW and such other provisions of law relating to the issuance or revocation of operators' licenses. [1998 c 214 § 4; 1979 c 158 § 182; 1971 ex.s. c 284 § 12.]

Effective date—1998 c 214: See note following RCW 46.61.5055.

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

46.65.900 Construction—Chapter supplemental. Nothing in this chapter shall be construed as amending, modifying, or repealing any existing law of Washington or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof or shall be construed so as to preclude the exercise of regulatory powers of any division, agency, department, or political subdivision of the state having the statutory power to regulate such operation and licensing. [1971 ex.s. c 284 § 14.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

(2008 Ed.)

46.65.910 Short title. This chapter shall be known and may be cited as the "Washington Habitual Traffic Offenders Act." [1971 ex.s. c 284 § 18.]

Severability—1971 ex.s. c 284: See note following RCW 46.65.010.

Chapter 46.66 RCW

WASHINGTON AUTO THEFT PREVENTION AUTHORITY

Sections

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46.66.030	Powers, duties.
46.66.040	Gifts, grants, conveyances.
46.66.050	Removal of member—Grounds—Replacement.
46.66.060	Members—Compensation and travel expenses.
46.66.070	Members—Immunity.
46.66.080	Washington auto theft prevention authority account.
46.66.900	Findings—Intent—Short title—2007 c 199.

46.66.010 Authority established—Members. (1) The Washington auto theft prevention authority is established. The authority shall consist of the following members, appointed by the governor:

(a) The executive director of the Washington association of sheriffs and police chiefs, or the executive director's designee;

(b) The chief of the Washington state patrol, or the chief's designee;

(c) Two police chiefs;

(d) Two sheriffs;

(e) One prosecuting attorney;

(f) A representative from the insurance industry who is responsible for writing property and casualty liability insurance in the state of Washington;

(g) A representative from the automobile industry; and

(h) One member of the general public.

(2) In addition, the authority may, where feasible, consult with other governmental entities or individuals from the public and private sector in carrying out its duties under this section. [2007 c 199 § 20.]

46.66.020 Meetings—Officers—Terms. (1) The Washington auto theft prevention authority shall initially convene at the call of the executive director of the Washington association of sheriffs and police chiefs, or the executive director's designee, no later than the third Monday in January 2008. Subsequent meetings of the authority shall be at the call of the chair or seven members.

(2) The authority shall annually elect a chairperson and other such officers as it deems appropriate from its membership.

(3) Members of the authority shall serve terms of four years each on a staggered schedule to be established by the first authority. For purposes of initiating a staggered schedule of terms, some members of the first authority may initially serve two years and some members may initially serve four years. [2007 c 199 § 21.]

46.66.030 Powers, duties. (1) The Washington auto theft prevention authority may obtain or contract for staff ser-

vices, including an executive director, and any facilities and equipment as the authority requires to carry out its duties.

(2) The director may enter into contracts with any public or private organization to carry out the purposes of this section and RCW 46.66.010, 46.66.020, and 46.66.040 through 46.66.080.

(3) The authority shall review and make recommendations to the legislature and the governor regarding motor vehicle theft in Washington state. In preparing the recommendations, the authority shall, at a minimum, review the following issues:

(a) Determine the scope of the problem of motor vehicle theft, including:

(i) Particular areas of the state where the problem is the greatest;

(ii) Annual data reported by local law enforcement regarding the number of reported thefts, investigations, recovered vehicles, arrests, and convictions; and

(iii) An assessment of estimated funds needed to hire sufficient investigators to respond to all reported thefts.

(b) Analyze the various methods of combating the problem of motor vehicle theft;

(c) Develop and implement a plan of operation; and

(d) Develop and implement a financial plan.

(4) The authority is not a law enforcement agency and may not gather, collect, or disseminate intelligence information for the purpose of investigating specific crimes or pursuing or capturing specific perpetrators. Members of the authority may not exercise general authority peace officer powers while acting in their capacity as members of the authority, unless the exercise of peace officer powers is necessary to prevent an imminent threat to persons or property.

(5) The authority shall annually report its activities, findings, and recommendations during the preceding year to the legislature by December 31st. [2007 c 199 § 22.]

46.66.040 Gifts, grants, conveyances. The Washington auto theft prevention authority may solicit and accept gifts, grants, bequests, devises, or other funds from public and private sources to support its activities. [2007 c 199 § 23.]

46.66.050 Removal of member—Grounds—Replacement. The governor may remove any member of the Washington auto theft prevention authority for cause including but not limited to neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the members of the authority under this chapter. Upon the death, resignation, or removal of a member, the governor shall appoint a replacement to fill the remainder of the unexpired term. [2007 c 199 § 24.]

46.66.060 Members—Compensation and travel expenses. Members of the Washington auto theft prevention authority who are not public employees shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses incurred in carrying out the duties of the authority in accordance with RCW 43.03.050 and 43.03.060. [2007 c 199 § 25.]

46.66.070 Members—Immunity. Any member serving in their official capacity on the Washington auto theft prevention authority, or either their employer or employers, or other entity that selected the members to serve, are immune from a civil action based upon an act performed in good faith. [2007 c 199 § 26.]

46.66.080 Washington auto theft prevention authority account. (1) The Washington auto theft prevention authority account is created in the state treasury, subject to appropriation. All revenues from the traffic infraction surcharge in RCW 46.63.110(7)(b) and all receipts from gifts, grants, bequests, devises, or other funds from public and private sources to support the activities of the auto theft prevention authority must be deposited into the account. Expenditures from the account may be used only for activities relating to motor vehicle theft, including education, prevention, law enforcement, investigation, prosecution, and confinement.

(2) The authority shall allocate moneys appropriated from the account to public agencies for the purpose of establishing, maintaining, and supporting programs that are designed to prevent motor vehicle theft, including:

(a) Financial support to prosecution agencies to increase the effectiveness of motor vehicle theft prosecution;

(b) Financial support to a unit of local government or a team consisting of units of local governments to increase the effectiveness of motor vehicle theft enforcement;

(c) Financial support for the procurement of equipment and technologies for use by law enforcement agencies for the purpose of enforcing motor vehicle theft laws; and

(d) Financial support for programs that are designed to educate and assist the public in the prevention of motor vehicle theft.

(3) The costs of administration shall not exceed ten percent of the moneys in the account in any one year so that the greatest possible portion of the moneys available to the authority is expended on combating motor vehicle theft.

(4) Prior to awarding any moneys from the Washington auto theft prevention authority account for motor vehicle theft enforcement, the auto theft prevention authority must verify that the financial award includes sufficient funding to cover proposed activities, which include, but are not limited to: (a) State, municipal, and county offender and juvenile confinement costs; (b) administration costs; (c) law enforcement costs; (d) prosecutor costs; and (e) court costs, with a priority being given to ensuring that sufficient funding is available to cover state, municipal, and county offender and juvenile confinement costs.

(5) Moneys expended from the Washington auto theft prevention authority account under subsection (2) of this section shall be used to supplement, not supplant, other moneys that are available for motor vehicle theft prevention.

(6) Grants provided under subsection (2) of this section constitute reimbursement for purposes of RCW 43.135.060(1). [2007 c 199 § 27.]

46.66.900 Findings—Intent—Short title—2007 c 199. See notes following RCW 9A.56.065.

Chapter 46.68 RCW
DISPOSITION OF REVENUE

Sections

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46.68.300	Freight mobility investment account.
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46.68.340	Ignition interlock device revolving account.

Amount of snowmobile fuel tax paid as motor vehicle fuel tax: RCW 46.10.170.

Highway funds, use, constitutional limitations: State Constitution Art. 2 § 40 (Amendment 18).

Motor vehicle

fuel tax: Chapter 82.36 RCW.

special fuel tax: Chapter 82.38 RCW.

use tax: Chapter 82.12 RCW.

Motor vehicle fund income from United States securities—Exemption from reserve fund requirement: RCW 43.84.095.

Off-road vehicle fuel tax—Refunds from motor vehicle fund: RCW 46.09.170.

Snowmobile fuel tax—Refund to general fund: RCW 46.10.150.

State patrol: Chapter 43.43 RCW.

46.68.010 Erroneous payments—Refunds, underpayments—Penalty for false statements. (1) Whenever any license fee, paid under the provisions of this title, has been erroneously paid, either wholly or in part, the payor is entitled to have refunded the amount so erroneously paid.

(2) A license fee is refundable in one or more of the following circumstances: (a) If the vehicle for which the renewal license was purchased was destroyed before the beginning date of the registration period for which the renewal fee was paid; (b) if the vehicle for which the renewal license was purchased was permanently removed from the state before the beginning date of the registration period for

which the renewal fee was paid; (c) if the vehicle license was purchased after the owner has sold the vehicle; (d) if the vehicle is currently licensed in Washington and is subsequently licensed in another jurisdiction, in which case any full months of Washington fees between the date of license application in the other jurisdiction and the expiration of the Washington license are refundable; or (e) if the vehicle for which the renewal license was purchased is sold before the beginning date of the registration period for which the renewal fee was paid, and the payor returns the new, unused, never affixed license renewal tabs to the department before the beginning of the registration period for which the registration was purchased.

(3) Upon the refund being certified to the state treasurer by the director as correct and being claimed in the time required by law the state treasurer shall mail or deliver the amount of each refund to the person entitled thereto. No claim for refund shall be allowed for such erroneous payments unless filed with the director within three years after such claimed erroneous payment was made.

(4) If due to error a person has been required to pay a vehicle license fee under this title and an excise tax under Title 82 RCW that amounts to an overpayment of ten dollars or more, that person shall be entitled to a refund of the entire amount of the overpayment, regardless of whether a refund of the overpayment has been requested.

(5) If due to error the department or its agent has failed to collect the full amount of the license fee and excise tax due and the underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and fees.

(6) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [2003 c 53 § 248; 1997 c 22 § 1; 1996 c 31 § 1; 1993 c 307 § 2; 1989 c 68 § 1; 1979 c 120 § 1; 1967 c 32 § 73; 1961 c 12 § 46.68.010. Prior: 1937 c 188 § 76; RRS § 6312-76.]

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

46.68.020 Disposition of fees for certificates of ownership. The director shall forward all fees for certificates of ownership or other moneys accruing under the provisions of chapter 46.12 RCW to the state treasurer, together with a proper identifying detailed report. The state treasurer shall credit such moneys as follows:

(1) The fees collected under RCW 46.12.040(1) and 46.12.101(6) shall be credited to the multimodal transportation account in RCW 47.66.070.

(2)(a) Beginning July 27, 2003, and until July 1, 2008, the fees collected under RCW 46.12.080, 46.12.101(3), 46.12.170, and 46.12.181 shall be credited as follows:

(i) 58.12 percent shall be credited to a segregated subaccount of the air pollution control account in RCW 70.94.015;

(ii) 16.60 percent shall be credited to the vessel response account created in RCW 90.56.335; and

(iii) The remainder shall be credited into the transportation 2003 account (nickel account).

(b) Beginning July 1, 2008, and thereafter, the fees collected under RCW 46.12.080, 46.12.101(3), 46.12.170, and

46.12.181 shall be credited to the transportation 2003 account (nickel account).

(3) The fees collected under RCW 46.12.040(3) and 46.12.060 shall be credited to the motor vehicle account. [2004 c 200 § 3; 2003 c 264 § 8; 2002 c 352 § 21; 1961 c 12 § 46.68.020. Prior: 1955 c 259 § 3; 1947 c 164 § 7; 1937 c 188 § 11; Rem. Supp. 1947 § 6312-11.]

Effective date—2004 c 200: See note following RCW 46.12.040.

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.68.030 Disposition of vehicle license fees. Except for proceeds from fees for vehicle licensing for vehicles paying such fees under RCW 46.16.070 and 46.16.085, and as otherwise provided for in chapter 46.16 RCW, all fees received by the director for vehicle licenses under the provisions of chapter 46.16 RCW shall be forwarded to the state treasurer, accompanied by a proper identifying detailed report, and be deposited to the credit of the motor vehicle fund, except that the proceeds from the vehicle license fee and renewal license fee shall be deposited by the state treasurer as hereinafter provided. After July 1, 2002, \$20.35 of each original or renewal license fee must be deposited in the state patrol highway account in the motor vehicle fund, hereby created. Vehicle license fees, renewal license fees, and all other funds in the state patrol highway account shall be for the sole use of the Washington state patrol for highway activities of the Washington state patrol, subject to proper appropriations and reappropriations therefor. \$2.02 of each original vehicle license fee and \$0.93 of each renewal license fee shall be deposited each biennium in the Puget Sound ferry operations account. Any remaining amounts of vehicle license fees and renewal license fees that are not distributed otherwise under this section must be deposited in the motor vehicle fund. [2002 c 352 § 22; 1990 c 42 § 109; 1985 c 380 § 20. Prior: 1983 c 15 § 23; 1983 c 3 § 122; 1981 c 342 § 9; 1973 c 103 § 3; 1971 ex.s. c 231 § 11; 1971 ex.s. c 91 § 1; 1969 ex.s. c 281 § 25; 1969 c 99 § 8; 1965 c 25 § 2; 1961 ex.s. c 7 § 17; 1961 c 12 § 46.68.030; prior: 1957 c 105 § 2; 1955 c 259 § 4; 1947 c 164 § 15; 1937 c 188 § 40; Rem. Supp. 1947 § 6312-40.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—1985 c 380: See RCW 46.87.900.

Severability—1983 c 15: See RCW 47.64.910.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Refund of mobile home identification tag fees: "The department of motor vehicles shall refund all moneys collected in 1973 for mobile home identification tags. Such refunds shall be made to those persons who have purchased such tags. The department shall adopt rules pursuant to chapter 34.04 RCW to comply with the provisions of this section." [1973 c 103 § 4.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

Effective date—1965 c 25: "This act shall take effect January 1, 1966." [1965 c 25 § 6.]

46.68.035 Disposition of combined vehicle licensing fees. All proceeds from combined vehicle licensing fees received by the director for vehicles licensed under RCW 46.16.070 and 46.16.085 shall be forwarded to the state trea-

surer to be distributed into accounts according to the following method:

(1) The sum of two dollars for each vehicle shall be deposited into the multimodal transportation account, except that for each vehicle registered by a county auditor or agent to a county auditor pursuant to RCW 46.01.140, the sum of two dollars shall be credited to the current county expense fund.

(2) The remainder and the proceeds from the license fee under RCW 46.16.086 and the farm vehicle trip permit under RCW 46.16.162 shall be distributed as follows:

(a) 22.36 percent shall be deposited into the state patrol highway account of the motor vehicle fund;

(b) 1.375 percent shall be deposited into the Puget Sound ferry operations account of the motor vehicle fund;

(c) 5.237 percent shall be deposited into the transportation 2003 account (nickel account);

(d) 11.533 percent shall be deposited into the transportation partnership account created in RCW 46.68.290; and

(e) The remaining proceeds shall be deposited into the motor vehicle fund. [2006 c 337 § 1; 2005 c 314 § 205; 2003 c 361 § 202; 2000 2nd sp.s. c 4 § 8; 1993 c 102 § 7; 1990 c 42 § 106; 1989 c 156 § 4; 1985 c 380 § 21.]

Application—2006 c 337 § 1: "Section 1 of this act applies to license fees due on or after July 1, 2006." [2006 c 337 § 15.]

Effective dates—2005 c 314 §§ 110 and 201-206: See note following RCW 46.17.010.

Application—2005 c 314 §§ 201-206, 301, and 302: See note following RCW 46.17.010.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective dates—2000 2nd sp.s. c 4 §§ 4-10: See note following RCW 43.89.010.

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Application—1989 c 156: See note following RCW 46.16.070.

Severability—1985 c 380: See RCW 46.87.900.

46.68.038 Disposition of driving record abstract fees. The funding allocated under RCW 46.20.293, 46.29.050, and 46.52.130 shall be deposited into the state patrol highway account created in RCW 46.68.030, for the purposes enumerated therein, which may include the provision of enhanced resources to address locations with higher than average collision rates. [2007 c 424 § 4.]

Effective date—2007 c 424: See note following RCW 46.20.293.

46.68.041 Disposition of driver's license fees. (1) Except as provided in subsection (2) of this section, the department shall forward all funds accruing under the provisions of chapter 46.20 RCW together with a proper identifying, detailed report to the state treasurer who shall deposit such moneys to the credit of the highway safety fund.

(2) Sixty-three percent of each fee collected by the department under RCW 46.20.311 (1)(e)(ii), (2)(b)(ii), and (3)(b) shall be deposited in the impaired driving safety account. [2004 c 95 § 15; 1998 c 212 § 3; 1995 2nd sp.s. c 3

§ 1; 1985 ex.s. c 1 § 12; 1981 c 245 § 3; 1979 c 63 § 3; 1977 c 27 § 1; 1975 1st ex.s. c 293 § 20; 1971 ex.s. c 91 § 2; 1969 c 99 § 9; 1967 c 174 § 3; 1965 c 25 § 4.]

Effective date—1995 2nd sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 3 § 2.]

Effective date—1985 ex.s. c 1: See note following RCW 46.20.070.

Effective date—1981 c 245: See note following RCW 46.20.161.

Severability—Effective date—1975 1st ex.s. c 293: See RCW 43.88.902 and 43.88.910.

Effective date—1967 c 174: See note following RCW 46.29.050.

Effective date—1965 c 25: See note following RCW 46.68.030.

46.68.060 Highway safety fund. There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which shall be deposited all moneys directed by law to be deposited therein. This fund shall be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010. During the 2005-2007 and 2007-2009 fiscal biennia, the legislature may transfer from the highway safety fund to the motor vehicle fund and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. [2007 c 518 § 714; 1969 c 99 § 11; 1967 c 174 § 4; 1965 c 25 § 3; 1961 c 12 § 46.68.060. Prior: 1957 c 104 § 1; 1937 c 188 § 81; RRS § 6312-81; 1921 c 108 § 13; RRS § 6375.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Effective date—1969 c 99: See note following RCW 79A.05.070.

Effective date—1969 c 25: See note following RCW 46.16.060.

Effective date—1967 c 174: See note following RCW 46.29.050.

Effective date—1965 c 25: See note following RCW 46.68.030.

Deposits into account: RCW 46.20.505, 46.20.510, 46.81A.030.

46.68.065 Motorcycle safety education account. There is hereby created the motorcycle safety education account in the highway safety fund of the state treasury, to the credit of which shall be deposited all moneys directed by law to be credited thereto. All expenses incurred by the director of the department of licensing in administering RCW 46.20.505 through 46.20.520 shall be borne by appropriations from this account, and moneys deposited into this account shall be used only for the purposes authorized in RCW 46.20.505 through 46.20.520. [2001 c 285 § 1; 1982 c 77 § 8.]

Severability—1982 c 77: See note following RCW 46.20.500.

46.68.070 Motor vehicle fund created—Use limited. There is created in the state treasury a permanent fund to be known as the motor vehicle fund to the credit of which shall be deposited all moneys directed by law to be deposited therein. This fund shall be for the use of the state, and through state agencies, for the use of counties, cities, and towns for proper road, street, and highway purposes, including the purposes of RCW 47.30.030. [1972 ex.s. c 103 § 6; 1961 c 12 § 46.68.070. Prior: (i) 1935 c 111 § 1, part; 1933 c 41 § 4, part;

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RRS § 6600, part; 1929 c 163 § 1; 1925 ex.s. c 185 § 1; 1923 c 181 § 3; 1921 c 96 § 18; 1919 c 46 § 3; 1917 c 155 § 13; 1915 c 142 § 18; RRS § 6330. (ii) 1939 c 181 § 1; RRS § 6600-1; 1937 c 208 §§ 1, 2, part.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

46.68.080 Refund of vehicle license fees and fuel taxes to island counties—Deposit of fuel taxes into Puget Sound ferry operations account. (1) Motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 and fuel taxes collected under RCW 82.36.025(1) and 82.38.030(1) and directly or indirectly paid by the residents of those counties composed entirely of islands and which have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, shall be paid into the motor vehicle fund of the state of Washington and shall monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such vehicle fuel tax, be paid to the county treasurer of each such county to be by him disbursed as hereinafter provided.

(2) One-half of the motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 and one-half of the fuel taxes collected under RCW 82.36.025(1) and 82.38.030(1) and directly or indirectly paid by the residents of those counties composed entirely of islands and which have either a fixed physical connection with the mainland or state highways on any of the islands of which they are composed, shall be paid into the motor vehicle fund of the state of Washington and shall monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such motor vehicle fuel tax, be paid to the county treasurer of each such county to be by him disbursed as hereinafter provided.

(3) All funds paid to the county treasurer of the counties of either class referred to in subsections (1) and (2) of this section, shall be by such county treasurer distributed and credited to the several road districts of each such county and paid to the city treasurer of each incorporated city and town within each such county, in the direct proportion that the assessed valuation of each such road district and incorporated city and town shall bear to the total assessed valuation of each such county.

(4) The amount of motor vehicle fuel tax paid by the residents of those counties composed entirely of islands shall, for the purposes of this section, be that percentage of the total amount of motor vehicle fuel tax collected in the state that the motor vehicle license fees paid by the residents of counties composed entirely of islands bears to the total motor vehicle license fees paid by the residents of the state.

(5)(a) An amount of fuel taxes shall be deposited into the Puget Sound ferry operations account. This amount shall equal the difference between the total amount of fuel taxes collected in the state under RCW 82.36.020 and 82.38.030 less the total amount of fuel taxes collected in the state under RCW 82.36.020(1) and 82.38.030(1) and be multiplied by a fraction. The fraction shall equal the amount of motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 from counties described in subsection (1) of this section divided by the total amount of motor vehicle license

fees collected in the state under RCW 46.16.0621 and 46.16.070.

(b) An additional amount of fuel taxes shall be deposited into the Puget Sound ferry operations account. This amount shall equal the difference between the total amount of fuel taxes collected in the state under RCW 82.36.020 and 82.38.030 less the total amount of fuel taxes collected in the state under RCW 82.36.020(1) and 82.38.030(1) and be multiplied by a fraction. The fraction shall equal the amount of motor vehicle license fees collected under RCW 46.16.0621 and 46.16.070 from counties described in subsection (2) of this section divided by the total amount of motor vehicle license fees collected in the state under RCW 46.16.0621 and 46.16.070, and this shall be multiplied by one-half. [2006 c 337 § 12; 1961 c 12 § 46.68.080. Prior: 1939 c 181 § 9; RRS § 6450-54a.]

46.68.090 Distribution of statewide fuel taxes. (1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax shall be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax amount shall be distributed monthly by the state treasurer in accordance with subsections (2) through (7) of this section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums shall be distributed monthly.

(2) All of the remaining net tax amount collected under RCW 82.36.025(1) and 82.38.030(1) shall be distributed as set forth in (a) through (j) of this section.

(a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(b) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects that, due to high cost only, will require bond financing to complete construction.

The following criteria, listed in order of priority, shall be used in determining which special category C projects have the highest priority:

- (i) Accident experience;
- (ii) Fatal accident experience;
- (iii) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and
- (iv) Continuity of development of the highway transportation network.

Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection (2)(b);

(c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(e) For distribution to the urban arterial trust account in the motor vehicle fund an amount equal to 7.5597 percent;

(f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there shall be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds shall be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and shall be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board shall adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

(j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(3) The remaining net tax amount collected under RCW 82.36.025(2) and 82.38.030(2) shall be distributed to the transportation 2003 account (nickel account).

(4) The remaining net tax amount collected under RCW 82.36.025(3) and 82.38.030(3) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(5) The remaining net tax amount collected under RCW 82.36.025(4) and 82.38.030(4) shall be distributed as follows:

(a) 8.3333 percent shall be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent shall be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder shall be distributed to the transportation partnership account created in RCW 46.68.290.

(6) The remaining net tax amount collected under RCW 82.36.025 (5) and (6) and 82.38.030 (5) and (6) shall be dis-

tributed to the transportation partnership account created in RCW 46.68.290.

(7) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels. [2005 c 314 § 103; 2003 c 361 § 403. Prior: 1999 c 269 § 2; 1999 c 94 § 6; prior: 1994 c 225 § 2; 1994 c 179 § 3; 1991 c 342 § 56; 1990 c 42 § 102; 1983 1st ex.s. c 49 § 21; 1979 c 158 § 184; 1977 ex.s. c 317 § 8; 1967 c 32 § 74; 1961 ex.s. c 7 § 5; 1961 c 12 § 46.68.090; prior: 1943 c 115 § 3; 1939 c 181 § 2; Rem. Supp. 1943 § 6600-1d; 1937 c 208 §§ 2, part, 3, part.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective date—1994 c 225: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1994." [1994 c 225 § 4.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Rural arterial trust account: RCW 36.79.020.

Urban arterial trust account: RCW 47.26.080.

46.68.110 Distribution of amount allocated to cities and towns. Funds credited to the incorporated cities and towns of the state as set forth in RCW 46.68.090 shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such sums distributed under RCW 46.68.090 shall be deducted monthly as such sums are credited and set aside for the use of the department of transportation for the supervision of work and expenditures of such incorporated cities and towns on the city and town streets thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any moneys so retained and not expended shall be credited in the succeeding biennium to the incorporated cities and towns in proportion to deductions herein made;

(2) Thirty-three one-hundredths of one percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the cities' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the cities in proportion to the deductions made;

(3) One percent of such funds distributed under RCW 46.68.090 shall be deducted monthly, as such funds accrue, to be deposited in the small city pavement and sidewalk account, to implement the city hardship assistance program, as provided in RCW 47.26.164. However, any moneys so retained and not required to carry out the program under this subsection as of July 1st of each odd-numbered year thereafter, shall be retained in the account and used for maintenance, repair, and resurfacing of city and town streets for cities and towns with a population of less than five thousand.

(4) Except as provided in RCW 47.26.080, after making the deductions under subsections (1) through (3) of this section and RCW 35.76.050, the balance remaining to the credit of incorporated cities and towns shall be apportioned monthly as such funds accrue among the several cities and towns within the state ratably on the basis of the population last determined by the office of financial management. [2008 c 121 § 601; 2007 c 148 § 1. Prior: 2005 c 314 § 106; 2005 c 89 § 1; 2003 c 361 § 404; prior: 1999 c 269 § 3; 1999 c 94 § 9; 1996 c 94 § 1; prior: 1991 sp.s. c 15 § 46; 1991 c 342 § 59; 1989 1st ex.s. c 6 § 41; 1987 1st ex.s. c 10 § 37; 1985 c 460 § 32; 1979 c 151 § 161; 1975 1st ex.s. c 100 § 1; 1961 ex.s. c 7 § 7; 1961 c 12 § 46.68.110; prior: 1957 c 175 § 11; 1949 c 143 § 1; 1943 c 83 § 2; 1941 c 232 § 1; 1939 c 181 § 4; Rem. Supp. 1949 § 6600-3a; 1937 c 208 §§ 2, part, 3, part.]

Severability—2008 c 121: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 121 § 606.]

Effective date—2008 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2008]." [2008 c 121 § 607.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Construction—Severability—1991 sp.s. c 15: "The appropriations of moneys and the designation of funds and accounts by this and other acts of the 1991 legislature shall be construed in a manner consistent with legislation enacted by the 1985, 1987, and 1989 legislatures to conform state funds and accounts with generally accepted accounting principles. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 15 § 69.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1989 1st ex.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 6 § 75.]

Severability—1987 1st ex.s. c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 10 § 60.]

Severability—1985 c 460: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 460 § 42.]

Expense of cost-audit examination of city and town street records payable from funds withheld under RCW 46.68.110(1): RCW 35.76.050.

Population determination, office of financial management: Chapter 43.62 RCW.

46.68.113 Preservation rating. During the 2003-2005 biennium, cities and towns shall provide to the transportation commission, or its successor entity, preservation rating information on at least seventy percent of the total city and town arterial network. Thereafter, the preservation rating information requirement shall increase in five percent increments in subsequent biennia. The rating system used by cities and towns must be based upon the Washington state pavement rating method or an equivalent standard approved by the department of transportation. Beginning January 1, 2007, the preservation rating information shall be submitted to the department. [2006 c 334 § 21; 2003 c 363 § 305.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Finding—Intent—2003 c 363: See note following RCW 35.84.060.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

46.68.120 Distribution of amount allocated to counties—Generally. Funds to be paid to the counties of the state shall be subject to deduction and distribution as follows:

(1) One and one-half percent of such funds shall be deducted monthly as such funds accrue and set aside for the use of the department of transportation and the county road administration board for the supervision of work and expenditures of such counties on the county roads thereof, including the supervision and administration of federal-aid programs for which the department of transportation has responsibility: PROVIDED, That any funds so retained and not expended shall be credited in the succeeding biennium to the counties in proportion to deductions herein made;

(2) All sums required to be repaid to counties composed entirely of islands shall be deducted;

(3) Thirty-three one-hundredths of one percent of such funds shall be deducted monthly, as such funds accrue, and set aside for the use of the department of transportation for the purpose of funding the counties' share of the costs of highway jurisdiction studies and other studies. Any funds so retained and not expended shall be credited in the succeeding biennium to the counties in proportion to the deductions made;

(4) The balance of such funds remaining to the credit of counties after such deductions shall be paid to the several counties monthly, as such funds accrue, in accordance with RCW 46.68.122 and 46.68.124. [1991 sp.s. c 15 § 47; 1991 c 342 § 64; 1989 1st ex.s. c 6 § 42; 1987 1st ex.s. c 10 § 38; 1985 c 460 § 33; 1985 c 120 § 1; 1982 c 33 § 1; 1980 c 87 § 44; 1979 c 158 § 185; 1977 ex.s. c 151 § 42; 1975 1st ex.s. c 100 § 2; 1973 1st ex.s. c 195 § 47; 1972 ex.s. c 103 § 1; 1967 c 32 § 75; 1965 ex.s. c 120 § 12; 1961 c 12 § 46.68.120. Prior: 1957 c 109 § 1; 1955 c 243 § 1; 1949 c 143 § 2; 1945 c 260 § 1; 1943 c 83 § 3; 1939 c 181 § 5; Rem. Supp. 149 § 6600-2a.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1989 1st ex.s. c 6: See note following RCW 46.68.110.

Severability—1987 1st ex.s. c 10: See note following RCW 46.68.110.

Severability—1985 c 460: See note following RCW 46.68.110.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070, 47.98.080.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

County road administration board—Expenses to be paid from motor vehicle fund—Disbursement procedure: RCW 36.78.110.

46.68.122 Distribution of amount to counties—Factors of distribution formula. Funds to be paid to the several counties pursuant to RCW 46.68.120(4) shall be allocated among them upon the basis of a distribution formula consisting of the following four factors:

(1) An equal distribution factor of ten percent of such funds shall be paid to each county;

(2) A population factor of thirty percent of such funds shall be paid to each county in direct proportion that the county's total equivalent population, as computed pursuant to RCW 46.68.124(1), is to the total equivalent population of all counties;

(3) A road cost factor of thirty percent of such funds shall be paid to each county in direct proportion that the county's total annual road cost, as computed pursuant to RCW 46.68.124(2), is to the total annual road costs of all counties;

(4) A money need factor of thirty percent of such funds shall be paid to each county in direct proportion that the county's money need factor, as computed pursuant to RCW 46.68.124(3), is to the total of money need factors of all counties. [1982 c 33 § 2.]

46.68.124 Distribution of amount to counties—Population, road cost, money need, computed—Allocation percentage adjustment. (1) The equivalent population for each county shall be computed as the sum of the population residing in the county's unincorporated area plus twenty-five percent of the population residing in the county's incorporated area. Population figures required for the computations in this subsection shall be certified by the director of the office of financial management on or before July 1st of each odd-numbered year.

(2) The total annual road cost for each county shall be computed as the sum of one twenty-fifth of the total estimated county road replacement cost, plus the total estimated annual maintenance cost. Appropriate costs for bridges and ferries shall be included. The county road administration board shall be responsible for establishing a uniform system of roadway categories for both maintenance and construction and also for establishing a single statewide cost per mile rate for each roadway category. The total annual cost for each county will be based on the established statewide cost per mile and associated mileage for each category. The mileage to be used for these computations shall be as shown in the county road log as maintained by the county road administration board as of July 1, 1985, and each two years thereafter. Each county shall be responsible for submitting changes, corrections, and deletions as regards the county road log to the county road administration board. Such changes, corrections, and deletions shall be subject to verification and approval by the county road administration board prior to inclusion in the county road log.

(3) The money need factor for each county shall be the county's total annual road cost less the following four amounts:

(a) One-half the sum of the actual county road tax levied upon the valuation of all taxable property within the county road districts pursuant to RCW 36.82.040, including any amount of such tax diverted under chapter 39.89 RCW, for the two calendar years next preceding the year of computation of the allocation amounts as certified by the department of revenue;

(b) One-half the sum of all funds received by the county road fund from the federal forest reserve fund pursuant to RCW 28A.520.010 and 28A.520.020 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(c) One-half the sum of timber excise taxes received by the county road fund pursuant to chapter 84.33 RCW in the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer;

(d) One-half the sum of motor vehicle license fees and motor vehicle and special fuel taxes refunded to the county, pursuant to RCW 46.68.080 during the two calendar years next preceding the year of computation of the allocation amounts as certified by the state treasurer.

(4) The state treasurer and the department of revenue shall furnish to the county road administration board the information required by subsection (3) of this section on or before July 1st of each odd-numbered year.

(5) The county road administration board, shall compute and provide to the counties the allocation factors of the several counties on or before September 1st of each year based solely upon the sources of information herein before required: PROVIDED, That the allocation factor shall be held to a level not more than five percent above or five percent below the allocation factor in use during the previous calendar year. Upon computation of the actual allocation factors of the several counties, the county road administration board shall provide such factors to the state treasurer to be used in the computation of the counties' fuel tax allocation for the succeeding calendar year. The state treasurer shall adjust the fuel tax allocation of each county on January 1st of every year based solely upon the information provided by the county road administration board. [2001 c 212 § 28; 1990 c 33 § 586. Prior: 1985 c 120 § 2; 1985 c 7 § 113; 1982 c 33 § 3.]

Severability—2001 c 212: See RCW 39.89.902.

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

46.68.130 Expenditure of balance of motor vehicle fund. The tax amount distributed to the state in the manner provided by RCW 46.68.090, and all moneys accruing to the motor vehicle fund from any other source, less such sums as are properly appropriated and reappropriated for expenditure for costs of collection and administration thereof, shall be expended, subject to proper appropriation and reappropriation, solely for highway purposes of the state, including the purposes of RCW 47.30.030. For the purposes of this section, the term "highway purposes of the state" does not include those expenditures of the Washington state patrol heretofore appropriated or reappropriated from the motor vehicle fund.

(2008 Ed.)

Nothing in this section or in RCW 46.68.090 may be construed so as to violate terms or conditions contained in highway construction bond issues authorized by statute as of July 1, 1999, or thereafter and whose payment is, by the statute, pledged to be paid from excise taxes on motor vehicle fuel and special fuels. [1999 c 269 § 4; 1981 c 342 § 11; 1974 ex.s. c 9 § 1; 1972 ex.s. c 103 § 7; 1971 ex.s. c 91 § 6; 1963 c 83 § 1; 1961 ex.s. c 7 § 9; 1961 c 12 § 46.68.130. Prior: 1957 c 271 § 4; 1957 c 105 § 3; 1941 c 246 § 1; 1939 c 181 § 6; Rem. Supp. 1941 § 6600-26.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Effective date—Severability—1981 c 342: See notes following RCW 82.36.010.

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

46.68.135 Multimodal account, transportation infrastructure account—Annual transfers. By July 1, 2006, and each year thereafter, the state treasurer shall transfer two and one-half million dollars from the multimodal account to the transportation infrastructure account created under RCW 82.44.190. The funds must be distributed for rail capital improvements only. [2006 c 337 § 4; 2005 c 314 § 111.]

Part headings not law—2005 c 314: See note following RCW 46.17.010.

46.68.160 Urban arterial trust account—Created in motor vehicle fund—Expenditures from. See RCW 47.26.080.

46.68.170 RV account. There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the 2005-2007 and 2007-2009 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account. [2007 c 518 § 701; 1996 c 237 § 2; 1980 c 60 § 3.]

Severability—2007 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 518 § 1101.]

Effective date—2007 c 518: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 518 § 1102.]

Effective date—1980 c 60: See note following RCW 47.38.050.

Additional license fees for recreational vehicles: RCW 46.16.063.

46.68.210 Puyallup tribal settlement account. (1) The Puyallup tribal settlement account is hereby created in the motor vehicle fund. All moneys designated by the "Agreement between the Puyallup Tribe of Indians, local governments in Pierce county, the state of Washington, the United States of America, and certain private property owners," dated August 27, 1988, (the "agreement") for use by the department of transportation on the Blair project as described in the agreement shall be deposited into the account, including but not limited to federal appropriations for the Blair

project, and appropriations contained in section 34, chapter 6, Laws of 1989 1st ex. sess. and section 709, chapter 19, Laws of 1989 1st ex. sess.

(2) All moneys deposited into the account shall be expended by the department of transportation pursuant to appropriation solely for the Blair project as described in the agreement. [1991 sp.s. c 13 § 104; 1990 c 42 § 411.]

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

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

46.68.220 Department of licensing services account.

The department of licensing services account is created in the motor vehicle fund. All receipts from service fees received under RCW 46.01.140(4)(b) shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for information and service delivery systems for the department, and for reimbursement of county licensing activities. [1992 c 216 § 5.]

46.68.230 Transfer of funds under government service agreement. Funds that are distributed to counties, cities, or towns pursuant to this chapter may be transferred by the recipient county, city, or town to another unit of local government pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 9.]

46.68.240 Highway infrastructure account. The highway infrastructure account is hereby created in the motor vehicle fund. Public and private entities may deposit moneys in the highway infrastructure account from federal, state, local, or private sources. Proceeds from bonds or other financial instruments sold to finance surface transportation projects from the highway infrastructure account shall be deposited into the account. Principal and interest payments made on loans from the highway infrastructure account shall be deposited into the account. Moneys in the account shall be available for purposes specified in RCW 82.44.195. Expenditures from the highway infrastructure account shall be subject to appropriation by the legislature. To the extent required by federal law or regulations promulgated by the United States secretary of transportation, the state treasurer is authorized to create separate subaccounts within the highway infrastructure account. [1996 c 262 § 3.]

Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262: See RCW 82.44.195.

Effective date—1996 c 262: See note following RCW 82.44.190.

46.68.250 Vehicle licensing fraud account. The vehicle licensing fraud account is created in the state treasury. From penalties and fines imposed under RCW 46.16.010, 47.68.255, and 88.02.118, an amount equal to the taxes and fees owed shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for vehicle license fraud enforcement and collections by the Washington state patrol and the department of revenue. [1996 c 184 § 6.]

Effective date—1996 c 184: See note following RCW 46.16.010.

46.68.260 Impaired driving safety account. The impaired driving safety account is created in the custody of the state treasurer. All receipts from fees collected under RCW 46.20.311 (1)(e)(ii), (2)(b)(ii), and (3)(b) shall be deposited according to RCW 46.68.041. Expenditures from this account may be used only to fund projects to reduce impaired driving and to provide funding to local governments for costs associated with enforcing laws relating to driving and boating while under the influence of intoxicating liquor or any drug. The account is subject to allotment procedures under chapter 43.88 RCW. Moneys in the account may be spent only after appropriation. [2004 c 95 § 16; 1998 c 212 § 2.]

46.68.280 Transportation 2003 account (nickel account). (1) The transportation 2003 account (nickel account) is hereby created in the motor vehicle fund. Money in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as transportation 2003 projects or improvements in the omnibus transportation budget and to pay the principal and interest on the bonds authorized for transportation 2003 projects or improvements. Upon completion of the projects or improvements identified as transportation 2003 projects or improvements, moneys deposited in this account must only be used to pay the principal and interest on the bonds authorized for transportation 2003 projects or improvements, and any funds in the account in excess of the amount necessary to make the principal and interest payments may be used for maintenance on the completed projects or improvements.

(2) The "nickel account" means the transportation 2003 account. [2003 c 361 § 601.]

Findings—Part headings not law—Severability—2003 c 361: See notes following RCW 82.36.025.

Effective dates—2003 c 361: See note following RCW 82.08.020.

46.68.290 Transportation partnership account—Definitions—Performance audits. (1) The transportation partnership account is hereby created in the state treasury. All distributions to the account from RCW 46.68.090 must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as 2005 transportation partnership projects or improvements in the omnibus transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements.

(2) The legislature finds that:

(a) Citizens demand and deserve accountability of transportation-related programs and expenditures. Transportation-related programs must continuously improve in quality, efficiency, and effectiveness in order to increase public trust;

(b) Transportation-related agencies that receive tax dollars must continuously improve the way they operate and deliver services so citizens receive maximum value for their tax dollars; and

(c) Fair, independent, comprehensive performance audits of transportation-related agencies overseen by the elected state auditor are essential to improving the efficiency,

economy, and effectiveness of the state's transportation system.

(3) For purposes of chapter 314, Laws of 2005:

(a) "Performance audit" means an objective and systematic assessment of a state agency or agencies or any of their programs, functions, or activities by the state auditor or designee in order to help improve agency efficiency, effectiveness, and accountability. Performance audits include economy and efficiency audits and program audits.

(b) "Transportation-related agency" means any state agency, board, or commission that receives funding primarily for transportation-related purposes. At a minimum, the department of transportation, the transportation improvement board or its successor entity, the county road administration board or its successor entity, and the traffic safety commission are considered transportation-related agencies. The Washington state patrol and the department of licensing shall not be considered transportation-related agencies under chapter 314, Laws of 2005.

(4) Within the authorities and duties under chapter 43.09 RCW, the state auditor shall establish criteria and protocols for performance audits. Transportation-related agencies shall be audited using criteria that include generally accepted government auditing standards as well as legislative mandates and performance objectives established by state agencies. Mandates include, but are not limited to, agency strategies, timelines, program objectives, and mission and goals as required in RCW 43.88.090.

(5) Within the authorities and duties under chapter 43.09 RCW, the state auditor may conduct performance audits for transportation-related agencies. The state auditor shall contract with private firms to conduct the performance audits.

(6) The audits may include:

(a) Identification of programs and services that can be eliminated, reduced, consolidated, or enhanced;

(b) Identification of funding sources to the transportation-related agency, to programs, and to services that can be eliminated, reduced, consolidated, or enhanced;

(c) Analysis of gaps and overlaps in programs and services and recommendations for improving, dropping, blending, or separating functions to correct gaps or overlaps;

(d) Analysis and recommendations for pooling information technology systems used within the transportation-related agency, and evaluation of information processing and telecommunications policy, organization, and management;

(e) Analysis of the roles and functions of the transportation-related agency, its programs, and its services and their compliance with statutory authority and recommendations for eliminating or changing those roles and functions and ensuring compliance with statutory authority;

(f) Recommendations for eliminating or changing statutes, rules, and policy directives as may be necessary to ensure that the transportation-related agency carry out reasonably and properly those functions vested in the agency by statute;

(g) Verification of the reliability and validity of transportation-related agency performance data, self-assessments, and performance measurement systems as required under RCW 43.88.090;

(h) Identification of potential cost savings in the transportation-related agency, its programs, and its services;

(i) Identification and recognition of best practices;

(j) Evaluation of planning, budgeting, and program evaluation policies and practices;

(k) Evaluation of personnel systems operation and management;

(l) Evaluation of purchasing operations and management policies and practices;

(m) Evaluation of organizational structure and staffing levels, particularly in terms of the ratio of managers and supervisors to nonmanagement personnel; and

(n) Evaluation of transportation-related project costs, including but not limited to environmental mitigation, competitive bidding practices, permitting processes, and capital project management.

(7) Within the authorities and duties under chapter 43.09 RCW, the state auditor must provide the preliminary performance audit reports to the audited state agency for comment. The auditor also may seek input on the preliminary report from other appropriate officials. Comments must be received within thirty days after receipt of the preliminary performance audit report unless a different time period is approved by the state auditor. The final performance audit report shall include the objectives, scope, and methodology; the audit results, including findings and recommendations; the agency's response and conclusions; and identification of best practices.

(8) The state auditor shall provide final performance audit reports to the citizens of Washington, the governor, the joint legislative audit and review committee, the appropriate legislative committees, and other appropriate officials. Final performance audit reports shall be posted on the internet.

(9) The audited transportation-related agency is responsible for follow-up and corrective action on all performance audit findings and recommendations. The audited agency's plan for addressing each audit finding and recommendation shall be included in the final audit report. The plan shall provide the name of the contact person responsible for each action, the action planned, and the anticipated completion date. If the audited agency does not agree with the audit findings and recommendations or believes action is not required, then the action plan shall include an explanation and specific reasons.

The office of financial management shall require periodic progress reports from the audited agency until all resolution has occurred. The office of financial management is responsible for achieving audit resolution. The office of financial management shall annually report by December 31st the status of performance audit resolution to the appropriate legislative committees and the state auditor. The legislature shall consider the performance audit results in connection with the state budget process.

The auditor may request status reports on specific audits or findings.

(10) For the period from July 1, 2005, until June 30, 2007, the amount of \$4,000,000 is appropriated from the transportation partnership account to the state auditors office for the purposes of subsections (2) through (9) of this section. [2006 c 337 § 5; 2005 c 314 § 104.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: "Sections 101 through 107, 109, 303 through 310 [309], and 401 of this act are necessary for the immediate preservation of the public peace, health, or

safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 314 § 405.]

Part headings not law—2005 c 314: See note following RCW 46.17.010.

46.68.295 Transportation partnership account—Transfers. (1) On July 1, 2006, and by each July 1st thereafter, the state treasurer shall transfer from the transportation partnership account created in RCW 46.68.290:

(a) One million dollars to the small city pavement and sidewalk account created in RCW 47.26.340;

(b) Two and one-half million dollars to the transportation improvement account created in RCW 47.26.084; and

(c) One and one-half million dollars to the county arterial preservation account created in RCW 46.68.090(2)(i).

(2) On July 1, 2006, the state treasurer shall transfer six million dollars from the transportation partnership account created in RCW 46.68.290 into the freight mobility investment account created in RCW 46.68.300 and by July 1, 2007, and by every July 1st thereafter, three million dollars shall be deposited into the freight mobility investment account. [2006 c 337 § 6.]

46.68.300 Freight mobility investment account. The freight mobility investment account is hereby created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for freight mobility projects identified in the omnibus transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements. [2005 c 314 § 105.]

Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401: See note following RCW 46.68.290.

Part headings not law—2005 c 314: See note following RCW 46.17.010.

46.68.310 Freight mobility multimodal account. The freight mobility multimodal account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for freight mobility projects identified in the omnibus transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements. [2006 c 337 § 7.]

Effective date—2006 c 337 § 7: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 24, 2006." [2006 c 337 § 16.]

46.68.320 Regional mobility grant program account. (1) The regional mobility grant program account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under RCW 47.66.030.

(2) Beginning with September 2007, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the regional mobility grant program account five million dollars.

(3) Beginning with September 2015, by the last day of September, December, March, and June of each year, the

state treasurer shall transfer from the multimodal transportation account to the regional mobility grant program account six million two hundred fifty thousand dollars. [2006 c 337 § 8.]

46.68.330 Freight congestion relief account. The freight congestion relief account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used to provide congestion relief through the improvement of freight rail systems and state highways that function as freight corridors. [2007 c 514 § 2.]

46.68.340 Ignition interlock device revolving account. The ignition interlock device revolving account is created in the state treasury. All receipts from the fee assessed under RCW 46.20.385(6) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for administering and operating the ignition interlock device revolving account program. [2008 c 282 § 3.]

Chapter 46.70 RCW

DEALERS AND MANUFACTURERS

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False or deceptive advertising: Chapter 9.04 RCW.

Lemon Law—Motor vehicle express warranties: Chapter 19.118 RCW.

Manufactured home safety and construction standards, inspections: RCW 43.22.431 through 43.22.434.

Retail installment sales of goods: Chapter 63.14 RCW.

Unfair business practices—Consumer protection: Chapter 19.86 RCW.

46.70.005 Declaration of purpose. The legislature finds and declares that the distribution, sale, and lease of vehicles in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and license vehicle manufacturers, distributors, or wholesalers and factory or distributor representatives, and to regulate and license dealers of vehicles doing business in Washington, in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state. [2001 c 272 § 1; 1986 c 241 § 1; 1973 1st ex.s. c 132 § 1; 1967 ex.s. c 74 § 1.]

Reviser's note: Throughout chapter 46.70 RCW the phrases "this act" and "this amendatory act" have been changed to "this chapter." This 1967 act or amendatory act [1967 ex.s. c 74] consisted of RCW 46.70.005 through 46.70.042, 46.70.051, 46.70.061, 46.70.081 through 46.70.083, 46.70.101 through 46.70.111, and 46.70.180 through 46.70.910, the 1967 amendments to RCW 46.70.060 and 46.70.070, and the repeal of RCW 46.70.010 through 46.70.050, 46.70.080, 46.70.100, and 46.70.110.

Emergency—Effective date—1967 ex.s. c 74: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 3 and sections 16 through 25 shall take effect immediately. Sections 4 through 15 and sections 26 through 30 inclusive shall take effect on July 1, 1967." [1967 ex.s. c 74 § 31.]

46.70.011 Definitions. As used in this chapter:

(1) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and which is required to be registered and titled under Title 46 RCW, Motor Vehicles.

(3) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot.

(4) "Vehicle dealer" means any person, firm, association, corporation, or trust, not excluded by subsection (5) of this section, engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person. Vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles, or both;

(b) A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles;

(c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers or any combination of such vehicles;

(d) A "recreational vehicle dealer" is a vehicle dealer that deals in travel trailers, motor homes, truck campers, or camping trailers that are primarily designed and used as temporary living quarters, are either self-propelled or mounted on or drawn by another vehicle, are transient, are not occupied as a primary residence, and are not immobilized or permanently affixed to a mobile home lot.

(5) The term "vehicle dealer" does not include, nor do the licensing requirements of RCW 46.70.021 apply to, the following persons, firms, associations, or corporations:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of, any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which that person is the registered or legal owner, or both, thereof; or

(e) Any person, firm, association, corporation, or trust, engaged in the selling of equipment other than vehicles, subject to registration, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or an affiliated licensee, who, on behalf of another negotiates the purchase, sale, lease, or exchange of a manufactured or mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the manufactured or mobile home is, or will be, located; or

(g) Owners who are also operators of the special highway construction equipment or of the highway construction equipment for which a vehicle license and display vehicle license number plate is required as defined in RCW 46.16.010; or

(h) Any bank, trust company, savings bank, mutual savings bank, savings and loan association, credit union, and any parent, subsidiary, or affiliate thereof, authorized to do business in this state under state or federal law with respect to the sale or other disposition of a motor vehicle owned and used in their business; or with respect to the acquisition and sale or other disposition of a motor vehicle in which the entity has acquired an interest as a lessor, lessee, or secured party; or

(i) Any person who is regularly engaged in the business of acquiring leases or installment contracts by assignment, with respect to the acquisition and sale or other disposition of a motor vehicle in which the person has acquired an interest as a result of the business.

(6) "Vehicle salesperson" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to so lease vehicles on behalf of a vehicle dealer.

(7) "Department" means the department of licensing, which shall administer and enforce the provisions of this chapter.

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

(9) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes any sales promotion organization, whether a person, firm, or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their vehicles or for supervising or contracting with their dealers or prospective dealers.

(10) "Established place of business" means a location meeting the requirements of RCW 46.70.023(1) at which a vehicle dealer conducts business in this state.

(11) "Principal place of business" means that dealer firm's business location in the state, which place the dealer designates as their principal place of business.

(12) "Subagency" means any place of business of a vehicle dealer within the state, which place is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the

state, at which place the firm does business using a name other than the principal name of the firm, or both.

(13) "Temporary subagency" means a location other than the principal place of business or subagency within the state where a licensed vehicle dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten days for a specific purpose such as auto shows, shopping center promotions, tent sales, exhibitions, or similar merchandising ventures. No more than six temporary subagency licenses may be issued to a licensee in any twelve-month period.

(14) "Wholesale vehicle dealer" means a vehicle dealer who buys and sells other than at retail.

(15) "Retail vehicle dealer" means a vehicle dealer who may buy and sell at both wholesale and retail.

(16) "Listing dealer" means a used mobile home dealer who makes contracts with sellers who will compensate the dealer for obtaining a willing purchaser for the seller's mobile home.

(17) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of the audience, constituting a series of oral invitations for offers for the purchase of vehicles made by the auctioneer, offers to purchase by members of the audience, and the acceptance of the highest or most favorable offer to purchase.

(18) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity licensed under chapter 18.11 RCW that only sells or offers to sell vehicles at auction or only arranges or sponsors auctions.

(19) "Buyer's agent" means any person, firm, partnership, association, limited liability company, limited liability partnership, or corporation retained or employed by a consumer to arrange for or to negotiate, or both, the purchase or lease of a new motor vehicle on behalf of the consumer, and who is paid a fee or receives other compensation from the consumer for its services.

(20) "New motor vehicle" means any motor vehicle that is self-propelled and is required to be registered and titled under Title 46 RCW, has not been previously titled to a retail purchaser or lessee, and is not a "used vehicle" as defined under RCW 46.04.660. [2006 c 364 § 1; 2001 c 272 § 2; 1998 c 46 § 1; 1996 c 194 § 1; 1993 c 175 § 1. Prior: 1989 c 337 § 11; 1989 c 301 § 1; 1988 c 287 § 1; 1986 c 241 § 2; 1981 c 305 § 2; 1979 c 158 § 186; 1979 c 11 § 3; prior: 1977 ex.s. c 204 § 2; 1977 ex.s. c 125 § 1; 1973 1st ex.s. c 132 § 2; 1969 ex.s. c 63 § 1; 1967 ex.s. c 74 § 3.]

46.70.021 License required for dealers or manufacturers—Penalties. (1) It is unlawful for any person, firm, or association to act as a vehicle dealer or vehicle manufacturer, to engage in business as such, serve in the capacity of such, advertise himself, herself, or themselves as such, solicit sales as such, or distribute or transfer vehicles for resale in this state, without first obtaining and holding a current license as provided in this chapter, unless the title of the vehicle is in the name of the seller.

(2) It is unlawful for any person other than a licensed vehicle dealer to display a vehicle for sale unless the registered owner or legal owner is the displayer or holds a notarized power of attorney.

(3)(a) Except as provided in (b) of this subsection, a person or firm engaged in buying and offering for sale, or buying and selling five or more vehicles in a twelve-month period, or in any other way engaged in dealer activity without holding a vehicle dealer license, is guilty of a gross misdemeanor, and upon conviction subject to a fine of up to five thousand dollars for each violation and up to one year in jail.

(b) A second offense is a class C felony punishable under chapter 9A.20 RCW.

(4) A violation of this section is also a per se violation of chapter 19.86 RCW and is considered a deceptive practice.

(5) The department of licensing, the Washington state patrol, the attorney general's office, and the department of revenue shall cooperate in the enforcement of this section.

(6) A distributor, factory branch, or factory representative shall not be required to have a vehicle manufacturer license so long as the vehicle manufacturer so represented is properly licensed pursuant to this chapter.

(7) Nothing in this chapter prohibits financial institutions from cooperating with vehicle dealers licensed under this chapter in dealer sales or leases. However, financial institutions shall not broker vehicles and cooperation is limited to organizing, promoting, and financing of such dealer sales or leases. [2003 c 53 § 249; 1993 c 307 § 4; 1988 c 287 § 2; 1986 c 241 § 3; 1973 1st ex.s. c 132 § 3; 1967 ex.s. c 74 § 4.]

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

46.70.023 Place of business. (1) An "established place of business" requires a permanent, enclosed commercial building located within the state of Washington easily accessible at all reasonable times. The business of a vehicle dealer must be lawfully carried on at an established place of business in accordance with the terms of all applicable building code, zoning, and other land-use regulatory ordinances. A vehicle dealer may display a vehicle for sale only at its established place of business, licensed subagency, or temporary subagency site, except at auction. The dealer shall keep the building open to the public so that the public may contact the vehicle dealer or the dealer's salespersons at all reasonable times. The books, records, and files necessary to conduct the business shall be kept and maintained at that place. The established place of business shall display an exterior sign with the business name and nature of the business, such as auto sales, permanently affixed to the land or building, with letters clearly visible to the major avenue of traffic. A room or rooms in a hotel, rooming house, or apartment house building or part of a single or multiple-unit dwelling house may not be considered an "established place of business" unless the ground floor of such a dwelling is devoted principally to and occupied for commercial purposes and the dealer offices are located on the ground floor. A mobile office or mobile home may be used as an office if it is connected to utilities and is set up in accordance with state law. A statewide trade association representing manufactured housing dealers shall be permitted to use a manufactured home as an office if the office complies with all other applicable building code, zoning, and other land-use regulatory ordinances. This subsection does not apply to auction companies that do not own vehicle inventory or sell vehicles from an auction yard.

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(2) An auction company shall have office facilities within the state. The books, records, and files necessary to conduct the business shall be maintained at the office facilities. All storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. An auction company shall maintain a telecommunications system.

(3) Auction companies shall post their vehicle dealer license at each auction where vehicles are offered, and shall provide the department with the address of the auction at least three days before the auction.

(4) If a dealer maintains a place of business at more than one location or under more than one name in this state, he or she shall designate one location as the principal place of business of the firm, one name as the principal name of the firm, and all other locations or names as subagencies. A subagency license is required for each and every subagency: PROVIDED, That the department may grant an exception to the subagency requirement in the specific instance where a licensed dealer is unable to locate their used vehicle sales facilities adjacent to or at the established place of business. This exception shall be granted and defined under the promulgation of rules consistent with the Administrative Procedure Act.

(5) All vehicle dealers shall maintain ownership or leasehold throughout the license year of the real property from which they do business. The dealer shall provide the department with evidence of ownership or leasehold whenever the ownership changes or the lease is terminated.

(6) A subagency shall comply with all requirements of an established place of business, except that subagency records may be kept at the principal place of business designated by the dealer. Auction companies shall comply with the requirements in subsection (2) of this section.

(7) A temporary subagency shall meet all local zoning and building codes for the type of merchandising being conducted. The dealer license certificate shall be posted at the location. No other requirements of an established place of business apply to a temporary subagency. Auction companies are not required to obtain a temporary subagency license.

(8) A wholesale vehicle dealer shall have office facilities in a commercial building within this state, and all storage facilities for inventory shall be listed with the department, and shall meet local zoning and land use ordinances. A wholesale vehicle dealer shall maintain a telecommunications system. An exterior sign visible from the nearest street shall identify the business name and the nature of business. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory, if any, must be physically segregated and clearly identified.

(9) A retail vehicle dealer shall be open during normal business hours, maintain office and display facilities in a commercially zoned location or in a location complying with all applicable building and land use ordinances, and maintain a business telephone listing in the local directory. When two or more vehicle dealer businesses share a location, all records, office facilities, and inventory shall be physically segregated and clearly identified.

(10) A subagency license is not required for a mobile home dealer to display an on-site display model, a consigned mobile home not relocated from its site, or a repossessed

mobile home if sales are handled from a principal place of business or subagency. A mobile home dealer shall identify on-site display models, repossessed mobile homes, and those consigned at their sites with a sign that includes the dealer's name and telephone number.

(11) Every vehicle dealer shall advise the department of the location of each and every place of business of the firm and the name or names under which the firm is doing business at such location or locations. If any name or location is changed, the dealer shall notify the department of such change within ten days. The license issued by the department shall reflect the name and location of the firm and shall be posted in a conspicuous place at that location by the dealer.

(12) A vehicle dealer's license shall upon the death or incapacity of an individual vehicle dealer authorize the personal representative of such dealer, subject to payment of license fees, to continue the business for a period of six months from the date of the death or incapacity. [1997 c 432 § 1; 1996 c 282 § 1; 1995 c 7 § 1; 1993 c 307 § 5; 1991 c 339 § 28; 1989 c 301 § 2; 1986 c 241 § 4.]

46.70.025 Established place of business—Waiver of requirements. The director may by rule waive any requirements pertaining to a vehicle dealer's established place of business if such waiver both serves the purposes of this chapter and is necessary due to unique circumstances such as a location divided by a public street or a highly specialized type of business. [1986 c 199 § 1.]

46.70.027 Accountability of dealer for employees—Actions for damages on violation of chapter. A vehicle dealer is accountable for the dealer's employees, sales personnel, and managerial personnel while in the performance of their official duties. Any violations of this chapter or applicable provisions of chapter 46.12 or 46.16 RCW committed by any of these employees subjects the dealer to license penalties prescribed under RCW 46.70.101. A retail purchaser, consignee who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from a wholesale dealer, who has suffered a loss or damage by reason of any act by a dealer, salesperson, managerial person, or other employee of a dealership, that constitutes a violation of this chapter or applicable provisions of chapter 46.12 or 46.16 RCW may institute an action for recovery against the dealer and the surety bond as set forth in RCW 46.70.070. However, under this section, motor vehicle dealers who have purchased from wholesale dealers may only institute actions against wholesale dealers and their surety bonds. [1989 c 337 § 12; 1986 c 241 § 5.]

46.70.028 Consignment. Dealers who transact dealer business by consignment shall obtain a consignment contract for sale and shall comply with applicable provisions of chapter 46.70 RCW. The dealer shall place all funds received from the sale of the consigned vehicle in a trust account until the sale is completed, except that the dealer shall pay any outstanding liens against the vehicle from these funds. Where title has been delivered to the purchaser, the dealer shall pay the amount due a consignor within ten days after the sale. However, in the case of a consignment from a licensed vehicle dealer from any state, the wholesale auto auction shall pay

the consignor within twenty days. [2000 c 131 § 2; 1989 c 337 § 13.]

Severability—2000 c 131: See note following RCW 46.70.115.

46.70.029 Listing dealers, transaction of business. Listing dealers shall transact dealer business by obtaining a listing agreement for sale, and the buyer's purchase of the mobile home shall be handled as dealer inventory. All funds from the purchaser shall be placed in a trust account until the sale is completed, except that the dealer shall pay any outstanding liens against the mobile home from these funds. Where title has been delivered to the purchaser, the listing dealer shall pay the amount due a seller within ten days after the sale of a listed mobile home. A complete account of all funds received and disbursed shall be given to the seller or consignor after the sale is completed. The sale of listed mobile homes imposes the same duty under RCW 46.70.122 on the listing dealer as any other sale. [2001 c 64 § 8; 1990 c 250 § 63; 1986 c 241 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.70.031 Application for license—Form. A vehicle dealer or vehicle manufacturer may apply for a license by filing with the department an application in such form as the department may prescribe. [1986 c 241 § 7; 1973 1st ex.s. c 132 § 4; 1967 ex.s. c 74 § 5.]

46.70.041 Application for license—Contents. (1) Every application for a vehicle dealer license shall contain the following information to the extent it applies to the applicant:

(a) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints, the honesty, truthfulness, and good reputation of the applicant for the license, or of the officers of a corporation making the application;

(b) The applicant's form and place of organization including if the applicant is a corporation, proof that the corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has any unsatisfied judgment in any federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime which directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners;

(f) A business telephone with a listing in the local directory;

(g) The name or names of new vehicles the vehicle dealer wishes to sell;

(h) The names and addresses of each manufacturer from whom the applicant has received a franchise;

(i) A certificate by a representative of the department, that the applicant's principal place of business and each sub-

agency business location in the state of Washington meets the location requirements as required by this chapter. The certificate shall include proof of the applicant's ownership or lease of the real property where the applicant's principal place of business is established;

(j) A copy of a current service agreement with a manufacturer, or distributor for a foreign manufacturer, requiring the applicant, upon demand of any customer receiving a new vehicle warranty to perform or arrange for, within a reasonable distance of his or her established place of business, the service repair and replacement work required of the manufacturer or distributor by such vehicle warranty. This requirement applies only to applicants seeking to sell, to exchange, to offer, to auction, to solicit, to advertise, or to broker new or current-model vehicles with factory or distributor warranties;

(k) The class of vehicles the vehicle dealer will be buying, selling, listing, exchanging, offering, brokering, leasing, auctioning, soliciting, or advertising, and which classification or classifications the dealer wishes to be designated as;

(l) Effective July 1, 2002, a certificate from the provider of each education program or test showing that the applicant has completed the education programs and passed the test required under RCW 46.70.079 if the applicant is a dealer subject to the education and test requirements;

(m) Any other information the department may reasonably require.

(2) If the applicant is a manufacturer the application shall contain the following information to the extent it is applicable to the applicant:

(a) The name and address of the principal place of business of the applicant and, if different, the name and address of the Washington state representative of the applicant;

(b) The name or names under which the applicant will do business in the state of Washington;

(c) Evidence that the applicant is authorized to do business in the state of Washington;

(d) The name or names of the vehicles that the licensee manufactures;

(e) The name or names and address or addresses of each and every distributor, factory branch, and factory representative;

(f) The name or names and address or addresses of resident employees or agents to provide service or repairs to vehicles located in the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured, unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(g) Any other information the department may reasonably require. [2001 c 272 § 3. Prior: 1993 c 307 § 6; 1993 c 175 § 2; 1990 c 250 § 64; 1986 c 241 § 8; 1979 c 158 § 187; 1977 ex.s. c 125 § 2; 1973 1st ex.s. c 132 § 5; 1971 ex.s. c 74 § 1; 1969 ex.s. c 63 § 2; 1967 ex.s. c 74 § 6.]

Severability—1990 c 250: See note following RCW 46.16.301.

Requirements of "established place of business": RCW 46.70.023.

46.70.042 Application for license—Retention by department—Confidentiality. Every application for license shall be retained by the department for a period of three years and shall be confidential information for the use

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of the department, the attorney general or the prosecuting attorney only: PROVIDED, That upon a showing of good cause therefor any court in which an action is pending by or against the applicant or licensee, may order the director to produce and permit the inspection and copying or photographing the application and any accompanying statements. [1967 ex.s. c 74 § 14.]

46.70.045 Denial of license. The director may deny a license under this chapter when the application is a subterfuge that conceals the real person in interest whose license has been denied, suspended, or revoked for cause under this chapter and the terms have not been fulfilled or a civil penalty has not been paid, or the director finds that the application was not filed in good faith. This section does not preclude the department from taking an action against a current licensee. [1997 c 432 § 2.]

46.70.051 Issuance of license—Private party dissemination of vehicle database. (1) After the application has been filed, the fee paid, and bond posted, if required, the department shall, if no denial order is in effect and no proceeding is pending under RCW 46.70.101, issue the appropriate license, which license, in the case of a vehicle dealer, shall designate the classification of the dealer. Nothing prohibits a vehicle dealer from obtaining licenses for more than one classification, and nothing prevents any vehicle dealer from dealing in other classes of vehicles on an isolated basis.

(2) An auction company licensed under chapter 18.11 RCW may sell at auction all classifications of vehicles under a motor vehicle dealer's license issued under this chapter including motor vehicles, miscellaneous type vehicles, and mobile homes and travel trailers.

(3) At the time the department issues a vehicle dealer license, the department shall provide to the dealer a current, up-to-date vehicle dealer manual that may be provided electronically setting forth the various statutes and rules applicable to vehicle dealers. In addition, at the time any such license is renewed under RCW 46.70.083, the department shall provide the dealer with any updates or current revisions to the vehicle dealer manual. These updates or current revisions may be provided electronically.

(4) The department may contract with responsible private parties to provide them elements of the vehicle database on a regular basis. The private parties may only disseminate this information to licensed vehicle dealers.

(a) Subject to the disclosure agreement provisions of RCW 46.12.380 and the requirements of Executive Order 97-01, the department may provide to the contracted private parties the following information:

(i) All vehicle and title data necessary to accurately disclose known title defects, brands, or flags and odometer discrepancies;

(ii) All registered and legal owner information necessary to determine true ownership of the vehicle and the existence of any recorded liens, including but not limited to liens of the department of social and health services or its successor; and

(iii) Any data in the department's possession necessary to calculate the motor vehicle excise tax, license, and registration fees including information necessary to determine the

applicability of regional transit authority excise and use tax surcharges.

(b) The department may provide this information in any form the contracted private party and the department agree upon, but if the data is to be transmitted over the Internet or similar public network from the department to the contracted private party, it must be encrypted.

(c) The department shall give these contracted private parties advance written notice of any change in the information referred to in (a)(i), (ii), or (iii) of this subsection, including information pertaining to the calculation of motor vehicle excise taxes.

(d) The department shall revoke a contract made under this subsection (4) with a private party who disseminates information from the vehicle database to anyone other than a licensed vehicle dealer. A private party who obtains information from the vehicle database under a contract with the department and disseminates any of that information to anyone other than a licensed vehicle dealer is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(e) Nothing in this subsection (4) authorizes a vehicle dealer or any other organization or entity not otherwise appointed as a vehicle licensing subagent under RCW 46.01.140 to perform any of the functions of a vehicle licensing subagent so appointed. [2001 c 272 § 4; 1997 c 432 § 4; 1996 c 282 § 2; 1993 c 307 § 7; 1989 c 301 § 3; 1973 1st ex.s. c 132 § 6; 1971 ex.s. c 74 § 2; 1967 ex.s. c 74 § 7.]

46.70.061 Fees—Disposition. (1) The annual fees for original licenses issued for twelve consecutive months from the date of issuance under this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: Seven hundred fifty dollars;

(b) Vehicle dealers, each subagency, and temporary subagency: One hundred dollars;

(c) Vehicle manufacturers: Five hundred dollars.

(2) The annual fee for renewal of any license issued pursuant to this chapter shall be:

(a) Vehicle dealers, principal place of business for each and every license classification: Two hundred fifty dollars;

(b) Vehicle dealer, each and every subagency: Twenty-five dollars;

(c) Vehicle manufacturers: Two hundred fifty dollars.

If any licensee fails or neglects to apply for such renewal within thirty days after the expiration of the license, or assigned renewal date under a staggered licensing system, the license shall be declared canceled by the director, in which case the licensee will be required to apply for an original license and pay the fee required for the original license.

(3) The fee for the transfer to another location of any license classification issued pursuant to this chapter shall be twenty-five dollars.

(4) The fee for vehicle dealer license plates and manufacturer license plates shall be the amount required by law for vehicle license plates exclusive of excise tax and gross weight and tonnage fees.

(5) All fees collected under this chapter shall be deposited in the state treasury and credited to the motor vehicle fund.

(6) The fees prescribed in this section are in addition to any excise taxes imposed by chapter 82.44 RCW. [2002 c

352 § 23; 1990 c 250 § 65; 1986 c 241 § 10; 1986 c 241 § 9; 1979 ex.s. c 251 § 1; 1973 1st ex.s. c 132 § 7; 1967 ex.s. c 74 § 13.]

Effective dates—2002 c 352: See note following RCW 46.09.070.

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1986 c 241: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except section 9 of this act shall take effect July 1, 1986, and section 10 of this act shall take effect July 1, 1987." [1986 c 241 § 28.]

46.70.070 Dealers—Bond required, exceptions—Actions—Cancellation of license. (1) Before issuing a vehicle dealer's license, the department shall require the applicant to file with the department a surety bond in the amount of:

(a) Thirty thousand dollars for motor vehicle dealers;

(b) Thirty thousand dollars for mobile home, park trailer, and travel trailer dealers;

(c) Five thousand dollars for miscellaneous dealers, running to the state, and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the dealer shall conduct his or her business in conformity with the provisions of this chapter.

Any retail purchaser, consignor who is not a motor vehicle dealer, or a motor vehicle dealer who has purchased from, sold to, or otherwise transacted business with a wholesale dealer, who has suffered any loss or damage by reason of any act by a dealer which constitutes a violation of this chapter shall have the right to institute an action for recovery against such dealer and the surety upon such bond. However, under this section, motor vehicle dealers who have purchased from, sold to, or otherwise transacted business with wholesale dealers may only institute actions against wholesale dealers and their surety bonds. Successive recoveries against said bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. Upon exhaustion of the penalty of said bond or cancellation of the bond by the surety the vehicle dealer license shall automatically be deemed canceled.

(2) The bond for any vehicle dealer licensed or to be licensed under more than one classification shall be the highest bond required for any such classification.

(3) Vehicle dealers shall maintain a bond for each business location in this state and bond coverage for all temporary subagencies. [2001 c 272 § 13; 1996 c 194 § 2; 1989 c 337 § 15; 1986 c 241 § 11; 1981 c 152 § 1; 1973 1st ex.s. c 132 § 8; 1971 ex.s. c 74 § 4; 1967 ex.s. c 74 § 27; 1961 c 239 § 1; 1961 c 12 § 46.70.070. Prior: 1959 c 166 § 19; 1951 c 150 § 8.]

46.70.075 Manufacturers—Bond required—Actions—Cancellation of license. Before issuing a manufacturer license to a manufacturer of mobile homes or travel trailers, the department shall require the applicant to file with the department a surety bond in the amount of forty thousand dollars in the case of a mobile home manufacturer and twenty thousand dollars in the case of a travel trailer manufacturer, running to the state and executed by a surety company authorized to do business in the state. Such bond shall be approved by the attorney general as to form and conditioned that the manufacturer shall conduct his business in conformity with

the provisions of this chapter and with all standards set by the state of Washington or the federal government pertaining to the construction or safety of such vehicles. Any retail purchaser or vehicle dealer who has suffered any loss or damage by reason of breach of warranty or by any act by a manufacturer which constitutes a violation of this chapter or a violation of any standards set by the state of Washington or the federal government pertaining to construction or safety of such vehicles has the right to institute an action for recovery against such manufacturer and the surety upon such bond. Successive recoveries against the bond shall be permitted, but the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. Upon exhaustion of the penalty of the bond or cancellation of the bond by the surety the manufacturer license is automatically deemed canceled. [1981 c 152 § 3; 1973 1st ex.s. c 132 § 9.]

46.70.079 Education requirements. (1) Except as provided in subsection (2) of this section, the following education requirements apply to an applicant for a vehicle dealer license under RCW 46.70.021:

(a) An applicant for a vehicle dealer license under RCW 46.70.021 must complete a minimum of eight hours of approved education programs described in subsection (3) of this section and pass a test prior to submitting an application for the license; and

(b) An applicant for a renewal of a vehicle dealer license under RCW 46.70.083 must complete a minimum of five hours per year in a licensing period of approved continuing education programs described in subsection (3) of this section prior to submitting an application for the renewal of the vehicle dealer license.

(2) The education and test requirements in subsection (1) of this section do not apply to an applicant for a vehicle dealer license under RCW 46.70.021 if the applicant is:

- (a) A franchised dealer of new recreational vehicles;
- (b) A nationally franchised or corporate-owned motor vehicle rental company;
- (c) A dealer of manufactured dwellings;
- (d) A national auction company that holds a vehicle dealer license and a wrecker license whose primary activity in this state is the sale or disposition of totaled vehicles; or
- (e) A wholesale auto auction company that holds a vehicle dealer license.

(3) The education programs and test required in subsection (1) of this section shall be developed by motor vehicle industry organizations including, but not limited to, the state independent auto dealers association and the department of licensing.

(4) A new motor vehicle dealer, as defined under RCW 46.96.020, is deemed to have met the education and test requirements required for applicants for a vehicle dealer license under this section. [2001 c 272 § 12.]

Effective date—2001 c 272 § 12: "Section 12 of this act takes effect July 1, 2002." [2001 c 272 § 14.]

46.70.083 Expiration of license—Renewal—Certification of established place of business. The license of a vehicle dealer or a vehicle manufacturer expires on the date that is twelve consecutive months from the date of issuance. The license may be renewed by filing with the department

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prior to the expiration of the license, a renewal application containing such information as the department may require to indicate the number of vehicle sales transacted during the past year, and any material change in the information contained in the original application. Failure by the dealer to comply is grounds for denial of the renewal application or dealer license plate renewal.

The dealer's established place of business shall be certified by a representative of the department at least once every thirty-six months, or more frequently as determined necessary by the department. The certification will verify compliance with the requirements of this chapter for an established place of business. Failure by the dealer to comply at any time is grounds for license suspension or revocation, denial of the renewal application, or monetary assessment. [1993 c 307 § 8; 1991 c 140 § 2; 1990 c 250 § 66; 1986 c 241 § 12; 1985 c 109 § 1; 1973 1st ex.s. c 132 § 12; 1971 ex.s. c 74 § 6; 1967 ex.s. c 74 § 10.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.70.085 Licenses—Staggered renewal. Notwithstanding any provision of law to the contrary, the director may extend or diminish licensing periods of dealers and manufacturers for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34.05 RCW. [1990 c 250 § 67; 1985 c 109 § 2.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.70.090 License plates—Use. (1) The department shall issue a vehicle dealer license plate which shall be attached to the rear of the vehicle only and which is capable of distinguishing the classification of the dealer, to vehicle dealers properly licensed pursuant to this chapter and shall, upon application, issue manufacturer's license plates to manufacturers properly licensed pursuant to this chapter.

(2) The department shall issue to a vehicle dealer up to three vehicle dealer license plates. After the third dealer plate is issued, the department shall limit the number of dealer plates to six percent of the vehicles sold during the preceding license period. For an original license the vehicle dealer license applicant shall estimate the first year's sales or leases. The director or director's designee may waive these dealer plate issuance restrictions for a vehicle dealer if the waiver both serves the purposes of this chapter and is essential to the continuation of the business. The director shall adopt rules to implement this waiver.

(3) Motor vehicle dealer license plates may be used:

(a) To demonstrate motor vehicles held for sale or lease when operated by an individual holding a valid operator's license, if a dated demonstration permit, valid for no more than seventy-two hours, is carried in the vehicle at all times it is operated by any such individual.

(b) On motor vehicles owned, held for sale or lease, and which are in fact available for sale or lease by the firm when operated by an officer of the corporation, partnership, or proprietorship or by their spouses, or by an employee of the firm, if a card so identifying any such individual is carried in the vehicle at all times it is operated by such individual. Any such vehicle so operated may be used to transport the dealer's own

tools, parts, and equipment of a total weight not to exceed five hundred pounds.

(c) On motor vehicles being tested for repair.

(d) On motor vehicles being moved to or from a motor vehicle dealer's place of business for sale.

(e) On motor vehicles being moved to or from motor vehicle service and repair facilities before sale or lease.

(f) On motor vehicles being moved to or from motor vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

(4) Mobile home and travel trailer dealer license plates may be used:

(a) On units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(b) On mobile homes hauled to a customer's location for set-up after sale.

(c) On travel trailers held for sale to demonstrate the towing capability of the vehicle if a dated demonstration permit, valid for not more than seventy-two hours, is carried with the vehicle at all times.

(d) On mobile homes being hauled from a customer's location if the requirements of RCW 46.44.170 and 46.44.175 are met.

(e) On any motor vehicle owned by the dealer which is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer so owning any such motor vehicle.

(f) On vehicles being moved to or from vehicle exhibitions within the state of Washington, if any such exhibition does not exceed a period of twenty days.

(5) Miscellaneous vehicle dealer license plates may be used:

(a) To demonstrate any miscellaneous vehicle: PROVIDED, That:

(i) No such vehicle may be demonstrated on a public highway unless the customer has an appropriate endorsement on his or her driver's license, if such endorsement is required to operate such vehicle; and

(ii) A dated demonstration permit, valid for no more than seventy-two hours, is carried with the vehicle at all times it is operated by any such individual.

(b) On vehicles owned, held for sale, and which are in fact available for sale, by the firm when operated by an officer of the corporation, partnership, or proprietorship or by a bona fide full-time employee of the firm, if a card so identifying such individual is carried in the vehicle at all times it is operated by him or her.

(c) On vehicles being tested for repair.

(d) On vehicles being transported to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer.

(e) On vehicles on which any other item sold or to be sold by the dealer is transported from the place of business of the manufacturer to the place of business of the dealer or to and from places of business of the dealer if such vehicle and such item are purchased or sold as one package.

(6) Manufacturers properly licensed pursuant to this chapter may apply for and obtain manufacturer license plates and may be used:

(a) On vehicles being moved to or from the place of business of a manufacturer to a vehicle dealer within this state who is properly licensed pursuant to this chapter.

(b) To test vehicles for repair.

(7) Vehicle dealer license plates and manufacturer license plates shall not be used for any purpose other than set forth in this section and specifically shall not be:

(a) Used on any vehicle not within the class for which the vehicle dealer or manufacturer license plates are issued unless specifically provided for in this section.

(b) Loaned to any person for any reason not specifically provided for in this section.

(c) Used on any vehicles for the transportation of any person, produce, freight, or commodities unless specifically provided for in this section, except there shall be permitted the use of such vehicle dealer license plates on a vehicle transporting commodities in the course of a demonstration over a period not to exceed seventy-two consecutive hours from the commencement of such demonstration, if a representative of the dealer is present and accompanies such vehicle during the course of the demonstration.

(d) Used on any vehicle sold to a resident of another state to transport such vehicle to that other state in lieu of a trip permit or in lieu of vehicle license plates obtained from that other state.

(e) Used on any new vehicle unless the vehicle dealer has provided the department a current service agreement with the manufacturer or distributor of that vehicle as provided in RCW 46.70.041(1)(k).

(8) In addition to or in lieu of any sanction imposed by the director pursuant to RCW 46.70.101 for unauthorized use of vehicle dealer license plates or manufacturer license plates, the director may order that any or all vehicle dealer license plates or manufacturer license plates issued pursuant to this chapter be confiscated for such period as the director deems appropriate. [2001 c 272 § 5; 1994 c 262 § 10; 1992 c 222 § 2; 1991 c 140 § 1; 1983 c 3 § 123; 1981 c 152 § 4; 1973 1st ex.s. c 132 § 13; 1971 ex.s. c 74 § 7; 1969 ex.s. c 63 § 3; 1961 c 12 § 46.70.090. Prior: 1955 c 283 § 1; 1951 c 150 § 10.]

46.70.101 Denial, suspension, or revocation of licenses—Grounds. The director may by order deny, suspend, or revoke the license of any vehicle dealer or vehicle manufacturer or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed

since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, adjudged guilty shall mean in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

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

(iv) Has knowingly, or with reason to know, provided the department with false information relating to the number of vehicle sales transacted during the past one year in order to obtain a vehicle dealer license plate;

(v) Does not have an established place of business as required in this chapter;

(vi) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

(vii) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same, except for sales by wholesale motor vehicle auction dealers to franchise motor vehicle dealers of the same make licensed under Title 46 RCW or franchise motor vehicle dealers of the same make licensed by any other state;

(viii) Is insolvent, either in the sense that their liabilities exceed their assets, or in the sense that they cannot meet their obligations as they mature;

(ix) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(x) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183;

(xi) Knowingly, or with reason to know, allows a salesperson employed by the dealer, or acting as their agent, to commit any of the prohibited practices set forth in subsection (1)(a) of this section and RCW 46.70.180;

(xii) Fails to have a current certificate or registration with the department of revenue.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale, lease, or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his or her possession any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has willfully failed to deliver to a purchaser or owner a certificate of ownership to a vehicle which he or she has sold or leased;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates or manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles, except for sales by wholesale motor vehicle auction dealers to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW or motor vehicle dealers licensed by any other state;

(ix) Has aided or assisted an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, allowing use of facilities, dealer license number, or by any other means;

(x) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of the property or funds; or

(xi) Has sold any vehicle with actual knowledge that:

(A) It has any of the following brands on the title: "SALVAGE/REBUILT," "JUNK," or "DESTROYED"; or

(B) It has been declared totaled out by an insurance carrier and then rebuilt; or

(C) The vehicle title contains the specific comment that the vehicle is "rebuilt";

without clearly disclosing that brand or comment in writing.

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

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

(c) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale, lease, or transfer of a vehicle;

(e) Has purchased, sold, leased, disposed of, or has in his or her possession, any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale or for lease, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale or for lease unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington who in good faith incurs reasonable obligations in giving effect to warranties that attach or have attached to any new or unused vehicle sold, leased, or distributed in this state or transferred into this state for resale or for lease by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) Is insolvent either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183. [2001 c 272 § 6; 1998 c 282 § 7; 1996 c 282 § 3; 1991 c 140 § 3; 1989 c 337 § 16; 1986 c 241 § 13; 1981 c 152 § 5; 1977 ex.s. c 125 § 3; 1973 1st ex.s. c 132 § 14; 1969 ex.s. c 63 § 4; 1967 ex.s. c 74 § 11.]

46.70.102 Denial, suspension, or revocation of licenses—Notice, hearing, procedure. Upon the entry of the order under RCW 46.70.101 the director shall promptly notify the applicant or licensee that the order has been entered and of the reasons therefor and that if requested by the applicant or licensee within fifteen days after the receipt of the director's notification, the matter will be promptly set down for hearing pursuant to chapter 34.05 RCW. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, or his personal representative, after notice of and opportunity for hearing, may modify or vacate the order, or extend it until final determination. No final order may be entered under RCW 46.70.101 denying or revoking a license without appropriate prior notice to the applicant or licensee, opportunity for hearing, and written findings of fact and conclusions of law. [1986 c 241 § 14; 1967 ex.s. c 74 § 12.]

46.70.111 Investigations or proceedings—Powers of director or designees—Penalty. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(1) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director, or the officer designated by him, to produce documentary or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [1967 ex.s. c 74 § 15.]

46.70.115 Cease and desist orders—Penalty, "curbstoning" defined. (1) If it appears to the director that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter, or a rule adopted or an order issued under this chapter, the director may issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending a hearing. The temporary order shall remain in effect until ten days after the hearing is held and shall become final if the person to whom the notice is addressed does not request a hearing within fifteen days after receipt of the notice.

(2) The director may levy and collect a civil penalty, in an amount not to exceed one thousand dollars for each violation, against a person found by the director to be curbstoning, as that term is defined in subsection (3) of this section. A person against whom a civil penalty has been imposed must receive reasonable notice and an opportunity for a hearing on the issue. The civil penalty is due ten days after issuance of a final order.

(3) For the purposes of subsection (2) of this section, "curbstoning" means a person or firm engaged in buying and offering for sale, or buying and selling, five or more vehicles that are each less than thirty years old in a twelve-month period without holding a vehicle dealer license. For the purpose of subsections (1) and (2) of this section, "curbstoning" does not include the sale of equipment or vehicles used in farming as defined in RCW 46.04.183 and sold by a farmer as defined in RCW 46.04.182. [2000 c 131 § 1; 1986 c 241 § 15.]

Severability—2000 c 131: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 131 § 3.]

46.70.120 Record of transactions. A dealer shall complete and maintain for a period of at least five years a record of the purchase and sale or lease of all vehicles purchased, sold, or leased by him or her. The records shall consist of:

(1) The license and title numbers of the state in which the last license was issued;

(2) A description of the vehicle;

- (3) The name and address of the person from whom purchased;
- (4) The name of the legal owner, if any;
- (5) The name and address of the purchaser or lessee;
- (6) If purchased from a dealer, the name, business address, dealer license number, and resale tax number of the dealer;
- (7) The price paid for the vehicle and the method of payment;
- (8) The vehicle odometer disclosure statement given by the seller to the dealer, and the vehicle odometer disclosure statement given by the dealer to the purchaser or lessee;
- (9) The written agreement to allow a dealer to sell between the dealer and the consignor, or the listing dealer and the seller;
- (10) Trust account records of receipts, deposits, and withdrawals;
- (11) All sale documents, which shall show the full name of dealer employees involved in the sale or lease; and
- (12) Any additional information the department may require. However, the department may not require a dealer to collect or retain the hardback copy of a temporary license permit after the permanent license plates for a vehicle have been provided to the purchaser or lessee, if the dealer maintains some other copy of the temporary license permit together with a log of the permits issued.

Such records shall be maintained separate from all other business records of the dealer. Records older than two years may be kept at a location other than the dealer's place of business if those records are made available in hard copy for inspection within three calendar days, exclusive of Saturday, Sunday, or a legal holiday, after a request by the director or the director's authorized agent. Records kept at the vehicle dealer's place of business must be available for inspection by the director or the director's authorized agent during normal business hours.

Dealers may maintain their recordkeeping and filing systems in accordance with their own particular business needs and practices. Nothing in this chapter requires dealers to maintain their records in any particular order or manner, as long as the records identified in this section are maintained in the dealership's recordkeeping system. [2001 c 272 § 7; 1996 c 282 § 4; 1990 c 238 § 7; 1986 c 241 § 16; 1973 1st ex.s. c 132 § 15; 1961 c 12 § 46.70.120. Prior: 1951 c 150 § 15.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Odometer disclosure statement: RCW 46.12.124.

46.70.122 Duty when purchaser or transferee is a dealer. (1) If the purchaser or transferee is a dealer he or she shall, on selling, leasing, or otherwise disposing of the vehicle, promptly execute the assignment and warranty of title, in such form as the director shall prescribe.

(2) The assignment and warranty shall show any secured party holding a security interest created or reserved at the time of resale or lease, to which shall be attached the assigned certificates of ownership and license registration received by the dealer. The dealer shall mail or deliver them to the department with the transferee's application for the issuance of new certificates of ownership and license registration. The title

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certificate issued for a vehicle possessed by a dealer and subject to a security interest shall be delivered to the secured party who upon request of the dealer's transferee shall, unless the transfer was a breach of the security agreement, either deliver the certificate to the transferee for transmission to the department, or upon receipt from the transferee of the owner's bill of sale or sale document, the transferee's application for a new certificate and the required fee, mail or deliver to the department. Failure of a dealer to deliver the title certificate to the secured party does not affect perfection of the security interest. [2001 c 272 § 8; 1990 c 238 § 5; 1975 c 25 § 11; 1972 ex.s. c 99 § 3; 1967 c 140 § 2; 1961 c 12 § 46.12.120. Prior: 1959 c 166 § 10; prior: 1947 c 164 § 4(c); 1937 c 188 § 6(c); Rem. Supp. 1947 § 6312-6(c). Formerly RCW 46.12.120.]

Effective date, implementation—1990 c 238: See note following RCW 46.12.030.

Effective date—1967 c 140: See note following RCW 46.12.010.

Definitions: RCW 46.12.005.

46.70.124 Evidence of ownership for dealers' used vehicles—Consignments. Vehicle dealers shall possess a separate certificate of ownership or other evidence of ownership approved by the department for each used vehicle kept in the dealer's possession. Evidence of ownership shall be either in the name of the dealer or in the name of the dealer's immediate vendor properly assigned. In the case of consigned vehicles, the vehicle dealer may possess a completed consignment contract that includes a guaranteed title from the seller in lieu of the required certificate of ownership. [1994 c 262 § 11; 1990 c 250 § 29; 1961 c 12 § 46.12.140. Prior: 1959 c 166 § 12; prior: 1947 c 164 § 4(e); 1937 c 188 § 6(e); Rem. Supp. 1947 § 6312-6(e). Formerly RCW 46.12.140.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.70.125 Used vehicles—Asking price, posting or disclosure. A vehicle dealer who sells used vehicles shall either display on the vehicle, or disclose upon request, the written asking price of a specific vehicle offered for sale by the dealer as of that time.

A violation of this section is an unfair business practice under chapter 19.86 RCW, the Consumer Protection Act, and the provisions of chapter 46.70 RCW. [1986 c 165 § 1.]

46.70.130 Details of charges must be furnished buyer or mortgagor. (1) Before the execution of a contract or chattel mortgage or the consummation of the sale or lease of any vehicle, the seller must furnish the buyer or lessee an itemization in writing signed by the seller separately disclosing to the buyer or lessee the finance charge, insurance costs, taxes, and other charges which are paid or to be paid by the buyer or lessee.

(2) Notwithstanding subsection (1) of this section, an itemization of the various license and title fees paid or to be paid by the buyer or lessee, which itemization must be the same as that disclosed on the registration/application for title document issued by the department, may be required only on the title application at the time the application is submitted for title transfer. A vehicle dealer may not be required to separately or individually itemize the license and title fees on

any other document, including but not limited to the purchase order and lease agreement. No fee itemization may be required on the temporary permit. [2001 c 272 § 9; 1996 c 282 § 5; 1973 1st ex.s. c 132 § 16; 1961 c 12 § 46.70.130. Prior: 1951 c 150 § 16.]

46.70.132 Manufactured home sale—Implied warranty. (1) In addition to the requirements contained in RCW 46.70.135, each sale of a new manufactured home in this state is made with an implied warranty that the manufactured home conforms in all material aspects to applicable federal and state laws and regulations establishing standards of safety or quality, and with implied warranties of merchantability and fitness for a particular purpose as permanent housing in the climate of the state.

(2) The implied warranties contained in this section may not be waived, limited, or modified. Any provision that attempts to waive, limit, or modify the implied warranties contained in this section is void and unenforceable. [1994 c 284 § 9.]

Severability—Effective date—1994 c 284: See RCW 43.22A.900 and 43.22A.901.

46.70.134 Manufactured home installation—Warranty, state installation code. Any dealer, manufacturer, or contractor who installs a manufactured home warrants that the manufactured home is installed in accordance with the state installation code, chapter 296-150B WAC. The warranty contained in this section may not be waived, limited, or modified. Any provision attempting to waive, limit, or modify the warranty contained in this section is void and unenforceable. This section does not apply when the manufactured home is installed by the purchaser of the home. [1994 c 284 § 10.]

Severability—Effective date—1994 c 284: See RCW 43.22A.900 and 43.22A.901.

46.70.135 Mobile homes—Warranties and inspections—Delivery—Occupancy—Advertising of dimensions. Mobile home manufacturers and mobile home dealers who sell mobile homes to be assembled on site and used as residences in this state shall conform to the following requirements:

(1) No new manufactured home may be sold unless the purchaser is provided with a manufacturer's written warranty for construction of the home in compliance with the Magnuson-Moss Warranty Act (88 Stat. 2183; 15 U.S.C. Sec. 47 et seq.; 15 U.S.C. Sec. 2301 et seq.).

(2) No new manufactured home may be sold unless the purchaser is provided with a dealer's written warranty for all installation services performed by the dealer.

(3) The warranties required by subsections (1) and (2) of this section shall be valid for a minimum of one year measured from the date of delivery and shall not be invalidated by resale by the original purchaser to a subsequent purchaser or by the certificate of ownership being eliminated or not issued as described in chapter 65.20 RCW. Copies of the warranties shall be given to the purchaser upon signing a purchase agreement and shall include an explanation of remedies available to the purchaser under state and federal law for breach of warranty, the name and address of the federal

department of housing and urban development and the state departments of licensing and labor and industries, and a brief description of the duties of these agencies concerning mobile homes.

(4) Warranty service shall be completed within forty-five days after the owner gives written notice of the defect unless there is a bona fide dispute between the parties. Warranty service for a defect affecting health or safety shall be completed within seventy-two hours of receipt of written notice. Warranty service shall be performed on site and a written work order describing labor performed and parts used shall be completed and signed by the service agent and the owner. If the owner's signature cannot be obtained, the reasons shall be described on the work order. Work orders shall be retained by the dealer or manufacturer for a period of three years.

(5) Before delivery of possession of the home to the purchaser, an inspection shall be performed by the dealer or his or her agent and by the purchaser or his or her agent which shall include a test of all systems of the home to insure proper operation, unless such systems test is delayed pursuant to this subsection. At the time of the inspection, the purchaser shall be given copies of all documents required by state or federal agencies to be supplied by the manufacturer with the home which have not previously been provided as required under subsection (3) of this section, and the dealer shall complete any required purchaser information card and forward the card to the manufacturer. A purchaser is deemed to have taken delivery of the manufactured home when all three of the following events have occurred: (a) The contractual obligations between the purchaser and the seller have been met; (b) the inspection of the home is completed; and (c) the systems test of the home has been completed subsequent to the installation of the home, or fifteen days has elapsed since the transport of the home to the site where it will be installed, whichever is earlier. Occupancy of the manufactured home shall only occur after the systems test has occurred and all required utility connections have been approved after inspection.

(6) Manufacturer and dealer advertising which states the dimensions of a home shall not include the length of the draw bar assembly in a listed dimension, and shall state the square footage of the actual floor area. [1994 c 284 § 11; 1989 c 343 § 22; 1981 c 304 § 36.]

Severability—Effective date—1994 c 284: See RCW 43.22A.900 and 43.22A.901.

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

Severability—1981 c 304: See note following RCW 26.16.030.

Manufactured home installation and warranty service: RCW 43.22.440, 43.22.442.

Manufactured home safety and construction standards, inspections, etc.: RCW 43.22.431 through 43.22.434.

46.70.137 Violations relating to mobile/manufactured homes. See RCW 18.27.117.

46.70.140 Handling "hot" vehicles—Unreported motor "switches"—Unauthorized use of dealer plates—Penalty. Any vehicle dealer who knowingly or with reason to know, buys or receives, sells or disposes of, conceals or has in the dealer's possession, any vehicle from which the

motor or serial number has been removed, defaced, covered, altered, or destroyed, or any dealer, who removes from or installs in any motor vehicle registered with the department by motor block number, a new or used motor block without immediately notifying the department of such fact upon a form provided by the department, or any vehicle dealer who loans or permits the use of vehicle dealer license plates by any person not entitled to the use thereof, is guilty of a gross misdemeanor. [1993 c 307 § 9; 1973 1st ex.s. c 132 § 17; 1971 ex.s. c 74 § 8; 1967 c 32 § 79; 1961 c 12 § 46.70.140. Prior: 1951 c 150 § 11.]

46.70.160 Rules and regulations. The director may make any reasonable rules and regulations not inconsistent with the provisions of chapter 46.70 RCW relating to the enforcement and proper operation thereof. [1961 c 12 § 46.70.160. Prior: 1959 c 166 § 21.]

46.70.170 Penalty for violations. It is a misdemeanor for any person to violate any of the provisions of this chapter, except where expressly provided otherwise, and the rules adopted as provided under this chapter. [1986 c 241 § 17; 1965 c 68 § 5.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.70.180 Unlawful acts and practices. Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2)(a) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state,

unless such amount has in fact been paid by the dealer prior to such sale. However, an amount not to exceed fifty dollars per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The documentary service fee is not represented to the purchaser or lessee as a fee or charge required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount up to fifty dollars may be added to the sale price or the capitalized cost.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold or leased to a person for a consideration and upon further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser or lessee being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law,

and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

When a dealer informs a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by an electronic mail message, the dealer must also transmit the communication by any additional means;

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or

reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the

purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section. [2007 c 155 § 2; 2006 c 289 § 1; 2003 c 368 § 1. Prior: 2001 c 272 § 10; 2001 c 64 § 9; 1999 c 398 § 10; 1997 c 153 § 1; 1996 c 194 § 3; 1995 c 256 § 26; 1994 c 284 § 13; 1993 c 175 § 3; 1990 c 44 § 14; 1989 c 415 § 20; 1986 c 241 § 18; 1985 c 472 § 13; 1981 c 152 §

6; 1977 ex.s. c 125 § 4; 1973 1st ex.s. c 132 § 18; 1969 c 112 § 1; 1967 ex.s. c 74 § 16.]

Effective date—2007 c 155: See note following RCW 46.16.045.

Prospective application—2006 c 289: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is substantive) or that are commenced (if change is procedural) on or after June 7, 2006." [2006 c 289 § 2.]

Severability—Effective date—1994 c 284: See RCW 43.22A.900 and 43.22A.901.

Severability—1990 c 44: See RCW 19.116.900.

Severability—1989 c 415: See RCW 46.96.900.

Certificate of ownership—Failure to transfer within specified time: RCW 46.12.101.

Glass—Limited windows—Vehicle sale requirements: RCW 46.37.430.

Odometers—Disconnecting, resetting, turning back, replacing without notifying purchaser: RCW 46.37.540 through 46.37.570.

Tires—Vehicle sale requirements: RCW 46.37.425.

46.70.183 Notice of bankruptcy proceedings. Any vehicle dealer or manufacturer, by or against whom a petition in bankruptcy has been filed, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1981 c 152 § 7.]

46.70.190 Civil actions for violations—Injunctions—Claims under Federal Automobile Dealer Franchise Act—Time limitation. Any person who is injured in his business or property by a violation of this chapter, or any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.

If a new motor vehicle dealer recovers a judgment or has a claim dismissed with prejudice against a manufacturer under RCW 46.96.040 or 46.96.050(3) or this section, the new motor vehicle dealer is precluded from pursuing that same claim or recovering judgment for that same claim against the same manufacturer under the federal Automobile Dealer Franchise Act, 15 U.S.C. Sections 1221 through 1225, but only to the extent that the damages recovered by or denied to the new motor vehicle dealer are the same as the damages being sought under the federal Automobile Dealer Franchise Act. Likewise, if a new motor vehicle dealer recovers a judgment or has a claim dismissed with prejudice against a manufacturer under the federal Automobile Dealer Franchise Act, the dealer is precluded from pursuing that same claim or recovering judgment for that same claim against the same manufacturer under this chapter, but only to the extent that the damages recovered by or denied to the dealer are the same as the damages being sought under this chapter.

A civil action brought in the superior court pursuant to the provisions of this section must be filed no later than one year following the alleged violation of this chapter. [1989 c 415 § 21; 1986 c 241 § 19; 1973 1st ex.s. c 132 § 19; 1967 ex.s. c 74 § 21.]

Severability—1989 c 415: See RCW 46.96.900.

46.70.220 Duties of attorney general and prosecuting attorneys to act on violations—Limitation of civil actions.

The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice herein prohibited or declared unlawful: PROVIDED, That this chapter shall be considered in conjunction with chapter 9.04 RCW, 19.86 RCW and 63.14 RCW and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter: PROVIDED FURTHER, That any action to enforce a claim for civil damages under chapter 19.86 RCW shall be forever barred unless commenced within six years after the cause of action accrues. [1967 ex.s. c 74 § 19.]

46.70.230 Duties of attorney general and prosecuting attorneys to act on violations—Assurance of compliance—Filing.

In the enforcement of this chapter, the attorney general and/or any said prosecuting attorney may accept an assurance of compliance with the provisions of this chapter from any person deemed in violation hereof. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. [1967 ex.s. c 74 § 20.]

46.70.240 Penalties—Jurisdiction.

Any person who violates the terms of any court order, or temporary or permanent injunction issued pursuant to this chapter, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state, or any person who pursuant to RCW 46.70.190 has secured the injunction violated, may petition for the recovery of civil penalties. [1967 ex.s. c 74 § 22.]

46.70.250 Personal service of process outside state.

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1967 ex.s. c 74 § 23.]

46.70.260 Application of chapter to existing and future franchises and contracts.

The provisions of this chapter shall be applicable to all franchises and contracts existing between vehicle dealers and manufacturers or factory branches and to all future franchises and contracts. [1986 c 241 § 22; 1967 ex.s. c 74 § 24.]

46.70.270 Provisions of chapter cumulative—Violation of RCW 46.70.180 deemed civil. The provisions of this chapter shall be cumulative to existing laws: PROVIDED, That the violation of RCW 46.70.180 shall be construed as exclusively civil and not penal in nature. [1967 ex.s. c 74 § 25.]

46.70.290 Mobile homes and persons engaged in distribution and sale. The provisions of chapter 46.70 RCW shall apply to the distribution and sale of mobile homes and to mobile home dealers, distributors, manufacturers, factory representatives, or other persons engaged in such distribution and sale to the same extent as for motor vehicles. [1993 c 307 § 10; 1971 ex.s. c 231 § 23.]

Effective date—1971 ex.s. c 231: See note following RCW 46.01.130.

46.70.300 Chapter exclusive—Local business and occupation tax not prevented. (1) The provisions of this chapter relating to the licensing and regulation of vehicle dealers and manufacturers shall be exclusive, and no county, city, or other political subdivision of this state shall enact any laws, rules, or regulations licensing or regulating vehicle dealers or manufacturers.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon vehicle dealers or manufacturers maintaining an office within that political subdivision if a business and occupation tax is levied by such a political subdivision upon other types of businesses within its boundaries. [1993 c 307 § 11; 1981 c 152 § 2.]

46.70.310 Consumer Protection Act. Any violation of this chapter is deemed to affect the public interest and constitutes a violation of chapter 19.86 RCW. [1986 c 241 § 23.]

46.70.320 Buyer's agents. The regulation of buyers' agents is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Activities of buyers' agents prohibited under RCW 46.70.180 (11), (12), or (13) are not reasonable in relation to the development and preservation of business. A violation of RCW 46.70.180 (11), (12), or (13) constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW. [1993 c 175 § 4.]

46.70.330 Wholesale motor vehicle auction dealers.

(1) A wholesale motor vehicle auction dealer may:

- (a) Sell any classification of motor vehicle;
- (b) Sell only to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state; or

(c) Sell a motor vehicle belonging to the United States government, the state of Washington, or a political subdivision to nonlicensed persons as may be required by the contracting public agency. However, a publicly owned "wrecked vehicle" as defined in RCW 46.80.010 may be sold to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state.

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(2) If the wholesale motor vehicle auction dealer knows that a vehicle is a "wrecked vehicle" as defined by RCW 46.80.010, the dealer must disclose this fact on the bill of sale. [1998 c 282 § 2.]

46.70.340 Issuance of temporary subagency licenses for recreational vehicle shows.

(1)(a) Before the department may issue a temporary subagency license to a recreational vehicle dealer engaged in offering new or new and used recreational vehicles for sale at a recreational vehicle show, a recreational vehicle dealer of new or new and used recreational vehicles shall submit to the department a manufacturer's written authorization for the sale and specifying the dates of the show, the location of the show, and the identity of the manufacturer's brand or model names of the new or used recreational vehicles.

(b) The department may issue a temporary subagency license if the location of the show is within fifty miles of the recreational vehicle dealer's established place of business or permanent location. The department may issue a temporary subagency license for a show outside fifty miles of the recreational vehicle dealer's established place of business or permanent location only if the product represented is new and is within the factory designated sales territory for each brand of new recreational vehicles to be offered for sale, and only those specific brands of new recreational vehicles may be offered for sale under the terms of the temporary subagency license.

(2) Whenever three or fewer recreational vehicle dealers participate in a show under a temporary subagency license issued under this section, each recreational vehicle dealer shall conspicuously include all of the following information in all advertising and promotional materials designed to attract the public to attend the show:

(a) Each recreational vehicle dealer's business name and the location of the recreational vehicle dealer's established place of business must be printed in a size equivalent to the second largest type used in the advertisement and must be placed at the top of the advertisement; and

(b) The manufacturer's brand or model names of those new recreational vehicles being offered for sale; and

(c) If the recreational vehicles being offered for sale are used, the word "used" must immediately precede the identification of the brand name of the model or be immediately adjacent to the depiction of used vehicles.

(3) Notwithstanding other provisions of this chapter, no more than two temporary subagency licenses may be issued to a recreational vehicle dealer engaged in offering new or new and used recreational vehicles for sale for events with three or fewer recreational vehicle dealers participating, and no more than six temporary subagency licenses may be issued to a recreational vehicle dealer in any twelve-month period for events including four or more recreational vehicle dealers.

(4) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce and an unfair method of competition for the

purpose of applying the consumer protection act, chapter 19.86 RCW. [2006 c 364 § 2.]

46.70.900 Liberal construction. All provisions of this chapter shall be liberally construed to the end that deceptive practices or commission of fraud or misrepresentation in the sale, lease, barter, or disposition of vehicles in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, leasing, bartering, or otherwise dealing in vehicles in this state and reliable persons may be encouraged to engage in the business of selling, leasing, bartering and otherwise dealing in vehicles in this state: PROVIDED, That this chapter shall not apply to printers, publishers, or broadcasters who in good faith print, publish or broadcast material without knowledge of its deceptive character. [2001 c 272 § 11; 1973 1st ex.s. c 132 § 20; 1967 ex.s. c 74 § 2.]

46.70.910 Severability—1967 ex.s. c 74. If any provision of this amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby. [1967 ex.s. c 74 § 28.]

46.70.920 Severability—1973 1st ex.s. c 132. If any provision of this 1973 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this 1973 amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby. [1973 1st ex.s. c 132 § 21.]

Chapter 46.71 RCW AUTOMOTIVE REPAIR

Sections

46.71.005	Legislative recognition.
46.71.011	Definitions.
46.71.015	Estimates—Invoices—Recordkeeping requirements.
46.71.021	Disposition of replaced parts.
46.71.025	Estimate required—Alternatives—Authorization to exceed.
46.71.031	Required signs.
46.71.035	Failure to comply with estimate requirements.
46.71.041	Liens barred for failure to comply.
46.71.045	Unlawful acts or practices.
46.71.051	Copy of warranty.
46.71.060	Retention of price estimates and invoices.
46.71.070	Consumer Protection Act—Defense.
46.71.080	Notice of chapter to vehicle owners.
46.71.090	Notice of chapter to repair facilities.

Vehicle warranties (Lemon law): Chapter 19.118 RCW.

46.71.005 Legislative recognition. The automotive repair industry supports good communication between auto repair facilities and their customers. The legislature recognizes that improved communications and accurate representations between automotive repair facilities and the customers will: Increase consumer confidence; reduce the likelihood of disputes arising; clarify repair facility lien interests; and promote fair and nondeceptive practices, thereby enhancing the safety and reliability of motor vehicles serviced by

auto repair facilities in the state of Washington. [1993 c 424 § 1.]

Severability—1993 c 424: "If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to persons and circumstances shall not be affected thereby." [1993 c 424 § 15.]

Effective date—1993 c 424: "This act shall take effect January 1, 1994." [1993 c 424 § 18.]

46.71.011 Definitions.

For purposes of this chapter:

(1) An "aftermarket body part" or "nonoriginal equipment manufacturer body part" is an exterior body panel or nonstructural body component manufactured by someone other than the original equipment manufacturer and supplied through suppliers other than those in the manufacturer's normal distribution channels.

(2) "Automotive repair" includes but is not limited to:

(a) All repairs to vehicles subject to chapter 46.16 RCW that are commonly performed in a repair facility by a motor vehicle technician including the diagnosis, installation, exchange, or repair of mechanical or electrical parts or units for any vehicle, the performance of any electrical or mechanical adjustment to any vehicle, or the performance of any service work required for routine maintenance or repair of any vehicle. However, commercial fleet repair or maintenance transactions involving two or more vehicles or ongoing service or maintenance contracts involving vehicles used primarily for business purposes are not included;

(b) All work in facilities that perform one or more specialties within the automotive repair service industry including, but not limited to, body collision repair, refinishing, brake, electrical, exhaust repair or installation, frame, uni-body, front-end, radiators, tires, transmission, tune-up, and windshield; and

(c) The removal, replacement, or repair of exterior body panels, the removal, replacement, or repair of structural and nonstructural body components, the removal, replacement, or repair of collision damaged suspension components, and the refinishing of automotive components.

(3) "Automotive repair facility" or "repair facility" means any person, firm, association, or corporation who for compensation engages in the business of automotive repair or diagnosis, or both, of malfunctions of motor vehicles subject to licensure under chapter 46.16 RCW and repair and refinishing auto-body collision damage as well as overall refinishing and cosmetic repairs.

(4) A "rebuilt" part consists of a used assembly that has been dismantled and inspected with only the defective parts being replaced.

(5) A "remanufactured" part consists of a used assembly that has been dismantled with the core parts being remachined and all other parts replaced with new parts so as to provide performance comparable to that found originally. [1993 c 424 § 2.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.015 Estimates—Invoices—Recordkeeping requirements. (1) Except as otherwise provided in RCW 46.71.025, all estimates that exceed one hundred dollars shall

be in writing and include the following information: The date; the name, address, and telephone number of the repair facility; the name, address, and telephone number, if available, of the customer or the customer's designee; if the vehicle is delivered for repair, the year, make, and model of the vehicle, the vehicle license plate number or last eight digits of the vehicle identification number, and the odometer reading of the vehicle; a description of the problem reported by the customer or the specific repairs requested by the customer; and a choice of alternatives described in RCW 46.71.025.

(2) Whether or not a written estimate is required, parts and labor provided by an automotive repair facility shall be clearly and accurately recorded in writing on an invoice and shall include, in addition to the information listed in subsection (1) of this section, the following information: A description of the repair or maintenance services performed on the vehicle; a list of all parts supplied, identified by name and part number, if available, part kit description or recognized package or shop supplies, if any, and an indication whether the parts supplied are rebuilt, or used, if applicable or where collision repair is involved, aftermarket body parts or non-original equipment manufacturer body parts, if applicable; the price per part charged, if any, and the total amount charged for all parts; the total amount charged for all labor, if any; and the total charge. Parts and labor do not need to be separately disclosed if pricing is expressed as an advertised special by the job, a prediscovered written repair menu item, or a routine service package.

(3) Notwithstanding subsection (2) of this section, if the repair work is performed under warranty or without charge to the customer, other than an applicable deductible, the repair facility shall provide either an itemized list of the parts supplied, or describe the service performed on the vehicle, but the repair facility is not required to provide any pricing information for parts or labor.

(4) A copy of the estimate, unless waived, shall be provided to the customer or customer's designee prior to providing parts or labor as required under RCW 46.71.025. A copy of the invoice shall be provided to the customer upon completion of the repairs.

(5) Only material omissions, under this section, are actionable in a court of law or equity. [1993 c 424 § 3.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.021 Disposition of replaced parts. Except for parts covered by a manufacturer's or other warranty or parts that must be returned to a distributor, remanufacturer, or rebuilder, the repair facility shall return replaced parts to the customer at the time the work is completed if the customer requested the parts at the time of authorization of the repair. If a customer at the time of authorization of the repair requests the return of a part that must be returned to the manufacturer, remanufacturer, distributor, recycler, or rebuilder, or must be disposed of as required by law, the repair facility shall offer to show the part to the customer. The repair facility need not show a replaced part if no charge is being made for the replacement part. [1993 c 424 § 4.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.025 Estimate required—Alternatives—Authorization to exceed. (1) Except as provided in subsection (3) of this section, a repair facility prior to providing parts or labor shall provide the customer or the customer's designee with a written price estimate of the total cost of the repair, including parts and labor, or where collision repair is involved, aftermarket body parts or nonoriginal equipment manufacturer body parts, if applicable, or offer the following alternatives:

"YOU ARE ENTITLED TO A WRITTEN PRICE ESTIMATE FOR THE REPAIRS YOU HAVE AUTHORIZED. YOU ARE ALSO ENTITLED TO REQUIRE THE REPAIR FACILITY TO OBTAIN YOUR ORAL OR WRITTEN AUTHORIZATION TO EXCEED THE WRITTEN PRICE ESTIMATE. YOUR SIGNATURE OR INITIALS WILL INDICATE YOUR SELECTION.

1. I request an estimate in writing before you begin repairs. Contact me if the price will exceed this estimate by more than ten percent.
2. Proceed with repairs but contact me if the price will exceed \$.
3. I do not want a written estimate.

..... (Initial or signature)
Date: Time:"

(2) The repair facility may not charge the customer more than one hundred ten percent, exclusive of retail sales tax, of the total shown on the written price estimate. Neither of these limitations apply if, before providing additional parts or labor the repair facility obtains either the oral or written authorization of the customer, or the customer's designee, to exceed the written price estimate. The repair facility or its representative shall note on the estimate the date and time of obtaining an oral authorization, the additional parts and labor required, the estimated cost of the additional parts and labor, or where collision repair is involved, aftermarket body parts or non-original equipment manufacturer body parts, if applicable, the name or identification number of the employee who obtains the authorization, and the name and telephone number of the person authorizing the additional costs.

(3) A written estimate shall not be required when the customer's motor vehicle or component has been brought to an automotive repair facility's regular place of business without face-to-face contact between the customer and the repair facility. Face-to-face contact means actual in-person discussion between the customer or his or her designee and the agent or employee of the automotive repair facility authorized to intake vehicles or components. However, prior to providing parts and labor, the repair facility must obtain either the oral or written authorization of the customer or the customer's designee. The repair facility or its representative shall note on the estimate or repair order the date and time of obtaining an oral authorization, the total amount authorized, the name or identification number of the employee who obtains the authorization, and the name of the person authorizing the repairs. [1993 c 424 § 5.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.031 Required signs. An automotive repair facility shall post in a prominent place on the business premises one or more signs, readily visible to customers, in the following form:

"YOUR CUSTOMER RIGHTS

YOU ARE ENTITLED BY LAW TO:

1. A WRITTEN ESTIMATE FOR REPAIRS WHICH WILL COST MORE THAN ONE HUNDRED DOLLARS, UNLESS WAIVED OR ABSENT FACE-TO-FACE CONTACT (SEE ITEM 4 BELOW);
2. RETURN OR INSPECTION OF ALL REPLACED PARTS, IF REQUESTED AT TIME OF REPAIR AUTHORIZATION;
3. AUTHORIZE ORALLY OR IN WRITING ANY REPAIRS WHICH EXCEED THE ESTIMATED TOTAL PRESALES TAX COST BY MORE THAN TEN PERCENT;
4. AUTHORIZE ANY REPAIRS ORALLY OR IN WRITING IF YOUR VEHICLE IS LEFT WITH THE REPAIR FACILITY WITHOUT FACE-TO-FACE CONTACT BETWEEN YOU AND THE REPAIR FACILITY PERSONNEL.

IF YOU HAVE AUTHORIZED A REPAIR IN ACCORDANCE WITH THE ABOVE INFORMATION YOU ARE REQUIRED TO PAY FOR THE COSTS OF THE REPAIR PRIOR TO TAKING THE VEHICLE FROM THE PREMISES."

The first line of each sign shall be in letters not less than one and one-half inch in height and the remaining lines shall be in letters not less than one-half inch in height. [1993 c 424 § 6.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.035 Failure to comply with estimate requirements. An automotive repair facility that fails to comply with the estimate requirements of RCW 46.71.025 is barred from recovering in an action to recover for automotive repairs any amount in excess of one hundred ten percent of the amount authorized by the customer, or the customer's designee, unless the repair facility proves by a preponderance of the evidence that its conduct was reasonable, necessary, and justified under the circumstances. In an action to recover for automotive repairs the prevailing party may, at the discretion of the court, recover the costs of the action and reasonable attorneys' fees. [1993 c 424 § 7.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.041 Liens barred for failure to comply. A repair facility that fails to comply with RCW 46.71.021, 46.71.025, or 46.71.031 is barred from asserting a possessory or chattel lien for the amount of the unauthorized parts or labor upon the motor vehicle or component. [1993 c 424 § 8.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.045 Unlawful acts or practices. Each of the following acts or practices are unlawful:

(1) Advertising that is false, deceptive, or misleading. A single or isolated media mistake does not constitute a false, deceptive, or misleading statement or misrepresentation under this section;

(2) Materially understating or misstating the estimated price for a specified repair procedure;

(3) Retaining payment from a customer for parts not delivered or installed or a labor operation or repair procedure that has not actually been performed;

(4) Unauthorized operation of a customer's vehicle for purposes not related to repair or diagnosis;

(5) Failing or refusing to provide a customer, upon request, a copy, at no charge, of any document signed by the customer;

(6) Retaining duplicative payment from both the customer and the warranty or extended service contract provider for the same covered component, part, or labor;

(7) Charging a customer for unnecessary repairs. For purposes of this subsection "unnecessary repairs" means those for which there is no reasonable basis for performing the service. A reasonable basis includes, but is not limited to: (a) That the repair service is consistent with specifications established by law or the manufacturer of the motor vehicle, component, or part; (b) that the repair is in accordance with accepted industry standards; or (c) that the repair was performed at the specific request of the customer. [1993 c 424 § 9.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.051 Copy of warranty. The repair facility shall make available, upon request, a copy of any express warranty provided by the repair facility to the customer that covers repairs performed on the vehicle. [1993 c 424 § 10.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.060 Retention of price estimates and invoices. Every automotive repair facility shall retain and make available for inspection, upon request by the customer or the customer's authorized representative, true copies of the written price estimates and invoices required under this chapter for at least one year after the date on which the repairs were performed. [1993 c 424 § 11; 1982 c 62 § 7; 1977 ex.s. c 280 § 6.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.070 Consumer Protection Act—Defense. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. In an action under chapter 19.86 RCW due to an automotive repair facility's charging a customer an amount in excess of one

hundred ten percent of the amount authorized by the customer, a violation shall not be found if the automotive repair facility proves by a preponderance of the evidence that its conduct was reasonable, necessary, and justified under the circumstances.

Notwithstanding RCW 46.64.050, no violation of this chapter shall give rise to criminal liability under that section. [1993 c 424 § 12; 1982 c 62 § 9; 1977 ex.s. c 280 § 7.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

46.71.080 Notice of chapter to vehicle owners. Whenever a vehicle license renewal form under RCW 46.16.210 is given to the registered owner of any vehicle, the department of licensing shall give to the owner written notice of the provisions of this chapter in a manner prescribed by the director of licensing. [1982 c 62 § 10.]

46.71.090 Notice of chapter to repair facilities. When the department of revenue issues a registration certificate under RCW 82.32.030 to an automotive repair facility, it shall give written notice to the person of the requirements of this chapter in a manner prescribed by the director of revenue. The department of revenue shall thereafter give the notice on an annual basis in conjunction with the business and occupation tax return provided to each person holding a registration certificate as an automotive repair facility. [1993 c 424 § 13; 1982 c 62 § 11.]

Severability—Effective date—1993 c 424: See notes following RCW 46.71.005.

Chapter 46.72 RCW

TRANSPORTATION OF PASSENGERS IN FOR HIRE VEHICLES

Sections

46.72.001	Finding and intent.
46.72.010	Definitions.
46.72.020	Permit required—Form of application.
46.72.030	Permit fee—Issuance—Display.
46.72.040	Surety bond.
46.72.050	Liability coverage—Right of action saved.
46.72.060	Right of action—Limitation of recovery.
46.72.070	Certificate—Fee.
46.72.080	Substitution of security—New certificate.
46.72.100	Unprofessional conduct—Bond/insurance policy—Penalty.
46.72.110	Fees to highway safety fund.
46.72.120	Rules.
46.72.130	Nonresident taxicabs—Permit—Fee—Compliance.
46.72.140	Nonresident taxicabs—Permit required for entry.
46.72.150	Nonresident taxicabs—Reciprocity.
46.72.160	Local regulation.
46.72.170	Joint regulation.
46.72.180	Uniform regulation of business and professions act.

Age of drivers of for hire vehicles: RCW 46.20.045.

Taxicab companies, local regulation: Chapter 81.72 RCW.

46.72.001 Finding and intent. The legislature finds and declares that privately operated for hire transportation service is a vital part of the transportation system within the state. Consequently, the safety, reliability, and stability of privately operated for hire transportation services are matters of statewide importance. The regulation of privately operated for hire transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to

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permit political subdivisions of the state to regulate for hire transportation services without liability under federal anti-trust laws. [1996 c 87 § 17.]

46.72.010 Definitions. When used in this chapter:

(1) The term "for hire vehicle" includes all vehicles used for the transportation of passengers for compensation, except auto stages, school buses operating exclusively under a contract to a school district, ride-sharing vehicles under chapter 46.74 RCW, limousine carriers licensed under chapter 46.72A RCW, vehicles used by nonprofit transportation providers for elderly or handicapped persons and their attendants under chapter 81.66 RCW, vehicles used by auto transportation companies licensed under chapter 81.68 RCW, vehicles used to provide courtesy transportation at no charge to and from parking lots, hotels, and rental offices, and vehicles used by charter party carriers of passengers and excursion service carriers licensed under chapter 81.70 RCW;

(2) The term "for hire operator" means and includes any person, concern, or entity engaged in the transportation of passengers for compensation in for hire vehicles. [1996 c 87 § 18; 1991 c 99 § 1; 1979 c 111 § 14; 1961 c 12 § 46.72.010. Prior: 1947 c 253 § 1; Rem. Supp. 1947 § 6386-1. Formerly RCW 81.72.010.]

Severability—1979 c 111: See note following RCW 46.74.010.

46.72.020 Permit required—Form of application. No for hire operator shall cause operation of a for hire vehicle upon any highway of this state without first obtaining a permit from the director of licensing, except for those for hire operators regulated by cities or counties in accordance with chapter 81.72 RCW. Application for a permit shall be made on forms provided by the director and shall include (1) the name and address of the owner or owners, and if a corporation, the names and addresses of the principal officers thereof; (2) city, town or locality in which any vehicle will be operated; (3) name and motor number of any vehicle to be operated; (4) the endorsement of a city official authorizing an operator under a law or ordinance requiring a license; and (5) such other information as the director may require. [1992 c 114 § 1; 1979 c 158 § 188; 1967 c 32 § 80; 1961 c 12 § 46.72.020. Prior: 1947 c 253 § 2; Rem. Supp. 1947 § 6386-2; prior: 1915 c 57 § 1; RRS § 6382. Formerly RCW 81.72.020.]

46.72.030 Permit fee—Issuance—Display. Application for a permit shall be forwarded to the director with a fee. Upon receipt of such application and fee, the director shall, if such application be in proper form, issue a permit authorizing the applicant to operate for hire vehicles upon the highways of this state until such owner ceases to do business as such, or until the permit is suspended or revoked. Such permit shall be displayed in a conspicuous place in the principal place of business of the owner. [1992 c 114 § 2; 1967 c 32 § 81; 1961 c 12 § 46.72.030. Prior: 1947 c 253 § 3; Rem. Supp. 1947 § 6386-3; prior: 1933 c 73 § 1, part; 1915 c 57 § 2, part; RRS § 6383, part. Formerly RCW 81.72.030.]

46.72.040 Surety bond. Before a permit is issued every for hire operator shall be required to deposit and thereafter

keep on file with the director a surety bond running to the state of Washington covering each and every for hire vehicle as may be owned or leased by him and used in the conduct of his business as a for hire operator. Such bond shall be in the sum of one hundred thousand dollars for any recovery for death or personal injury by one person, and three hundred thousand dollars for all persons killed or receiving personal injury by reason of one act of negligence, and twenty-five thousand dollars for damage to property of any person other than the assured, with a good and sufficient surety company licensed to do business in this state as surety and to be approved by the director, conditioned for the faithful compliance by the principal of said bond with the provisions of this chapter, and to pay all damages which may be sustained by any person injured by reason of any careless negligence or unlawful act on the part of said principal, his agents or employees in the conduct of said business or in the operation of any motor propelled vehicle used in transporting passengers for compensation on any public highway of this state. [1973 c 15 § 1; 1967 c 32 § 82; 1961 c 12 § 46.72.040. Prior: 1947 c 253 § 4; Rem. Supp. 1947 § 6386-4; prior: 1933 c 73 § 1, part; 1915 c 57 § 2, part; RRS § 6383, part. Formerly RCW 81.72.040.]

46.72.050 Liability coverage—Right of action saved.

In lieu of the surety bond as provided in this chapter, there may be deposited and kept on file and in force with the director a public liability insurance policy covering each and every motor vehicle operated or intended to be so operated, executed by an insurance company licensed and authorized to write such insurance policies in the state of Washington, assuring the applicant for a permit against property damage and personal liability to the public, with the premiums paid and payment noted thereon. Said policy of insurance shall provide a minimum coverage equal and identical to the coverage required by the aforesaid surety bond, specified under the provisions of RCW 46.72.040. No provisions of this chapter shall be construed to limit the right of any injured person to any private right of action against a for hire operator as herein defined. [1973 c 15 § 2; 1967 c 32 § 83; 1961 c 12 § 46.72.050. Prior: 1947 c 253 § 5; Rem. Supp. 1947 § 6386-5. Formerly RCW 81.72.050.]

46.72.060 Right of action—Limitation of recovery.

Every person having a cause of action for damages against any person, firm, or corporation receiving a permit under the provisions of this chapter, for injury, damages or wrongful death caused by any careless, negligent or unlawful act of any such person, firm, or corporation or his, their, or its agents or employees in conducting or carrying on said business or in operating any motor propelled vehicle for the carrying and transporting of passengers over and along any public street, road or highway shall have a cause of action against the principal and surety upon the bond or the insurance company and the insured for all damages sustained, and in any such action the full amount of damages sustained may be recovered against the principal, but the recovery against the surety shall be limited to the amount of the bond. [1961 c 12 § 46.72.060. Prior: 1947 c 253 § 6; Rem. Supp. 1947 § 6386-6; prior:

1929 c 27 § 1; 1927 c 161 § 1; 1915 c 57 § 3; RRS § 6384. Formerly RCW 81.72.060.]

46.72.070 Certificate—Fee. The director shall approve and file all bonds and policies of insurance. The director shall, upon receipt of fees and after approving the bond or policy, furnish the owner with an appropriate certificate which must be carried in a conspicuous place in the vehicle at all times during for hire operation. A for hire operator shall secure a certificate for each for hire vehicle operated and pay therefor a fee for each vehicle so registered. Such permit or certificate shall expire on June 30th of each year, and may be annually renewed upon payment of a fee. [1992 c 114 § 3; 1967 c 32 § 84; 1961 c 12 § 46.72.070. Prior: 1947 c 253 § 7; Rem. Supp. 1947 § 6386-7. Formerly RCW 81.72.070.]

46.72.080 Substitution of security—New certificate.

In the event the owner substitutes a policy or bond after a for hire certificate has been issued, a new certificate shall be issued to the owner. The owner shall submit the substituted bond or policy to the director for approval, together with a fee. If the director approves the substituted policy or bond, a new certificate shall be issued. In the event any certificate has been lost, destroyed or stolen, a duplicate thereof may be obtained by filing an affidavit of loss and paying a fee. [1992 c 114 § 4; 1967 c 32 § 85; 1961 c 12 § 46.72.080. Prior: 1947 c 253 § 8; Rem. Supp. 1947 § 6386-8. Formerly RCW 81.72.080.]

46.72.100 Unprofessional conduct—Bond/insurance policy—Penalty.

(1) In addition to the unprofessional conduct specified in RCW 18.235.130, the director may take disciplinary action if he or she has good reason to believe that one of the following is true of the operator or the applicant for a permit or certificate: (a) He or she is guilty of committing two or more offenses for which mandatory revocation of driver's license is provided by law; (b) he or she has been convicted of vehicular homicide or vehicular assault; (c) he or she is intemperate or addicted to the use of narcotics.

(2) Any for hire operator who operates a for hire vehicle without first having filed a bond or insurance policy and having received a for hire permit and a for hire certificate as required by this chapter is guilty of a gross misdemeanor, and upon conviction shall be punished by imprisonment in jail for a period not exceeding ninety days or a fine of not exceeding five hundred dollars, or both fine and imprisonment. [2003 c 53 § 250; 2002 c 86 § 293; 1983 c 164 § 8; 1967 c 32 § 86; 1961 c 12 § 46.72.100. Prior: 1947 c 253 § 9; Rem. Supp. 1947 § 6386-9; prior: 1915 c 57 § 4; RRS § 6385. Formerly RCW 81.72.100.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

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

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

46.72.110 Fees to highway safety fund. All fees received by the director under the provisions of this chapter shall be transmitted by him, together with a proper identify-

ing report, to the state treasurer to be deposited by the state treasurer in the highway safety fund. [1967 c 32 § 87; 1961 c 12 § 46.72.110. Prior: 1947 c 253 § 10; Rem. Supp. 1947 § 6386-10. Formerly RCW 81.72.110.]

46.72.120 Rules. The director is empowered to make and enforce such rules and regulations, including the setting of fees, as may be consistent with and necessary to carry out the provisions of this chapter. [1992 c 114 § 5; 1967 c 32 § 88; 1961 c 12 § 46.72.120. Prior: 1947 c 253 § 11; Rem. Supp. 1947 § 6386-11. Formerly RCW 81.72.120.]

46.72.130 Nonresident taxicabs—Permit—Fee—Compliance. No operator of a taxicab licensed or possessing a permit in another state to transport passengers for hire, and principally engaged as a for hire operator in another state, shall cause the operation of a taxicab upon any highway of this state without first obtaining an annual permit from the director upon an application accompanied with an annual fee for each taxicab. The issuance of a permit shall be further conditioned upon compliance with this chapter. [1992 c 114 § 6; 1967 c 32 § 89; 1961 c 12 § 46.72.130. Prior: 1953 c 12 § 1; 1951 c 219 § 1. Formerly RCW 81.72.130.]

46.72.140 Nonresident taxicabs—Permit required for entry. All law enforcement officers shall refuse every taxicab entry into this state which does not have a certificate from the director on the vehicle. [1967 c 32 § 90; 1961 c 12 § 46.72.140. Prior: 1951 c 219 § 2. Formerly RCW 81.72.140.]

46.72.150 Nonresident taxicabs—Reciprocity. RCW 46.72.130 and 46.72.140 shall be inoperative to operators of taxicabs residing and licensed in any state which allows Washington operators of taxicabs to use such state's highways free from such regulations. [1961 c 12 § 46.72.150. Prior: 1951 c 219 § 3. Formerly RCW 81.72.150.]

46.72.160 Local regulation. Cities, counties, and port districts may license, control, and regulate all for hire vehicles operating within their respective jurisdictions. The power to regulate includes:

- (1) Regulating entry into the business of providing for hire vehicle transportation services;
- (2) Requiring a license to be purchased as a condition of operating a for hire vehicle and the right to revoke, cancel, or refuse to reissue a license for failure to comply with regulatory requirements;
- (3) Controlling the rates charged for providing for hire vehicle transportation service and the manner in which rates are calculated and collected;
- (4) Regulating the routes and operations of for hire vehicles, including restricting access to airports;
- (5) Establishing safety and equipment requirements; and
- (6) Any other requirements adopted to ensure safe and reliable for hire vehicle transportation service. [1996 c 87 § 19.]

46.72.170 Joint regulation. The department, a city, county, or port district may enter into cooperative agreements (2008 Ed.)

with any other city, town, county, or port district for the joint regulation of for hire vehicles. Cooperative agreements may provide for, but are not limited to, the granting, revocation, and suspension of joint for hire vehicle licenses. [1996 c 87 § 20.]

46.72.180 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 294.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Chapter 46.72A RCW LIMOUSINES

Sections

46.72A.010	Finding and intent.
46.72A.020	Office required—Exception.
46.72A.030	Regulation—Inspection.
46.72A.040	State preemption.
46.72A.050	Business license, vehicle certificates required.
46.72A.060	Insurance—Amount—Penalty.
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46.72A.080	Advertising—Penalty.
46.72A.090	Chauffeurs—Criteria for.
46.72A.100	Unprofessional conduct—Sanctions—Chauffeur.
46.72A.110	Deposit of fees.
46.72A.120	Rules and fees.
46.72A.130	Continued operation of existing limousines.
46.72A.140	Uniform regulation of business and professions act.

46.72A.010 Finding and intent. The legislature finds and declares that privately operated limousine transportation service is a vital part of the transportation system within the state and provides prearranged transportation services to state residents, tourists, and out-of-state business people. Consequently, the safety, reliability, and stability of privately operated limousine transportation services are matters of statewide importance. The regulation of privately operated limousine transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit the department and a port district in a county with a population of one million or more to regulate limousine transportation services without liability under federal antitrust laws. [1996 c 87 § 4.]

Transfer of powers, duties, and functions—1996 c 87: "(1) All powers, duties, and functions of the utilities and transportation commission pertaining to the regulation of limousines and limousine charter party carriers are transferred to the department of licensing. All references to the utilities and transportation commission in the Revised Code of Washington shall be construed to mean the director or the department of licensing when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the department of licensing. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the utilities and transportation commission in carrying out the powers, functions, and duties transferred shall be made available to the department of licensing. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of licensing.

(b) Any appropriations made to the utilities and transportation commission for carrying out the powers, functions, and duties transferred shall, on

June 6, 1996, be transferred and credited to the department of licensing.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the utilities and transportation commission pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the department of licensing. All existing contracts and obligations shall remain in full force and shall be performed by the department of licensing.

(4) The transfer of the powers, duties, and functions of the utilities and transportation commission shall not affect the validity of any act performed before June 6, 1996.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification." [1996 c 87 § 22.]

46.72A.020 Office required—Exception. All limousine carriers must operate from a main office and may have satellite offices. However, no office may be solely in a vehicle of any type. All arrangements for the carrier's services must be made through its offices and dispatched to the carrier's vehicles. Under no circumstances may customers or customers' agents make arrangements for immediate rental of a carrier's vehicle with the driver of the vehicle, even if the driver is an owner or officer of the company, with the single exception of stand-hail limousines only at a facility owned and operated by a port district in a county with a population of one million or more that are licensed and restricted by the rules and policies set forth by the port district. [1996 c 87 § 5.]

46.72A.030 Regulation—Inspection. (1) The department, in conjunction with the Washington state patrol, shall regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The department shall adopt rules and require such reports as are necessary to carry out this chapter.

(2) In addition, a port district in a county with a population of one million or more may regulate limousine carriers with respect to entry, safety of equipment, chauffeur qualifications, and operations. The county in which the port district is located may adopt ordinances and rules to assist the port district in enforcement of limousine regulations only at port facilities. In no event may this be construed to grant the county the authority to regulate limousines within its jurisdiction. The port district may not set limousine rates, but the limousine carriers shall file their rates and schedules with the port district.

(3) The department, a port district in a county with a population of at least one million, or a county in which the port district is located may enter into cooperative agreements for the joint regulation of limousines.

(4) The Washington state patrol shall annually conduct a vehicle inspection of each limousine licensed under this chapter, except when a port district regulates limousine carriers under subsection (2) of this section, that port district or county in which the port [district] is located shall conduct the annual vehicle inspection. The patrol, the port district, or the

county may impose an annual vehicle inspection fee. [1996 c 87 § 6.]

46.72A.040 State preemption. Except when a port district regulates limousine carriers under RCW 46.72A.030, the state of Washington fully occupies and preempts the entire field of regulation over limousine carriers as regulated by this chapter. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to limousine carriers that are consistent with this chapter. [1996 c 87 § 7.]

46.72A.050 Business license, vehicle certificates required. No limousine carrier may operate a limousine upon the highways of this state without first obtaining a business license from the department. The applicant shall forward an application for a business license to the department along with a fee established by rule. Upon approval of the application, the department shall issue a business license and unified business identifier authorizing the carrier to operate limousines upon the highways of this state.

In addition, a limousine carrier shall annually obtain, upon payment of the appropriate fee, a vehicle certificate for each limousine operated by the carrier. [1996 c 87 § 8.]

46.72A.060 Insurance—Amount—Penalty. (1) The department shall require limousine carriers to obtain and continue in effect, liability and property damage insurance from a company licensed to sell liability insurance in this state for each limousine used to transport persons for compensation.

(2) The department shall fix the amount of the insurance policy or policies, giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The limousine carrier must maintain the liability and property damage insurance in force on each motor-propelled vehicle while so used.

(3) Failure to file and maintain in effect the insurance required under this section is a gross misdemeanor. [2003 c 53 § 251; 1996 c 87 § 9.]

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

46.72A.070 Vehicle certificates—Issuance of new or duplicate certificate—Penalty. (1) If the limousine carrier substitutes a liability and property damage insurance policy after a vehicle certificate has been issued, a new vehicle certificate is required. The limousine carrier shall submit the substituted policy to the department for approval, together with a fee. If the department approves the substituted policy, the department shall issue a new vehicle certificate.

(2) If a vehicle certificate has been lost, destroyed, or stolen, a duplicate vehicle certificate may be obtained by filing an affidavit of loss and paying a fee.

(3)(a) Except as provided in (b) of this subsection, a limousine carrier who operates a vehicle without first having received a vehicle certificate as required by this chapter is guilty of a misdemeanor.

(b) A second or subsequent offense is a gross misdemeanor. [2003 c 53 § 252; 1996 c 87 § 10.]

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

46.72A.080 Advertising—Penalty. (1) No limousine carrier may advertise without listing the carrier's unified business identifier issued by the department in the advertisement and specifying the type of service offered as provided in RCW 46.04.274. No limousine carrier may advertise or hold itself out to the public as providing taxicab transportation services.

(2) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a limousine carrier's name or address shall list the carrier's unified business identifier and the type of service offered. The alphabetized listing of limousine carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address must show the carrier's current unified business identifier.

(3) Advertising in the alphabetical listing in a telephone directory need not contain the carrier's certified business identifier.

(4) Advertising by electronic transmission need not contain the carrier's unified business identifier if the carrier provides it to the person selling the advertisement and it is recorded in the advertising contract.

(5) It is a gross misdemeanor for a person to (a) falsify a unified business identifier or use a false or inaccurate unified business identifier; (b) fail to specify the type of service offered; or (c) advertise or otherwise hold itself out to the public as providing taxicab transportation services in connection with a solicitation or identification as an authorized limousine carrier. [1997 c 193 § 1; 1996 c 87 § 11.]

46.72A.090 Chauffeurs—Criteria for. The limousine carrier shall certify to the appropriate regulating authority that each chauffeur hired to operate a limousine meets the following criteria: (1) Is at least twenty-one years of age; (2) holds a valid Washington state driver's license; (3) has successfully completed a training course approved by the department; (4) has successfully passed a written examination; (5) has successfully completed a background check performed by the Washington state patrol; and (6) has submitted a medical certificate certifying the individual's fitness as a chauffeur. Upon initial application and every three years thereafter, a chauffeur must file a physician's certification with the limousine carrier validating the individual's fitness to drive a limousine. The department shall determine the scope of the examination. The director may require a chauffeur to be reexamined at any time.

The limousine carrier shall keep on file and make available for inspection all documents required by this section. [1996 c 87 § 12.]

46.72A.100 Unprofessional conduct—Sanctions—Chauffeur. The director may impose any of the sanctions specified in RCW 18.235.110 for unprofessional conduct as described in RCW 18.235.130 or if one of the following is true of a chauffeur hired to drive a limousine including where such a chauffeur is also the carrier: (1) The person has been convicted of an offense of such a nature as to indicate that he or she is unfit to qualify as a chauffeur; (2) the person is

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guilty of committing two or more offenses for which mandatory revocation of a driver's license is provided by law; (3) the person has been convicted of vehicular homicide or vehicular assault; (4) the person is intemperate or addicted to narcotics. [2002 c 86 § 295; 1996 c 87 § 13.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

46.72A.110 Deposit of fees. The department shall transmit all fees received under this chapter, together with a proper identifying report, to the state treasurer to be deposited by the state treasurer in the master license fund. [1996 c 87 § 14.]

46.72A.120 Rules and fees. The department may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to carry out this chapter. The fees must approximate the cost of administration. [1996 c 87 § 15.]

46.72A.130 Continued operation of existing limousines. A vehicle operated as a limousine under *chapter 81.90 RCW before April 1, 1996, may continue to operate as a limousine even though it may not meet the definition of limousine in RCW 46.04.274 as long as the owner is the same as the registered owner on April 1, 1996, and the vehicle and limousine carrier otherwise comply with this chapter. [1996 c 87 § 16.]

***Reviser's note:** Chapter 81.90 RCW was repealed by 1996 c 87 § 23.

46.72A.140 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 296.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Chapter 46.73 RCW

PRIVATE CARRIER DRIVERS

Sections

46.73.010	Qualifications and hours of service.
46.73.020	Federal funds as necessary condition.
46.73.030	Penalty.

Rules of court: *Monetary penalty schedule—IRLJ 6.2.*

46.73.010 Qualifications and hours of service. The Washington state patrol may adopt rules establishing standards for qualifications and hours of service of drivers for private carriers as defined by RCW 81.80.010(6). Such standards shall correlate with and, as far as reasonable, conform to the regulations contained in Title 49 C.F.R., Chapter 3, Subchapter B, Parts 391 and 395, on July 28, 1985. [2005 c 319 § 120; 1985 c 333 § 1.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

46.73.020 Federal funds as necessary condition. The delegation of rule-making authority contained in RCW 46.73.010 is conditioned upon the continued receipt of federal funds or grants for the support of state enforcement of such rules. Within ninety days of finding that federal funds or grants are withdrawn or not renewed, the Washington state patrol and the Washington utilities and transportation commission shall repeal any and all rules adopted under RCW 46.73.010. [1985 c 333 § 2.]

46.73.030 Penalty. A violation of any rule adopted by the Washington state patrol under RCW 46.73.010 is a traffic infraction. [1985 c 333 § 3.]

Chapter 46.74 RCW RIDE SHARING

Sections

46.74.010	Definitions.
46.74.020	Exclusion from for hire vehicle laws.
46.74.030	Operators.

Acquisition and disposal of vehicle for commuter ride sharing by city employees: RCW 35.21.810.

Public utility tax exemption: RCW 82.16.047.

State-owned vehicles used for commuter ride sharing: RCW 43.41.130.

46.74.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Commuter ride sharing" means a car pool or van pool arrangement whereby one or more fixed groups not exceeding fifteen persons each including the drivers, and (a) not fewer than five persons including the drivers, or (b) not fewer than four persons including the drivers where at least two of those persons are confined to wheelchairs when riding, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, each group in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institution.

(2) "Flexible commuter ride sharing" means a car pool or van pool arrangement whereby a group of at least two but not exceeding fifteen persons including the driver is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding special rider equipment, between their places of abode or termini near such places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution.

(3) "Ride sharing for persons with special transportation needs" means an arrangement whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010(3) in a passenger motor vehicle as defined by the department to include small buses, cutaways, and modified vans not more than twenty-eight feet long: PROVIDED,

That the driver need not be a person with special transportation needs.

(4) "Ride-sharing operator" means the person, entity, or concern, not necessarily the driver, responsible for the existence and continuance of commuter ride sharing, flexible commuter ride sharing, or ride sharing for persons with special transportation needs. The term "ride-sharing operator" includes but is not limited to an employer, an employer's agent, an employer-organized association, a state agency, a county, a city, a public transportation benefit area, or any other political subdivision that owns or leases a ride-sharing vehicle.

(5) "Ride-sharing promotional activities" means those activities involved in forming a commuter ride-sharing arrangement or a flexible commuter ride-sharing arrangement, including but not limited to receiving information from existing and prospective ride-sharing participants, sharing that information with other existing and prospective ride-sharing participants, matching those persons with other existing or prospective ride-sharing participants, and making assignments of persons to ride-sharing arrangements.

(6) "Persons with special transportation needs" means those persons defined in RCW 81.66.010(4). [1997 c 250 § 8; 1997 c 95 § 1; 1996 c 244 § 2; 1979 c 111 § 1.]

Reviser's note: This section was amended by 1997 c 95 § 1 and by 1997 c 250 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1979 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 111 § 21.]

46.74.020 Exclusion from for hire vehicle laws. Ride-sharing vehicles are not deemed for hire vehicles and do not fall within the provisions of chapter 46.72 RCW or any other provision of Title 46 RCW affecting for hire vehicles, whether or not the ride-sharing operator receives compensation. [1979 c 111 § 2.]

Severability—1979 c 111: See note following RCW 46.74.010.

46.74.030 Operators. The operator and the driver of a commuter ride-sharing vehicle or a flexible commuter ride-sharing vehicle shall be held to a reasonable and ordinary standard of care, and are not subject to ordinances or regulations which relate exclusively to the regulation of drivers or owners of motor vehicles operated for hire, or other common carriers or public transit carriers. No person, entity, or concern may, as a result of engaging in ride-sharing promotional activities, be liable for civil damages arising directly or indirectly (1) from the maintenance and operation of a commuter ride-sharing or flexible commuter ride-sharing vehicle; or (2) from an intentional act of another person who is participating or proposing to participate in a commuter ride-sharing or flexible commuter ride-sharing arrangement, unless the ride-sharing operator or promoter had prior, actual knowledge that the intentional act was likely to occur and had a reasonable ability to prevent the act from occurring. [1997 c 250 § 9; 1996 c 244 § 3; 1979 c 111 § 3.]

Severability—1979 c 111: See note following RCW 46.74.010.

Chapter 46.76 RCW

MOTOR VEHICLE TRANSPORTERS

Sections

46.76.010	License required—Exceptions—"Driveaway or towaway methods" defined.
46.76.020	Application for license.
46.76.030	Issuance of license—Plates.
46.76.040	License and plate fees.
46.76.050	Expiration, renewal—Fee.
46.76.055	Staggering renewal periods.
46.76.060	Display of plates—Nontransferability.
46.76.065	Grounds for denial, suspension, or revocation of license.
46.76.067	Compliance with chapter 81.80 RCW.
46.76.070	Rules.
46.76.080	Penalty.

46.76.010 License required—Exceptions—"Driveaway or towaway methods" defined. It shall be unlawful for any person, firm, partnership, association, or corporation to engage in the business of delivering by the driveaway or towaway methods vehicles not his own and of a type required to be registered under the laws of this state, without procuring a transporter's license in accordance with the provisions of this chapter.

This shall not apply to motor freight carriers or operations regularly licensed under the provisions of chapter 81.80 RCW to haul such vehicles on trailers or semitrailers.

Driveaway or towaway methods means the delivery service rendered by a motor vehicle transporter wherein motor vehicles are driven singly or in combinations by the towbar, saddlemount or fullmount methods or any lawful combinations thereof, or where a truck or truck-tractor draws or tows a semitrailer or trailer. [1961 c 12 § 46.76.010. Prior: 1957 c 107 § 1; 1953 c 155 § 1; 1947 c 97 § 1; Rem. Supp. 1947 § 6382-75.]

46.76.020 Application for license. Application for a transporter's license shall be made on a form provided for that purpose by the director of licensing and when executed shall be forwarded to the director together with the proper fee. The application shall contain the name and address of the applicant, state whether or not the license will be used to provide towing services for monetary compensation as described in RCW 46.55.025 and, if so, whether or not the applicant is a registered tow truck operator, and contain other information as the director may require. [2008 c 19 § 1; 1979 c 158 § 189; 1967 c 32 § 91; 1961 c 12 § 46.76.020. Prior: 1947 c 97 § 2; Rem. Supp. 1947 § 6382-76.]

46.76.030 Issuance of license—Plates. Upon receiving an application for transporter's license the director, if satisfied that the applicant is entitled thereto, shall issue a proper certificate of license registration and a distinctive set of license plates and shall transmit the fees obtained therefor with a proper identifying report to the state treasurer, who shall deposit such fees in the motor vehicle fund. The certificate of license registration and license plates issued by the director shall authorize the holder of the license to drive or tow any motor vehicle or trailers upon the public highways. [1967 c 32 § 92; 1961 c 12 § 46.76.030. Prior: 1947 c 97 § 3; Rem. Supp. 1947 § 6382-77.]

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46.76.040 License and plate fees. The fee for an original transporter's license is twenty-five dollars. Transporter license number plates bearing an appropriate symbol and serial number shall be attached to all vehicles being delivered in the conduct of the business licensed under this chapter. The plates may be obtained for a fee of two dollars for each set. [1990 c 250 § 68; 1961 c 12 § 46.76.040. Prior: 1957 c 107 § 2; 1947 c 97 § 4; Rem. Supp. 1947 § 6382-78.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.76.050 Expiration, renewal—Fee. A transporter's license expires on the date assigned by the director, and may be renewed by filing a proper application and paying an annual fee of fifteen dollars. [1985 c 109 § 3; 1961 c 12 § 46.76.050. Prior: 1947 c 97 § 5; Rem. Supp. 1947 § 6382-79.]

46.76.055 Staggering renewal periods. Notwithstanding any provision of law to the contrary, the director may extend or diminish the licensing period of transporters for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34.05 RCW. [1985 c 109 § 4.]

46.76.060 Display of plates—Nontransferability. Transporter's license plates shall be conspicuously displayed on all vehicles being delivered by the driveaway or towaway methods. These plates shall not be loaned to or used by any person other than the holder of the license or his employees. [1961 c 12 § 46.76.060. Prior: 1957 c 107 § 3; 1947 c 97 § 6; Rem. Supp. 1947 § 6382-80.]

46.76.065 Grounds for denial, suspension, or revocation of license. The following conduct shall be sufficient grounds pursuant to RCW 34.05.422 for the director or a designee to deny, suspend, or revoke the license of a motor vehicle transporter:

- (1) Using transporter plates for driveaway or towaway of any vehicle owned by such transporter;
- (2) Knowingly, as that term is defined in RCW 9A.08.010(1)(b), having possession of a stolen vehicle or a vehicle with a defaced, missing, or obliterated manufacturer's identification serial number;
- (3) Loaning transporter plates;
- (4) Using transporter plates for any purpose other than as provided under RCW 46.76.010; or
- (5) Violation of provisions of this chapter or of rules and regulations adopted relating to enforcement and proper operation of this chapter. [1977 ex.s. c 254 § 1.]

46.76.067 Compliance with chapter 81.80 RCW. (1) Any person or organization that transports any mobile home or other vehicle for hire shall comply with this chapter and chapter 81.80 RCW. Persons or organizations that do not have a valid permit or meet other requirements under chapter 81.80 RCW shall not be issued a transporter license or transporter plates to transport mobile homes or other vehicles. RCW 46.76.065(5) applies to persons or organizations that have transporter licenses or plates and do not meet the requirements of chapter 81.80 RCW.

(2) This section does not apply to mobile home manufacturers or dealers that are licensed and delivering the mobile home under chapter 46.70 RCW. [1988 c 239 § 4.]

46.76.070 Rules. The director may make any reasonable rules or regulations not inconsistent with the provisions of this chapter relating to the enforcement and proper operation of this chapter. [1967 c 32 § 93; 1961 c 12 § 46.76.070. Prior: 1947 c 97 § 7; Rem. Supp. 1947 § 6382-81.]

46.76.080 Penalty. The violation of any provision of this chapter is a traffic infraction. In addition to any other penalty imposed upon a violator of the provisions of this chapter, the director may confiscate any transporter license plates used in connection with such violation. [1979 ex.s. c 136 § 96; 1961 c 12 § 46.76.080. Prior: 1947 c 97 § 8; Rem. Supp. 1947 § 6382-82.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

Chapter 46.79 RCW

HULK HAULERS AND SCRAP PROCESSORS

Sections

46.79.010	Definitions.
46.79.020	Transporting junk vehicles to scrap processor—Removal of parts, restrictions.
46.79.030	Application for license, renewal—Form—Signature—Contents.
46.79.040	Application forwarded with fees—Issuance of license—Disposition of fees—Display of license.
46.79.050	License expiration—Renewal fee—Surrender of license, when.
46.79.055	Staggering renewal periods.
46.79.060	Special license plates—Fee.
46.79.070	Acts subject to penalties.
46.79.080	Rules.
46.79.090	Inspection of premises and records—Certificate of inspection.
46.79.100	Other provisions to comply with chapter.
46.79.110	Chapter not to prohibit individual towing of vehicles to wreckers or processors.
46.79.120	Unlicensed hulk hauling or scrap processing—Penalty.
46.79.130	Wholesale motor vehicle auction dealers.

46.79.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context indicates otherwise.

(1) "Junk vehicle" means a motor vehicle certified under RCW 46.55.230 as meeting all the following requirements:

- Is three years old or older;
- Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;
- Is apparently inoperable;
- Is without a valid, current registration plate;
- Has a fair market value equal only to the value of the scrap in it.

(2) "Scrap processor" means a licensed establishment that maintains a hydraulic baler and shears, or a shredder for recycling salvage.

(3) "Demolish" means to destroy completely by use of a hydraulic baler and shears, or a shredder.

(4) "Hulk hauler" means any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed vehicle wrecker or scrap processor in substan-

tially the same form in which they are obtained. A hulk hauler may not sell secondhand motor vehicle parts to anyone other than a licensed vehicle wrecker or scrap processor, except for those parts specifically enumerated in RCW 46.79.020(2), as now or hereafter amended, which may be sold to a licensed vehicle wrecker or disposed of at a public facility for waste disposal.

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

(6) "Major component parts" include engines and short blocks, frames, transmissions or transfer cases, cabs, doors, front or rear differentials, front or rear clips, quarter panels or fenders, bumpers, truck beds or boxes, seats, and hoods. [2001 c 64 § 10; 1990 c 250 § 69; 1983 c 142 § 2; 1979 c 158 § 190; 1971 ex.s. c 110 § 1.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.79.020 Transporting junk vehicles to scrap processor—Removal of parts, restrictions. Any hulk hauler or scrap processor licensed under the provisions of this chapter may:

(1) Notwithstanding any other provision of law, transport any flattened or junk vehicle whether such vehicle is from in state or out of state, to a scrap processor upon obtaining the certificate of title or release of interest from the owner or an affidavit of sale from the landowner who has complied with RCW 46.55.230. The scrap processor shall forward such document(s) to the department, together with a monthly report of all vehicles acquired from other than a licensed automobile wrecker, and no further identification shall be necessary.

(2) Prepare vehicles and vehicle salvage for transportation and delivery to a scrap processor or vehicle wrecker only by removing the following vehicle parts:

- Gas tanks;
- Vehicle seats containing springs;
- Tires;
- Wheels;
- Scrap batteries;
- Scrap radiators.

Such parts may not be removed if they will be accepted by a scrap processor or wrecker. Such parts may be removed only at a properly zoned location, and all preparation activity, vehicles, and vehicle parts shall be obscured from public view. Storage is limited to two vehicles or the parts thereof which are authorized by this subsection, and any such storage may take place only at a properly zoned location. Any vehicle parts removed under the authority of this subsection shall be lawfully disposed of at or through a public facility or service for waste disposal or by sale to a licensed vehicle wrecker. [2001 c 64 § 11; 1990 c 250 § 70; 1987 c 62 § 1; 1983 c 142 § 3; 1979 c 158 § 191; 1971 ex.s. c 110 § 2.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.79.030 Application for license, renewal—Form—Signature—Contents. Application for a hulk hauler's license or a scrap processor's license or renewal of a hulk hauler's license or a scrap processor's license shall be made on a form for this purpose, furnished by the director, and shall be signed by the applicant or his authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief of police of any city or town, wherever located, having a population of over five thousand persons and in all other instances a member of the state patrol certifying that the applicant can be found at the address shown on the application, and;

(4) Any other information that the director may require. [1971 ex.s. c 110 § 3.]

46.79.040 Application forwarded with fees—Issuance of license—Disposition of fees—Display of license. Application for a hulk hauler's license, together with a fee of ten dollars, or application for a scrap processor's license, together with a fee of twenty-five dollars, shall be forwarded to the director. Upon receipt of the application the director shall, if the application be in order, issue the license applied for authorizing him to do business as such and forward the fee, together with an itemized and detailed report, to the state treasurer, to be deposited in the motor vehicle fund. Upon receiving the certificate the owner shall cause it to be prominently displayed at the address shown in his application, where it may be inspected by an investigating officer at any time. [1971 ex.s. c 110 § 4.]

46.79.050 License expiration—Renewal fee—Surrender of license, when. A license issued pursuant to this chapter expires on the date assigned by the director, and may be renewed by filing a proper application and payment of a fee of ten dollars.

Whenever a hulk hauler or scrap processor ceases to do business or the license has been suspended or revoked, the license shall immediately be surrendered to the director. [1985 c 109 § 5; 1983 c 142 § 4; 1971 ex.s. c 110 § 5.]

46.79.055 Staggering renewal periods. Notwithstanding any provision of law to the contrary, the director may extend or diminish the licensing period of hulk haulers and scrap processors for the purpose of staggering renewal periods. The extension or diminishment shall be by rule of the department adopted in accordance with chapter 34.05 RCW. [1985 c 109 § 6.]

46.79.060 Special license plates—Fee. The hulk hauler or scrap processor shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of vehicles owned and/or operated by him and used in the conduct of his business. Such special license shall be displayed on the operational vehicles and shall be in lieu of a trip permit or current license on any vehicle being transported. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. [1971 ex.s. c 110 § 6.]

(2008 Ed.)

46.79.070 Acts subject to penalties. The director may by order pursuant to the provisions of chapter 34.05 RCW, deny, suspend, or revoke the license of any hulk hauler or scrap processor or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed five hundred dollars per violation, whenever the director finds that the applicant or licensee:

(1) Removed a vehicle or vehicle major component part from property without obtaining both the written permission of the property owner and documentation approved by the department for acquiring vehicles, junk vehicles, or major component parts thereof;

(2) Acquired, disposed of, or possessed a vehicle or major component part thereof when he or she knew that such vehicle or part had been stolen or appropriated without the consent of the owner;

(3) Sold, bought, received, concealed, had in his or her possession, or disposed of a vehicle or major component part thereof having a missing, defaced, altered, or covered manufacturer's identification number, unless approved by a law enforcement officer;

(4) Committed forgery or made any material misrepresentation on any document relating to the acquisition, disposition, registration, titling, or licensing of a vehicle pursuant to Title 46 RCW;

(5) Committed any dishonest act or omission which has caused loss or serious inconvenience as a result of the acquisition or disposition of a vehicle or any major component part thereof;

(6) Failed to comply with any of the provisions of this chapter or other applicable law relating to registration and certificates of title of vehicles and any other document releasing any interest in a vehicle;

(7) Been authorized to remove a particular vehicle or vehicles and failed to take all remnants and debris from those vehicles from that area unless requested not to do so by the person authorizing the removal;

(8) Removed parts from a vehicle at other than an approved location or removed or sold parts or vehicles beyond the scope authorized by this chapter or any rule adopted hereunder;

(9) Been adjudged guilty of a crime which directly relates to the business of a hulk hauler or scrap processor and the time elapsed since the adjudication is less than five years. For the purposes of this section adjudged guilty means, in addition to a final conviction in either a federal, state, or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended; or

(10) Been the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid. [1990 c 250 § 71; 1983 c 142 § 5; 1971 ex.s. c 110 § 7.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.79.080 Rules. The director is hereby authorized to promulgate and adopt reasonable rules and regulations not in conflict with provisions hereof for the proper operation and enforcement of this chapter. [1971 ex.s. c 110 § 8.]

46.79.090 Inspection of premises and records—Certificate of inspection. It shall be the duty of the chiefs of police, or the Washington state patrol, in cities having a population of over five thousand persons, and in all other cases the Washington state patrol, to make periodic inspection of the hulk hauler's or scrap processor's premises and records provided for in this chapter, and furnish a certificate of inspection to the director in such manner as may be determined by the director: PROVIDED, That the above inspection in any instance can be made by an authorized representative of the department.

The department is hereby authorized to enlist the services and cooperation of any law enforcement officer or state agency of another state to inspect the premises of any hulk hauler or scrap processor whose established place of business is in that other state but who is licensed to transport automobile hulks within Washington state. [1983 c 142 § 6; 1971 ex.s. c 110 § 9.]

46.79.100 Other provisions to comply with chapter. Any municipality or political subdivision of this state which now has or subsequently makes provision for the regulation of hulk haulers or scrap processors shall comply strictly with the provisions of this chapter. [1971 ex.s. c 110 § 10.]

46.79.110 Chapter not to prohibit individual towing of vehicles to wreckers or processors. Nothing contained in this chapter shall be construed to prohibit any individual not engaged in business as a hulk hauler or scrap processor from towing any vehicle owned by him or her to any vehicle wrecker or scrap processor. [2001 c 64 § 12; 1983 c 142 § 7; 1971 ex.s. c 110 § 11.]

46.79.120 Unlicensed hulk hauling or scrap processing—Penalty. Any hulk hauler or scrap processor who engages in the business of hulk hauling or scrap processing without holding a current license issued by the department for authorization to do so, or, holding such a license, exceeds the authority granted by that license, is guilty of a gross misdemeanor. [1983 c 142 § 8.]

46.79.130 Wholesale motor vehicle auction dealers.

- (1) A wholesale motor vehicle auction dealer may:
- (a) Sell any classification of motor vehicle;
 - (b) Sell only to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state; or
 - (c) Sell a motor vehicle belonging to the United States government, the state of Washington, or a political subdivision to nonlicensed persons as may be required by the contracting public agency. However, a publicly owned "wrecked vehicle" as defined in RCW 46.80.010 may be sold to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state.

- (2) If the wholesale motor vehicle auction dealer knows that a vehicle is a "wrecked vehicle" as defined by RCW 46.80.010, the dealer must disclose this fact on the bill of sale. [1998 c 282 § 4.]

Chapter 46.80 RCW VEHICLE WRECKERS

Sections

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Hulk haulers and scrap processors: Chapter 46.79 RCW.

46.80.005 Legislative declaration. The legislature finds and declares that the distribution and sale of vehicle parts in the state of Washington vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare and in the exercise of its police power, it is necessary to regulate and license vehicle wreckers and dismantlers, the buyers-for-resale, and the sellers of secondhand vehicle components doing business in Washington, in order to prevent the sale of stolen vehicle parts, to prevent frauds, impositions, and other abuses, and to preserve the investments and properties of the citizens of this state. [1995 c 256 § 3; 1977 ex.s. c 253 § 1.]

Severability—1977 ex.s. c 253: "If any provision of this 1977 amendatory act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the amendatory act and the applicability thereof to persons and circumstances shall not be affected thereby." [1977 ex.s. c 253 § 14.]

46.80.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Vehicle wrecker" means every person, firm, partnership, association, or corporation engaged in the business of buying, selling, or dealing in vehicles of a type required to be licensed under the laws of this state, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of a vehicle, or who buys or sells integral secondhand parts of component material thereof, in whole or in part, or who deals in secondhand vehicle parts.

(2) "Core" means a major component part received by a vehicle wrecker in exchange for a like part sold by the wrecker, is not resold as a major component part except for scrap metal value or for remanufacture, and the wrecker

maintains records for three years from the date of acquisition to identify the name of the person from whom the core was received.

(3) "Established place of business" means a building or enclosure which the vehicle wrecker occupies either continuously or at regular periods and where his books and records are kept and business is transacted and which must conform with zoning regulations.

(4) "Interim owner" means the owner of a vehicle who has the original certificate of ownership for the vehicle, which certificate has been released by the person named on the certificate and assigned to the person offering to sell the vehicle to the wrecker.

(5) "Major component part" includes at least each of the following vehicle parts: (a) Engines and short blocks; (b) frame; (c) transmission and/or transfer case; (d) cab; (e) door; (f) front or rear differential; (g) front or rear clip; (h) quarter panel; (i) truck bed or box; (j) seat; (k) hood; (l) bumper; (m) fender; and (n) airbag. The director may supplement this list by rule.

(6) "Wrecked vehicle" means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state. [1999 c 278 § 1; 1995 c 256 § 4; 1977 ex.s. c 253 § 2; 1961 c 12 § 46.80.010. Prior: 1947 c 262 § 1; Rem. Supp. 1947 § 8326-40.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.020 License required—Penalty. (1) It is unlawful for a person to engage in the business of wrecking vehicles without having first applied for and received a license.

(2)(a) Except as provided in (b) of this subsection, a person or firm engaged in the unlawful activity described in this section is guilty of a gross misdemeanor.

(b) A second or subsequent offense is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 253; 1995 c 256 § 5; 1979 c 158 § 192; 1977 ex.s. c 253 § 3; 1971 ex.s. c 7 § 1; 1967 c 32 § 94; 1961 c 12 § 46.80.020. Prior: 1947 c 262 § 2; Rem. Supp. 1947 § 8326-41.]

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

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.030 Application for license—Contents. Application for a vehicle wrecker's license or renewal of a vehicle wrecker's license shall be made on a form for this purpose, furnished by the department of licensing, and shall be signed by the vehicle wrecker or his authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association, or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief of police of any city or town having a population of over five thousand persons and in all other instances a member of the Washington state patrol certifying that:

(a) The applicant has an established place of business at the address shown on the application, and;

(b) In the case of a renewal of a vehicle wrecker's license, the applicant is in compliance with this chapter and the provisions of Title 46 RCW, relating to registration and certificates of title: PROVIDED, That the above certifications in any instance can be made by an authorized representative of the department of licensing;

(4) Any other information that the department may require. [2001 c 64 § 13; 1990 c 250 § 72; 1979 c 158 § 193; 1977 ex.s. c 253 § 4; 1971 ex.s. c 7 § 2; 1967 ex.s. c 13 § 1; 1967 c 32 § 95; 1961 c 12 § 46.80.030. Prior: 1947 c 262 § 3; Rem. Supp. 1947 § 8326-42.]

Severability—1990 c 250: See note following RCW 46.16.301.

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.040 Issuance of license—Fee. The application, together with a fee of twenty-five dollars, and a surety bond as provided in RCW 46.80.070, shall be forwarded to the department. Upon receipt of the application the department shall, if the application is in order, issue a vehicle wrecker's license authorizing the wrecker to do business as such and forward the fee to the state treasurer, to be deposited in the motor vehicle fund. Upon receiving the certificate the owner shall cause it to be prominently displayed in the place of business, where it may be inspected by an investigating officer at any time. [1995 c 256 § 6; 1971 ex.s. c 7 § 3; 1967 c 32 § 96; 1961 c 12 § 46.80.040. Prior: 1947 c 262 § 4; Rem. Supp. 1947 § 8326-43.]

46.80.050 Expiration, renewal—Fee. A license issued on this application remains in force until suspended or revoked and may be renewed annually upon reapplication according to RCW 46.80.030 and upon payment of a fee of ten dollars. A vehicle wrecker who fails or neglects to renew the license before the assigned expiration date shall pay the fee for an original vehicle wrecker license as provided in this chapter.

Whenever a vehicle wrecker ceases to do business as such or the license has been suspended or revoked, the wrecker shall immediately surrender the license to the department. [1995 c 256 § 7; 1985 c 109 § 7; 1971 ex.s. c 7 § 4; 1967 ex.s. c 13 § 2; 1967 c 32 § 97; 1961 c 12 § 46.80.050. Prior: 1947 c 262 § 5; Rem. Supp. 1947 § 8326-44.]

46.80.060 License plates—Fee—Display. The vehicle wrecker shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of such vehicles. The special plates must be displayed on vehicles owned and/or operated by the wrecker and used in the

conduct of the business. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. A wrecker with more than one licensed location in the state may use special plates bearing the same license number for vehicles operated out of any of the licensed locations. [1995 c 256 § 8; 1961 c 12 § 46.80.060. Prior: 1957 c 273 § 21; 1947 c 262 § 6; Rem. Supp. 1947 § 8326-45.]

46.80.070 Bond. Before issuing a vehicle wrecker's license, the department shall require the applicant to file with the department a surety bond in the amount of one thousand dollars, running to the state of Washington and executed by a surety company authorized to do business in the state of Washington. The bond shall be approved as to form by the attorney general and conditioned upon the wrecker conducting the business in conformity with the provisions of this chapter. Any person who has suffered any loss or damage by reason of fraud, carelessness, neglect, violation of the terms of this chapter, or misrepresentation on the part of the wrecking company, may institute an action for recovery against the vehicle wrecker and surety upon the bond. However, the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond. [1995 c 256 § 9; 1977 ex.s. c 253 § 5; 1971 ex.s. c 7 § 5; 1967 c 32 § 98; 1961 c 12 § 46.80.070. Prior: 1947 c 262 § 7; Rem. Supp. 1947 § 8326-46.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.080 Records—Penalty. (1) Every vehicle wrecker shall maintain books or files in which the wrecker shall keep a record and a description of:

(a) Every vehicle wrecked, dismantled, disassembled, or substantially altered by the wrecker; and

(b) Every major component part acquired by the wrecker; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm, or corporation from whom the wrecker purchased the vehicle or part. Major component parts other than cores shall be further identified by the vehicle identification number of the vehicle from which the part came.

(2) The record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle that is the source of a major component part other than a core:

(a) The certificate of title number (if previously titled in this or any other state);

(b) Name of state where last registered;

(c) Number of the last license number plate issued;

(d) Name of vehicle;

(e) Motor or identification number and serial number of the vehicle;

(f) Date purchased;

(g) Disposition of the motor and chassis;

(h) Yard number assigned by the licensee to the vehicle or major component part, which shall also appear on the identified vehicle or part; and

(i) Such other information as the department may require.

(3) The records shall also contain a bill of sale signed by the seller for other minor component parts acquired by the

licensee, identifying the seller by name, address, and date of sale.

(4) The records shall be maintained by the licensee at his or her established place of business for a period of three years from the date of acquisition.

(5) The record is subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employees of the department.

(6) A vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the vehicle wrecker's place of business or to other places designated by the owner of the vehicle or his or her representative. This record shall specify the name and description of the vehicle, name of owner, number of license plate, condition of the vehicle and place to which it was towed or transported.

(7) Failure to comply with this section is a gross misdemeanor. [1999 c 278 § 2; 1995 c 256 § 10; 1977 ex.s. c 253 § 6; 1971 ex.s. c 7 § 6; 1967 c 32 § 99; 1961 c 12 § 46.80.080. Prior: 1947 c 262 § 8; Rem. Supp. 1947 § 8326-47.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.090 Reports to department—Evidence of ownership. Within thirty days after acquiring a vehicle, the vehicle wrecker shall furnish a written report to the department. This report shall be in such form as the department shall prescribe and shall be accompanied by evidence of ownership as determined by the department. No vehicle wrecker may acquire a vehicle, including a vehicle from an interim owner, without first obtaining evidence of ownership as determined by the department. For a vehicle from an interim owner, the evidence of ownership may not require that a title be issued in the name of the interim owner as required by RCW 46.12.101. The vehicle wrecker shall furnish a monthly report of all acquired vehicles. This report shall be made on forms prescribed by the department and contain such information as the department may require. This statement shall be signed by the vehicle wrecker or an authorized representative and the facts therein sworn to before a notary public, or before an officer or employee of the department designated by the director to administer oaths or acknowledge signatures, pursuant to RCW 46.01.180. [1999 c 278 § 3; 1995 c 256 § 11; 1979 c 158 § 194; 1977 ex.s. c 253 § 7; 1971 ex.s. c 7 § 7; 1967 c 32 § 100; 1961 c 12 § 46.80.090. Prior: 1947 c 262 § 9; Rem. Supp. 1947 § 8326-48.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.100 Cancellation of bond. If, after issuing a vehicle wrecker's license, the bond is canceled by the surety in a method provided by law, the department shall immediately notify the principal covered by the bond and afford the principal the opportunity of obtaining another bond before the termination of the original. If the principal fails, neglects, or refuses to obtain a replacement, the director may cancel or suspend the vehicle wrecker's license. Notice of cancellation of the bond may be accomplished by sending a notice by first-class mail using the last known address in department records for the principal covered by the bond and recording the transmittal on an affidavit of first-class mail. [1995 c 256

§ 12; 1977 ex.s. c 253 § 8; 1967 c 32 § 101; 1961 c 12 § 46.80.100. Prior: 1947 c 262 § 10; Rem. Supp. 1947 § 8326-49.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.110 License penalties, civil fines, criminal penalties. (1) The director or a designee may, pursuant to the provisions of chapter 34.05 RCW, by order deny, suspend, or revoke the license of a vehicle wrecker, or assess a civil fine of up to five hundred dollars for each violation, if the director finds that the applicant or licensee has:

(a) Acquired a vehicle or major component part other than by first obtaining title or other documentation as provided by this chapter;

(b) Willfully misrepresented the physical condition of any motor or integral part of a vehicle;

(c) Sold, had in the wrecker's possession, or disposed of a vehicle or any part thereof when he or she knows that the vehicle or part has been stolen, or appropriated without the consent of the owner;

(d) Sold, bought, received, concealed, had in the wrecker's possession, or disposed of a vehicle or part thereof having a missing, defaced, altered, or covered manufacturer's identification number, unless approved by a law enforcement officer;

(e) Committed forgery or misstated a material fact on any title, registration, or other document covering a vehicle that has been reassembled from parts obtained from the disassembling of other vehicles;

(f) Committed any dishonest act or omission that the director has reason to believe has caused loss or serious inconvenience as a result of a sale of a vehicle or part thereof;

(g) Failed to comply with any of the provisions of this chapter or with any of the rules adopted under it, or with any of the provisions of Title 46 RCW relating to registration and certificates of title of vehicles;

(h) Procured a license fraudulently or dishonestly;

(i) Been convicted of a crime that directly relates to the business of a vehicle wrecker and the time elapsed since conviction is less than ten years, or suffered any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, conviction means in addition to a final conviction in either a federal, state, or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended.

(2) In addition to actions by the department under this section, it is a gross misdemeanor to violate subsection (1)(a), (b), or (h) of this section. [1995 c 256 § 13; 1989 c 337 § 17; 1977 ex.s. c 253 § 9; 1971 ex.s. c 7 § 8; 1967 ex.s. c 13 § 3; 1967 c 32 § 102; 1961 c 12 § 46.80.110. Prior: 1947 c 262 § 11; Rem. Supp. 1947 § 8326-50.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.121 False or unqualified applications. If a person whose vehicle wrecker license has previously been canceled for cause by the department files an application for a license to conduct business as a vehicle wrecker, or if the

department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been canceled for cause, the department may refuse to issue the person a license to conduct business as a vehicle wrecker. [1995 c 256 § 14.]

46.80.130 All storage at place of business—Screening required—Penalty. (1) It is unlawful for a vehicle wrecker to keep a vehicle or any integral part thereof in any place other than the established place of business, designated in the certificate issued by the department, without permission of the department.

(2) All premises containing vehicles or parts thereof shall be enclosed by a wall or fence of such height as to obscure the nature of the business carried on therein. To the extent reasonably necessary or permitted by the topography of the land, the department may establish specifications or standards for the fence or wall. The wall or fence shall be painted or stained a neutral shade that blends in with the surrounding premises, and the wall or fence must be kept in good repair. A living hedge of sufficient density to prevent a view of the confined area may be substituted for such a wall or fence. Any dead or dying portion of the hedge shall be replaced.

(3) Violation of subsection (1) of this section is a gross misdemeanor. [1995 c 256 § 15; 1971 ex.s. c 7 § 9; 1967 ex.s. c 13 § 4; 1967 c 32 § 103; 1965 c 117 § 1; 1961 c 12 § 46.80.130. Prior: 1947 c 262 § 13; Rem. Supp. 1947 § 8326-52.]

46.80.140 Rules. The director is hereby authorized to promulgate and adopt reasonable rules and regulations not in conflict with provisions hereof for the proper operation and enforcement of this chapter. [1967 c 32 § 104; 1961 c 12 § 46.80.140. Prior: 1947 c 262 § 14; Rem. Supp. 1947 § 8326-53.]

46.80.150 Inspection of licensed premises and records. It shall be the duty of the chiefs of police, or the Washington state patrol, in cities having a population of over five thousand persons, and in all other cases the Washington state patrol, to make periodic inspection of the vehicle wrecker's licensed premises and records provided for in this chapter during normal business hours, and furnish a certificate of inspection to the department in such manner as may be determined by the department. In any instance, an authorized representative of the department may make the inspection. [1995 c 256 § 16; 1983 c 142 § 9; 1977 ex.s. c 253 § 10; 1971 ex.s. c 7 § 10; 1967 ex.s. c 13 § 5; 1967 c 32 § 105; 1961 c 12 § 46.80.150. Prior: 1947 c 262 § 15; Rem. Supp. 1947 § 8326-54.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.160 Municipal compliance. Any municipality or political subdivision of this state that now has or subsequently makes provision for the regulation of vehicle wreckers shall comply strictly with the provisions of this chapter. [1995 c 256 § 17; 1961 c 12 § 46.80.160. Prior: 1947 c 262 § 16; Rem. Supp. 1947 § 8326-55.]

46.80.170 Violations—Penalties. Unless otherwise provided by law, it is a misdemeanor for any person to violate any of the provisions of this chapter or the rules adopted under this chapter. [1995 c 256 § 18; 1977 ex.s. c 253 § 11.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

46.80.180 Cease and desist orders—Fines. (1) If it appears to the director that an unlicensed person has engaged in an act or practice constituting a violation of this chapter, or a rule adopted or an order issued under this chapter, the director may issue an order directing the person to cease and desist from continuing the act or practice. The director shall give the person reasonable notice of and opportunity for a hearing. The director may issue a temporary order pending a hearing. The temporary order remains in effect until ten days after the hearing is held and becomes final if the person to whom the notice is addressed does not request a hearing within fifteen days after receipt of the notice.

(2) The director may assess a fine of up to one thousand dollars with the final order for each act or practice constituting a violation of this chapter by an unlicensed person. [1995 c 256 § 19.]

46.80.190 Subpoenas. (1) The department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or vehicle parts bearing upon the investigation or proceeding under this chapter.

(2) The persons subpoenaed may be required to testify and produce any books, papers, records, data, vehicles, or vehicle parts that the director deems relevant or material to the inquiry.

(3) The director or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree under RCW 9A.72.020.

(4) A court of competent jurisdiction may, upon application by the director, issue to a person who fails to comply, an order to appear before the director or officer designated by the director, to produce documentary or other evidence touching the matter under investigation or in question. [2003 c 53 § 254; 1995 c 256 § 20.]

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

46.80.200 Wholesale motor vehicle auction dealers.

(1) A wholesale motor vehicle auction dealer may:

(a) Sell any classification of motor vehicle;

(b) Sell only to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state; or

(c) Sell a motor vehicle belonging to the United States government, the state of Washington, or a political subdivision to nonlicensed persons as may be required by the contracting public agency. However, a publicly owned "wrecked vehicle" may be sold to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state.

(2) If the wholesale motor vehicle auction dealer knows that a vehicle is a "wrecked vehicle," the dealer must disclose this fact on the bill of sale. [1998 c 282 § 6.]

46.80.900 Liberal construction. The provisions of this chapter shall be liberally construed to the end that traffic in stolen vehicle parts may be prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of wrecking vehicles or selling used vehicle parts in this state and reliable persons may be encouraged to engage in businesses of wrecking or reselling vehicle parts in this state. [1995 c 256 § 21; 1977 ex.s. c 253 § 13.]

Severability—1977 ex.s. c 253: See note following RCW 46.80.005.

Chapter 46.81 RCW

TRAFFIC SAFETY EDUCATION COURSES

(See chapter 28A.220 RCW)

Chapter 46.81A RCW

MOTORCYCLE SKILLS EDUCATION PROGRAM

Sections

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46.81A.001 Purpose. It is the purpose of this chapter to provide the motorcycle riders of the state with an affordable motorcycle skills education program in order to promote motorcycle safety awareness. [1988 c 227 § 1.]

46.81A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

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

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

(4) "Motorcycle" means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding farm tractors, electric personal assistive mobility devices, mopeds, motorized foot scooters, motorized bicycles, and off-road motorcycles. [2003 c 353 § 11; 2003 c 41 § 4; 1988 c 227 § 2.]

Reviser's note: This section was amended by 2003 c 41 § 4 and by 2003 c 353 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 353: See note following RCW 46.04.320.

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

46.81A.020 Powers and duties of director, department. (1) The director shall administer and enforce the law pertaining to the motorcycle skills education program as set forth in this chapter.

(2) The director may adopt and enforce reasonable rules that are consistent with this chapter.

(3) The director shall revise the Washington motorcycle safety program to:

(a) Institute separate novice and advanced motorcycle skills education courses for both two-wheeled and three-wheeled motorcycles that are each a minimum of eight hours and no more than sixteen hours at a cost of (i) no more than fifty dollars for Washington state residents under the age of eighteen, and (ii) no more than one hundred twenty-five dollars for Washington state residents who are eighteen years of age or older and military personnel of any age stationed in Washington state;

(b) Encourage the use of loaned or used motorcycles for use in the motorcycle skills education course if the instructor approves them;

(c) Require all instructors for two-wheeled motorcycles to conduct at least three classes in a one-year period, and all instructors for three-wheeled motorcycles to conduct at least one class in a one-year period, to maintain their teaching eligibility.

(4) The department may enter into agreements to review and certify that a private motorcycle skills education course meets educational standards equivalent to those required of courses conducted under the motorcycle skills education program. An agreement entered into under this subsection must provide that the department may conduct periodic audits to ensure that educational standards continue to meet those required for courses conducted under the motorcycle skills education program, and that the costs of the review, certification, and audit process will be borne by the party seeking certification.

(5) The department shall obtain and compile information from applicants for a motorcycle endorsement regarding whether they have completed a state approved or certified motorcycle skills education course. [2007 c 97 § 2; 2003 c 41 § 5; 2002 c 197 § 2; 1998 c 245 § 91; 1993 c 115 § 2; 1988 c 227 § 3.]

Short title—Effective date—2003 c 41: See notes following RCW 46.20.500.

46.81A.030 Deposit of gifts. The director may receive gifts, grants, or endowments from private sources which shall be deposited in the motorcycle safety [education] account within the highway safety fund. [1988 c 227 § 4.]

Motorcycle safety education account: RCW 46.68.065.

46.81A.900 Severability—1988 c 227. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 227 § 8.]

Chapter 46.82 RCW

DRIVER TRAINING SCHOOLS

Sections

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46.82.360	Suspension, revocation, or denial of licenses—Failure to comply with specified business practices.
46.82.370	Suspension, revocation, or denial of licenses—Appeal of action—Emergency suspension—Hearing, notice and procedure.
46.82.380	Appeal from action or decision of director.
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46.82.400	Chapter not applicable to educational institutions.
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46.82.420	Basic minimum required curriculum—Revocation of license for failure to teach.
46.82.430	Instructional material requirements.
46.82.900	Severability—1979 ex.s. c 51.

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

(1) "Behind-the-wheel instruction" means instruction in an approved driver training school instruction vehicle according to and inclusive of the minimum required curriculum. Behind-the-wheel instruction is characterized by driving experience.

(2) "Classroom" means a space dedicated to and used exclusively by a driver training instructor for the instruction of students. With prior department approval, a branch office classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, or a business training facility.

(3) "Classroom instruction" means that portion of a traffic safety education course that is characterized by classroom-based student instruction conducted by or under the direct supervision of a licensed instructor or licensed instructors.

(4) "Driver training school" means a commercial driver training school engaged in the business of giving instruction, for a fee, in the operation of automobiles.

(5) "Driver training education course" means a course of instruction in traffic safety education approved and licensed by the department of licensing that consists of classroom and behind-the-wheel instruction as documented by the minimum approved curriculum.

(6) "Director" means the director of the department of licensing of the state of Washington.

(7) "Advisory committee" means the driving instructors' advisory committee as created in this chapter.

(8) "Fraudulent practices" means any conduct or representation on the part of a driver training school owner or instructor including:

(a) Inducing anyone to believe, or to give the impression, that a license to operate a motor vehicle or any other license granted by the director may be obtained by any means other than those prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, or collecting money for such purposes;

(b) Operation of a driver training school without a license, providing instruction without an instructor's license, verifying enrollment prior to being licensed, misleading or false statements on applications for a commercial driver

training school license or instructor's license or on any required records or supporting documentation;

(c) Failing to fully document and maintain all required driver training school records of instruction, school operation, and instructor training;

(d) Issuing a driver training course certificate without requiring completion of the necessary behind-the-wheel and classroom instruction.

(9) "Instructor" means any person employed by or otherwise associated with a driver training school to instruct persons in the operation of an automobile.

(10) "Owner" means an individual, partnership, corporation, association, or other person or group that holds a substantial interest in a driver training school.

(11) "Place of business" means a designated location at which the business of a driver training school is transacted and its records are kept.

(12) "Person" means any individual, firm, corporation, partnership, or association.

(13) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any driver training school. Evidence of substantial interest includes, but is not limited to, one or more of the following:

(a) Directly or indirectly owning, operating, managing, or controlling a driver training school or any part of a driver training school;

(b) Directly or indirectly profiting from or assuming liability for debts of a driver training school;

(c) Is an officer or director of a driver training school;

(d) Owning ten percent or more of any class of stock in a privately or closely held corporate driver training school, or five percent or more of any class of stock in a publicly traded corporate driver training school;

(e) Furnishing ten percent or more of the capital, whether in cash, goods, or services, for the operation of a driver training school during any calendar year; or

(f) Directly or indirectly receiving a salary, commission, royalties, or other form of compensation from the activity in which a driver training school is or seeks to be engaged.

(14) "Student" means any person enrolled in a driver training course that pays a fee for instruction. [2006 c 219 § 2; 1986 c 80 § 1; 1979 ex.s. c 51 § 1.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.285 Application of uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2006 c 219 § 1.]

Effective date—2006 c 219: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2006]." [2006 c 219 § 15.]

46.82.290 Administration of chapter—Adoption of rules. (1) The director shall be responsible for the administration and enforcement of the law pertaining to driver training schools as set forth in this chapter.

(2) The director is authorized to adopt and enforce such reasonable rules as may be consistent with and necessary to carry out this chapter. [1979 ex.s. c 51 § 2.]

46.82.300 Driver instructors' advisory committee.

(1) The director shall be assisted in the duties and responsibilities of this chapter by the driver instructors' advisory committee, consisting of five members. Members of the advisory committee shall be appointed by the director for two-year terms and shall consist of a representative of the driver training schools, a representative of the driving instructors (who shall not be from the same school as the school member), a representative of the superintendent of public instruction, a representative of the department of licensing, and a representative from the Washington state traffic safety commission. Members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. A member who is receiving a salary from the state shall not receive compensation other than travel expenses incurred in such service.

(2) The advisory committee shall meet at least semiannually and shall have additional meetings as may be called by the director. The director or the director's representative shall attend all meetings of the advisory committee and shall serve as chairman.

(3) Duties of the advisory committee shall be to:

(a) Advise and confer with the director or the director's representative on matters pertaining to the establishment of rules necessary to carry out this chapter;

(b) Review and update when necessary a curriculum consisting of a list of items of knowledge and the processes of driving a motor vehicle specifying the minimum requirements adjudged necessary in teaching a proper and adequate course of driver education;

(c) Review and update instructor certification standards to be consistent with RCW 46.82.330 and take into consideration those standards required to be met by traffic safety education teachers under RCW 28A.220.020(3); and

(d) Prepare the examination for a driver instructor's certificate and review examination results at least once each calendar year for the purpose of updating and revising examination standards. [2006 c 219 § 3; 2002 c 195 § 5; 1984 c 287 § 93; 1979 ex.s. c 51 § 3.]

Effective date—2006 c 219: See note following RCW 46.82.285.

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

46.82.310 School licenses—Insurance. (1) No person shall engage in the business of conducting a driver training school without a license issued by the director for that purpose. The school's license must be displayed before the school may:

(a) Schedule, enroll, or engage any students in a course of instruction;

(b) Issue a verification of enrollment to any student; or

(c) Begin any classroom or behind-the-wheel instruction.

(2) An application for a driver training school license shall be filed with the director, containing such information as prescribed by the director, including a uniform business identifier number, accompanied by an application fee as set by rule of the department, which shall in no event be

refunded. Before an application for a driver training school license is approved, the business practices, facilities, records, and insurance of the proposed school must be inspected and reviewed by authorized representatives of the director. If an application is approved by the director, the applicant shall be granted a license valid for a period of one year from the date of issuance.

(3) A driver training school may apply for a license to establish a branch office or branch classroom by filing an application with the director, containing such information as prescribed by the director, accompanied by an application fee as set by rule of the department, which shall in no event be refunded. Before an application for a license to establish a branch office or branch classroom is approved, the business practices, facilities, records, and insurance of the proposed branch location must be inspected and reviewed by authorized representatives of the director. If an application is approved by the director, the applicant shall be granted a license valid for a period of one year from the date of issuance.

(4) The annual fee for renewal of a school or branch location license shall be set by rule of the department. Subject to the department's inspection of the business, the director shall issue a license certificate to each licensee which shall be conspicuously displayed in the place of business of the licensee. If the director has not received a renewal application on or before the date a license expires, the license will be void requiring a new application as provided for in this chapter, including payment of all fees.

(5) The person to whom a driver training school license has been issued must notify the director in writing within ten business days after any change is made in the officers, directors, or location of the place of business of the school.

(6) A change involving the ownership of a driver training school requires a new license application, including payment of all fees.

(a) The owner relinquishing the business must notify the director in writing within ten business days.

(b) The new owner must submit an application and fee as prescribed by rule of the department for transfer of the school's license to the director within ten business days.

(c) Upon receipt of the required notification and the application and fees for license transfer, the director shall permit continuance of the business for a period not to exceed sixty days from the date of transfer pending approval of the new application for a school license.

(d) The transferred license shall remain subject to suspension, revocation, or denial in accordance with RCW 46.82.350 and 46.82.360.

(7) Evidence of liability insurance coverage must be filed with the director prior to the issuance or renewal of a school license, and shall meet the following standards:

(a) Coverage must be provided by a company authorized to do business in Washington state;

(b) Automobile liability coverage shall be in the amount of not less than one million dollars, and shall include property damage and uninsured motorists coverage;

(c) The required coverage shall be maintained in full force and effect for the term of the school license;

(d) Changes in insurance coverage due to cancellation or expiration require notification of the director and proof of

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continuing coverage within ten working days following any change; and

(e) Coverage shall be issued in the name of the school and identify the covered locations and vehicles.

(8) The increased insurance requirements of subsection (7) of this section must be in effect by no later than one year after July 1, 2006. [2006 c 219 § 4; 2002 c 352 § 24; 1979 ex.s. c 51 § 4.]

Effective date—2006 c 219: See note following RCW 46.82.285.

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.82.320 Instructor's license. (1) No person affiliated with a driver training school shall give instruction in the operation of an automobile for a fee without a license issued by the director for that purpose. An application for an original or renewal instructor's license shall be filed with the director, containing such information as prescribed by this chapter and by the director, accompanied by an application fee set by rule of the department, which shall in no event be refunded. An application for a renewal instructor's license must be accompanied by proof of the applicant's continuing professional development that meets the standards adopted by the director. If the applicant satisfactorily meets the application requirements and the examination requirements as prescribed in RCW 46.82.330, the applicant shall be granted a license valid for a period of one year from the date of issuance. An instructor shall take a requalification examination every five years.

(2) The director shall issue a license certificate to each qualified applicant.

(a) An employing driver training school must conspicuously display an instructor's license at its established place of business and display copies of the instructor's license at any branch office where the instructor provides instruction.

(b) Unless revoked, canceled, or denied by the director, the license shall remain the property of the licensee in the event of termination of employment or employment by another driver training school.

(c) If the director has not received a renewal application on or before the date a license expires, the license will be voided requiring a new application as provided for in this chapter, including examination and payment of all fees.

(d) If revoked, canceled, or denied by the director, the license must be surrendered to the department within ten days following the effective date of such action.

(3) Each licensee shall be provided with a wallet-size identification card by the director at the time the license is issued which shall be carried on the instructor's person at all times while engaged in instructing.

(4) The person to whom an instructor's license has been issued shall notify the director in writing within ten days of any change of employment or termination of employment, providing the name and address of the new driver training school by whom the instructor will be employed. [2006 c 219 § 5; 2002 c 352 § 25; 1989 c 337 § 18; 1986 c 80 § 2; 1979 ex.s. c 51 § 5.]

Effective date—2006 c 219: See note following RCW 46.82.285.

Effective dates—2002 c 352: See note following RCW 46.09.070.

46.82.325 Background checks for school personnel.

(1) Instructors, owners, and other persons affiliated with a

school who have contact with students are required to have a background check through the Washington state patrol criminal identification system and through the federal bureau of investigation. The background check shall also include a fingerprint check using a fingerprint card. Persons covered by this section must have their background rechecked under this subsection every five years.

(2) In addition to the background check required under subsection (1) of this section, persons covered by this section must have a background check through the Washington criminal identification system at the time of application for any renewal license.

(3) The cost of the background check shall be paid by the person. [2006 c 219 § 6; 2002 c 195 § 4.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.330 Instructor's license—Application—Requirements, examination. (1) The application for an instructor's license shall document the applicant's fitness, knowledge, skills, and abilities to teach the classroom and behind-the-wheel phases of a driver training education program in a commercial driver training school.

(2) An applicant shall be eligible to apply for an original instructor's certificate if the applicant possesses and meets the following qualifications and conditions:

(a) Has been licensed to drive for five or more years and possesses a current and valid Washington driver's license or is a resident of a jurisdiction immediately adjacent to Washington state and possesses a current and valid license issued by such jurisdiction, and does not have on his or her driving record any of the violations or penalties set forth in (2)(a) (i), (ii), or (iii) of this section. The director shall have the right to examine the driving record of the applicant from the department of licensing and from other jurisdictions and from these records determine if the applicant has had:

(i) Not more than one moving traffic violation within the preceding twelve months or more than two moving traffic violations in the preceding twenty-four months;

(ii) No alcohol-related traffic violation or incident within the preceding seven years; and

(iii) No driver's license suspension, cancellation, revocation, or denial within the preceding five years;

(b) Is a high school graduate or the equivalent and at least twenty-one years of age;

(c) Has completed an acceptable application on a form prescribed by the director;

(d) Has satisfactorily completed a course of instruction in the training of drivers acceptable to the director that is no less than sixty hours in length and includes instruction in classroom and behind-the-wheel teaching methods and supervised practice behind-the-wheel teaching of driving techniques; and

(e) Has paid an examination fee as set by rule of the department and has successfully completed an instructor's examination as prepared by the advisory committee, which shall consist of a knowledge test and an actual driving test conducted in a vehicle provided by the applicant. The examination shall determine:

(i) The applicant's knowledge of driving laws and rules;

(ii) The applicant's ability to safely operate a motor vehicle; and

(iii) The applicant's ability to impart this knowledge and ability to others. [2006 c 219 § 7; 1979 ex.s. c 51 § 6.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.340 Duplicate license certificates. In case of the loss, mutilation, or destruction of a driver training school license certificate or an instructor's license certificate, the director shall issue a duplicate thereof upon proof of the facts and payment of a fee as set by rule of the department. [2006 c 219 § 8; 1979 ex.s. c 51 § 7.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.350 Suspension, revocation, or denial of licenses—Causes enumerated. The director may suspend, revoke, deny, or refuse to renew an instructor's license or a driver training school license, or impose such other disciplinary action authorized under RCW 18.235.110, upon determination that the applicant, licensee, or owner has engaged in unprofessional conduct as defined by RCW 18.235.130 or for any of the following causes:

(1) Upon determination that the licensee has made a false statement or concealed any material fact in connection with the application or license renewal;

(2) Upon determination that the applicant, licensee, owner, or any person directly or indirectly interested in the driver training school's business has been convicted of a felony, or any crime involving violence, dishonesty, deceit, indecency, degeneracy, or moral turpitude;

(3) Upon determination that the applicant, licensee, owner, or any person directly or indirectly interested in the driver training school's business previously held a driver training school license which was revoked, suspended, or refused renewal by the director;

(4) Upon determination that the applicant, licensee, or owner does not have an established place of business as required by this chapter;

(5) Upon determination that the applicant or licensee has failed to require all persons with financial interest in the driver training school to be signatories to the application;

(6) Upon determination that the applicant, licensee, or owner has committed fraud, induced another to commit fraud, or engaged in fraudulent practices in relation to the business conducted under the license, or has induced another to resort to fraud in relation to securing for himself, herself, or another a license to drive a motor vehicle;

(7) Upon determination that the applicant, licensee, or owner has engaged in conduct that could endanger the educational welfare or personal safety of students or others;

(8) Upon determination that a licensed instructor no longer possesses and meets the qualifications and conditions set out in RCW 46.82.330(2)(a); or

(9) Upon determination that the applicant, licensee or owner failed to satisfy or fails to satisfy the other conditions stated in this chapter. [2006 c 219 § 9; 1979 ex.s. c 51 § 8.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.360 Suspension, revocation, or denial of licenses—Failure to comply with specified business prac-

tices. The license of any driver training school or instructor may be suspended, revoked, denied, or refused renewal, or such other disciplinary action authorized under RCW 18.235.110 may be imposed, for failure to comply with the business practices specified in this section.

(1) No place of business shall be established nor any business of a driver training school conducted or solicited within one thousand feet of an office or building owned or leased by the department of licensing in which examinations for drivers' licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building.

(2) Any automobile used by a driver training school or an instructor for instruction purposes must be equipped with:

(a) Dual controls for foot brake and clutch, or foot brake only in a vehicle equipped with an automatic transmission;

(b) An instructor's rear view mirror; and

(c) A sign in legible, printed English letters displayed on the back or top, or both, of the vehicle that:

(i) Is not less than twenty inches in horizontal width or less than ten inches in vertical height;

(ii) Has the words "student driver," "instruction car," or "driving school" in letters at least two and one-half inches in height near the top;

(iii) Has the name and telephone number of the school in similarly legible letters not less than one inch in height placed somewhere below the aforementioned words;

(iv) Has lettering and background colors that make it clearly readable at one hundred feet in clear daylight;

(v) Is displayed at all times when instruction is being given.

(3) Instruction may not be given by an instructor to a student who is under the age of fifteen, and behind-the-wheel instruction may not be given by an instructor to a student in an automobile unless the student possesses a current and valid instruction permit issued pursuant to RCW 46.20.055 or a current and valid driver's license.

(4) No driver training school or instructor shall advertise or otherwise indicate that the issuance of a driver's license is guaranteed or assured as a result of the course of instruction offered.

(5) No driver training school or instructor shall utilize any types of advertising without using the full, legal name of the school and identifying itself as a driver training school. Instruction vehicles and equipment, classrooms, driving simulators, training materials and services advertised must be available in a manner as might be expected by the average person reading the advertisement.

(6) A driver training school shall have an established place of business owned, rented, or leased by the school and regularly occupied and used exclusively for the business of giving driver instruction. The established place of business of a driver training school shall be located in a district that is zoned for business or commercial purposes.

(a) The established place of business, branch office, or classroom or advertised address of any such driver training school shall not consist of or include a house trailer, residence, tent, temporary stand, temporary address, bus, telephone answering service if such service is the sole means of contacting the driver training school, a room or rooms in a

hotel or rooming house or apartment house, or premises occupied by a single or multiple-unit dwelling house.

(b) A driver training school may lease classroom space within a public or private school that is recognized and regulated by the office of the superintendent of public instruction to conduct student instruction as approved by the director. However, such use of public or private classroom space does not alleviate the driver training school from securing and maintaining an established place of business nor from using its own classroom on a regular basis as required by this chapter.

(c) To classify as a branch office or classroom the facility must be within a thirty-five mile radius of the established place of business.

(d) Nothing in this subsection may be construed as limiting the authority of local governments to grant conditional use permits or variances from zoning ordinances.

(7) No driver training school or instructor shall conduct any type of instruction or training on a course used by the department of licensing for testing applicants for a Washington driver's license.

(8) Each driver training school shall maintain its student, instructor, vehicle, and operating records at its established place of business.

(a) Student records must include the student's name, address, and telephone number, date of enrollment and all dates of instruction, the student's instruction permit or driver's license number, the type of training given, the total number of hours of instruction, and the name and signature of the instructor or instructors.

(b) Instructor records shall include the instructor's license number, the date of hire, the dates and duration of an instructor's training including initial certification as an instructor and continuing education, an abstract of the driving record for the instructor obtained within the past year, and a list of the locations where the instructor is providing student instruction.

(c) Vehicle records shall include the original insurance policies and copies of the vehicle registration for all instruction vehicles.

(d) Student and instructor records shall be maintained for five years following the completion of the instruction. Vehicle records shall be maintained for five years following their issuance. All records shall be made available for inspection upon the request of the department.

(e) Upon a transfer or sale of school ownership the school records shall be transferred to and become the property and responsibility of the new owner.

(9) Each driver training school shall, at its established place of business, display, in a place where it can be seen by all clients, a copy of the required minimum curriculum furnished by the department and a copy of the school's own curriculum. Copies of the required minimum curriculum are to be provided to driver training schools and instructors by the director.

(10) Driver training schools and instructors shall submit to periodic inspections of their business practices, facilities, records, and insurance by authorized representatives of the director of the department of licensing. [2006 c 219 § 10; 1989 c 337 § 19; 1979 ex.s. c 51 § 9.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.370 Suspension, revocation, or denial of licenses—Appeal of action—Emergency suspension—Hearing, notice and procedure. Upon notification of suspension, revocation, denial, or refusal to renew a license under this chapter, a driver training school or instructor shall have the right to appeal the action being taken. An appeal may be made to the director, who shall cause a hearing to be held in accordance with chapter 34.05 RCW. Filing an appeal shall stay the action pending the hearing and the director's decision. Upon conclusion of the hearing, the director shall issue a decision on the appeal.

(1) A license may, however, be temporarily suspended by the director without notice pending any prosecution, investigation, or hearing where such emergency action is warranted. A licensee or applicant entitled to a hearing shall be given due notice thereof.

(2) The sending of a notice of a hearing by registered mail to the last known address of a licensee or applicant in accordance with chapter 34.05 RCW shall be deemed due notice.

(3) The director or the director's authorized representative shall preside over the hearing and shall have the power to subpoena witnesses, administer oaths to witnesses, take testimony of any person, and cause depositions to be taken. A subpoena issued under the authority of this section shall be served in the same manner as a subpoena issued by a court of record. Witnesses subpoenaed under this section and persons other than officers or employees of the department of licensing shall be entitled to the same fees and mileage as are allowed in civil actions in courts of law. [2006 c 219 § 11; 1979 ex.s. c 51 § 10.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.380 Appeal from action or decision of director. Any action or decision of the director may, after a hearing is held as provided in this chapter, be appealed by the party aggrieved to the superior court of the county in which the place of business is located or where the aggrieved person resides. [1979 ex.s. c 51 § 11.]

46.82.390 Penalty. A violation of any provision of this chapter shall be a misdemeanor. [1979 ex.s. c 51 § 12.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

46.82.400 Chapter not applicable to educational institutions. This chapter shall not apply to or affect in any manner courses of instruction offered in high schools, vocational-technical schools, colleges, or universities which are now or hereafter established, nor shall it be applicable to instructors in any such high schools, vocational-technical schools, colleges, or universities: PROVIDED, That such course or courses are conducted by such schools in a like manner to their other regular courses. If such course is conducted by any commercial school as herein identified on a contractual basis, such school and instructors must qualify under this chapter. [1979 ex.s. c 51 § 13.]

46.82.410 Disposition of moneys collected. All moneys collected from driver training school licenses and instruc-

tor licenses shall be deposited in the highway safety fund. [1990 c 250 § 73; 1979 ex.s. c 51 § 14.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.82.420 Basic minimum required curriculum—Revocation of license for failure to teach. (1) The advisory committee shall consult with the department in the development and maintenance of a basic minimum required curriculum and the department shall furnish to each qualifying applicant for an instructor's license or a driver training school license a copy of such curriculum.

(2) In addition to information on the safe, lawful, and responsible operation of motor vehicles on the state's highways, the basic minimum required curriculum shall include information on:

(a) Intermediate driver's license issuance, passenger and driving restrictions and sanctions for violating the restrictions, and the effect of traffic violations and collisions on the driving privileges;

(b) The effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington and the current penalties for driving under the influence of drugs or alcohol;

(c) Motorcycle awareness, approved by the director, to ensure new operators of motor vehicles have been instructed in the importance of safely sharing the road with motorcyclists;

(d) Bicycle safety, to ensure that operators of motor vehicles have been instructed in the importance of safely sharing the road with bicyclists; and

(e) Pedestrian safety, to ensure that operators of motor vehicles have been instructed in the importance of safely sharing the road with pedestrians.

(3) Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching such basic minimum curriculum as required, the instructor or school shall be required to appear before the advisory committee and show cause why the license of the instructor or school should not be revoked for such negligence. If the committee does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both. [2008 c 125 § 3; 2007 c 97 § 3; 2006 c 219 § 12; 2004 c 126 § 2; 1991 c 217 § 3; 1979 ex.s. c 51 § 15.]

Findings—2008 c 125: "The legislature finds and declares that it is the policy of the state of Washington to encourage the safe and efficient use of the roads by all citizens, regardless of mode of transportation. In furtherance of this policy, the legislature further finds and declares that driver training programs should enhance the driver training curriculum in order to emphasize the importance of safely sharing the road with bicyclists and pedestrians." [2008 c 125 § 1.]

Short title—2008 c 125: "This act may be known and cited as the Matthew "Tatsuo" Nakata act." [2008 c 125 § 2.]

Effective date—2006 c 219: See note following RCW 46.82.285.

46.82.430 Instructional material requirements. Instructional material used in driver training schools shall include information on the proper use of the left-hand lane by motor vehicles on multilane highways and on bicyclists' and pedestrians' rights and responsibilities and suggested riding

procedures in common traffic situations. [1998 c 165 § 6; 1986 c 93 § 5.]

Short title—1998 c 165: See note following RCW 43.59.010.

Keep right except when passing, etc.: RCW 46.61.100.

46.82.900 Severability—1979 ex.s. c 51. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 51 § 19.]

**Chapter 46.83 RCW
TRAFFIC SCHOOLS**

Sections

- 46.83.010 City or town and county traffic schools authorized—Procedure to establish.
- 46.83.020 County commissioners to control and supervise—Assistance of sheriff and police department.
- 46.83.030 Deposit, control of funds—Support.
- 46.83.040 Purpose of school.
- 46.83.050 Court may order attendance.
- 46.83.060 Duty of person required to attend—Penalty.

46.83.010 City or town and county traffic schools authorized—Procedure to establish. Any city or town and the county in which it is located are authorized, as may be agreed between the respective governing bodies of the city or town and county, to establish a traffic school for the purposes and under the conditions set forth in this chapter. Such city or town and county traffic school may be effected whenever the governing body of the city or town shall pass an ordinance and the board of commissioners of the county shall pass a resolution declaring intention to organize and operate a traffic school in accordance with agreements had between them as to the financing, organization, and operation thereof. [1961 c 12 § 46.83.010. Prior: 1959 c 182 § 1.]

46.83.020 County commissioners to control and supervise—Assistance of sheriff and police department. A traffic school established under this chapter shall be under the control and supervision of the board of county commissioners, through such agents, assistants, or instructors as the board may designate, and shall be conducted with the assistance of the county sheriff and the police department of the city or town. [1961 c 12 § 46.83.020. Prior: 1959 c 182 § 2.]

46.83.030 Deposit, control of funds—Support. All funds appropriated by the city or town and county to the operation of the traffic school shall be deposited with the county treasurer and shall be administered by the board of county commissioners. The governing bodies of every city or town and county participating in the operation of traffic schools are authorized to make such appropriations by ordinance or resolution, as the case may be, as they shall determine for the establishment and operation of traffic schools, and they are further authorized to accept and expend gifts, donations, and any other money from any source, private or public, given for the purpose of said schools. [1961 c 12 § 46.83.030. Prior: 1959 c 182 § 3.]

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46.83.040 Purpose of school. It shall be the purpose of every traffic school which may be established hereunder to instruct, educate, and inform all persons appearing for training in the proper, lawful, and safe operation of motor vehicles, including but not limited to rules of the road and the limitations of persons, vehicles, and bicycles and roads, streets, and highways under varying conditions and circumstances. [1998 c 165 § 7; 1961 c 12 § 46.83.040. Prior: 1959 c 182 § 4.]

Short title—1998 c 165: See note following RCW 43.59.010.

46.83.050 Court may order attendance. Every municipal court, district court, juvenile court, superior court, and every other court handling traffic cases within the limits of a county wherein a traffic school has been established may, as a part of any sentence imposed following a conviction for any traffic law violation, or as a condition on the suspension of sentence or deferral of any imposition of sentence, order any person so convicted, whether that person be a juvenile, a minor, or an adult, to attend the traffic school for a number of days to be determined by the court, but not to exceed the maximum number of days which the violator could be required to serve in the city or county jail as a result of his or her conviction. [1984 c 258 § 138; 1961 c 12 § 46.83.050. Prior: 1959 c 182 § 5.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Application—1984 c 258 §§ 101-139: See note following RCW 3.50.005.

46.83.060 Duty of person required to attend—Penalty. Every person required to attend a traffic school as established under the provisions of this chapter shall maintain attendance in accordance with the sentence or order. Failure so to do, unless for good cause shown by clear and convincing evidence, is a traffic infraction. [1979 ex.s. c 136 § 98; 1961 c 12 § 46.83.060. Prior: 1959 c 182 § 6.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

**Chapter 46.85 RCW
RECIPROCAL OR PROPORTIONAL
REGISTRATION OF VEHICLES**

Sections

- 46.85.010 Declaration of policy.
- 46.85.020 Definitions.
- 46.85.030 Departmental entry into multistate proportional registration agreement, International Registration Plan.
- 46.85.040 Authority for reciprocity agreements—Provisions—Reciprocity standards.
- 46.85.050 Base state registration reciprocity.
- 46.85.060 Declarations of extent of reciprocity, when—Exemptions, benefits, and privileges—Rules.
- 46.85.070 Extension of reciprocal privileges to lessees authorized.
- 46.85.080 Automatic reciprocity, when.
- 46.85.090 Suspension of reciprocity benefits.
- 46.85.100 Agreements to be written, filed, and available for distribution.
- 46.85.110 Reciprocity agreements in effect at time of act.
- 46.85.900 Chapter part of and supplemental to motor vehicle registration law.
- 46.85.910 Constitutionality.
- 46.85.920 Repeal and saving.
- 46.85.930 Effective date—1963 c 106.
- 46.85.940 Section captions not a part of the law.

46.85.010 Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories, and countries with respect to vehicles registered in this and such other states, provinces, territories, and countries thus contributing to the economic and social development and growth of this state. [1987 c 244 § 8; 1963 c 106 § 1.]

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

(1) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(2) "Owner" means a person, business firm, or corporation who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(3) "Properly registered," as applied to place of registration, means:

(a) The jurisdiction where the person registering the vehicle has his legal residence; or

(b) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business; or

(c) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

In case of doubt or dispute as to the proper place of registration of a vehicle, the department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected. [1987 c 244 § 9; 1985 c 173 § 2; 1982 c 227 § 18; 1981 c 222 § 1; 1963 c 106 § 2.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.030 Departmental entry into multistate proportional registration agreement, International Registration Plan. The department of licensing shall have the authority to execute agreements, arrangements, or declarations to carry out the provisions of chapter 46.87 RCW and this chapter.

If the department enters into a multistate proportional registration agreement which requires this state to perform

acts in a quasi agency relationship, the department may collect and forward applicable registration fees and applications to other jurisdictions on behalf of the applicant or on behalf of another jurisdiction and may take such other action as will facilitate the administration of such agreement.

If the department enters into a multistate proportional registration agreement which prescribes procedures applicable to vehicles not specifically described in chapter 46.87 RCW, such as but not limited to "owner-operator" or "rental" vehicles, it shall promulgate rules taking exception to or accomplishing the procedures prescribed in such agreement.

It is the purpose and intent of this subsection to facilitate the membership in the International Registration Plan and at the same time allow the department to continue to participate in such agreements and compacts as may be necessary and desirable in addition to the International Registration Plan. [1987 c 244 § 10; 1982 c 227 § 19; 1981 c 222 § 2; 1977 ex.s. c 92 § 1; 1975-'76 2nd ex.s. c 34 § 137; 1967 c 32 § 113; 1963 c 106 § 3.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

Effective date—1982 c 227: See note following RCW 19.09.100.

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

46.85.040 Authority for reciprocity agreements—Provisions—Reciprocity standards. The department may enter into an agreement or arrangement with the duly authorized representatives of another jurisdiction, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction and for which evidence of compliance is supplied, benefits, privileges, and exemptions from the payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state when operated upon highways of such other jurisdiction shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the department, be in the best interest of this state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce. [1985 c 173 § 3; 1982 c 227 § 20; 1963 c 106 § 4.]

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.050 Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of chapter 46.87 RCW or this chapter may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits, and privileges extended by such agreement, arrangement, or declaration shall apply to such vehicles, when properly licensed

or registered in such base jurisdiction. [1987 c 244 § 11; 1963 c 106 § 5.]

46.85.060 Declarations of extent of reciprocity, when—Exemptions, benefits, and privileges—Rules. In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the department, be in the best interest of this state and the citizens thereof and which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce. Declarations of exemptions, benefits, and privileges issued by the department shall include at least the following exemptions:

(1) Nonresident persons not employed in this state may operate a vehicle in this state that is currently licensed in another jurisdiction for a period not to exceed six months in any continuous twelve-month period.

(2) Nonresident persons employed in this state may operate vehicles not to exceed twelve thousand pounds registered gross vehicle weight that are currently licensed in another jurisdiction if no permanent, temporary, or part-time residence is maintained in this state for a period greater than six months in any continuous twelve-month period.

(3) A vehicle or a combination of vehicles, not exceeding a registered gross or combined gross vehicle weight of twelve thousand pounds, which is properly base licensed in another jurisdiction and registered to a bona fide business in that jurisdiction is not required to obtain Washington vehicle license registration except when such vehicle is owned or operated by a business or branch office of a business located in Washington.

(4) The department of licensing, after consultation with the department of revenue, shall adopt such rules as it deems necessary for the administration of these exemptions, benefits, and privileges. [1987 c 142 § 4; 1985 c 353 § 3; 1982 c 227 § 21; 1963 c 106 § 6.]

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.070 Extension of reciprocal privileges to lessees authorized. An agreement, or arrangement entered into, or a declaration issued under the authority of this chapter, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration. [1963 c 106 § 7.]

46.85.080 Automatic reciprocity, when. On and after July 1, 1963, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this chapter, any vehicle properly registered or licensed in such other jurisdiction and for which evidence of compliance is supplied shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other

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jurisdiction to vehicles properly registered in this state. Reciprocity extended under this section shall apply to commercial vehicles only when engaged exclusively in interstate commerce. [1963 c 106 § 8.]

46.85.090 Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this chapter may include provisions authorizing the department to suspend or cancel the exemptions, benefits, or privileges granted thereunder to an owner who violates any of the conditions or terms of such agreements, arrangements, or declarations or who violates the laws of this state relating to motor vehicles or rules and regulations lawfully promulgated thereunder. [1987 c 244 § 12; 1963 c 106 § 9.]

46.85.100 Agreements to be written, filed, and available for distribution. All agreements, arrangements, or declarations or amendments thereto shall be in writing and shall be filed with the department. Upon becoming effective, they shall supersede the provisions of RCW 46.16.030, chapter 46.87 RCW, or this chapter to the extent that they are inconsistent therewith. The department shall provide copies for public distribution upon request. [1987 c 244 § 13; 1982 c 227 § 22; 1967 c 32 § 114; 1963 c 106 § 10.]

Effective date—1982 c 227: See note following RCW 19.09.100.

46.85.110 Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles in force and effect at the time this chapter becomes effective shall continue in force and effect at the time this chapter becomes effective and until specifically amended or revoked as provided by law or by such agreements or arrangements. [1963 c 106 § 11.]

Effective date—1963 c 106: See RCW 46.85.930.

46.85.900 Chapter part of and supplemental to motor vehicle registration law. This chapter shall be, and construed as, a part of and supplemental to the motor vehicle registration law of this state. [1963 c 106 § 30.]

46.85.910 Constitutionality. If any phrase, clause, subsection or section of this chapter shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this chapter without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the chapter shall not be affected as a result of said part being held unconstitutional or invalid. [1963 c 106 § 31.]

46.85.920 Repeal and saving. The following acts or parts of acts and RCW sections are hereby repealed:

(1) Sections 46.84.010, 46.84.030, 46.84.040, 46.84.050, 46.84.060, 46.84.070, 46.84.080, 46.84.090 and 46.84.100, chapter 12, Laws of 1961 and RCW 46.84.010, 46.84.030, 46.84.040, 46.84.050, 46.84.060, 46.84.070, 46.84.080, 46.84.090 and 46.84.100;

(2) Section 46.84.020, chapter 12, Laws of 1961 as amended by section 37, chapter 21, Laws of 1961 extraordinary session and RCW 46.84.020;

(3) Sections 1, 2, 3, and 4, chapter 266, Laws of 1961 and RCW 46.84.110, 46.84.120, 46.84.130 and 46.84.140; and

(4) Sections 38, 39, and 40, chapter 21, Laws of 1961 extraordinary session and RCW 46.84.150, 46.84.160 and 46.84.170.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder, nor the term of office or appointment or employment of any person appointed or employed thereunder. [1963 c 106 § 32.]

46.85.930 Effective date—1963 c 106. This chapter shall take effect and be in force on and after July 1, 1963. [1963 c 106 § 33.]

46.85.940 Section captions not a part of the law. Section captions as used in this chapter shall not constitute any part of the law. [1963 c 106 § 34.]

Chapter 46.87 RCW

PROPORTIONAL REGISTRATION

(Formerly: International Registration Plan)

Sections

46.87.010	Applicability—Implementation.
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46.87.335	Mitigation of assessments.
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46.87.390	Remedies cumulative.
46.87.400	Civil immunity.
46.87.410	Bankruptcy proceedings—Notice.
46.87.900	Severability—1985 c 380.
46.87.910	Short title.

46.87.010 Applicability—Implementation. This chapter applies to proportional registration and reciprocity granted under the provisions of the International Registration Plan (IRP). This chapter shall become effective and be implemented beginning with the 1988 registration year.

(1) Provisions and terms of the IRP prevail unless given a different meaning in chapter 46.04 RCW, this chapter, or in rules adopted under the authority of this chapter.

(2) The director may adopt and enforce rules deemed necessary to implement and administer this chapter.

(3) Owners having a fleet of apportionable vehicles operating in two or more IRP member jurisdictions may elect to proportionally register the vehicles of the fleet under the provisions of the IRP and this chapter in lieu of full or temporary registration as provided for in chapters 46.16 or 46.88 RCW.

(4) If a due date or an expiration date established under authority of this chapter falls on a Saturday, Sunday, or a state legal holiday, such period is automatically extended through the end of the next business day. [2005 c 194 § 1; 1987 c 244 § 15; 1986 c 18 § 22; 1985 c 380 § 1.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.020 Definitions. Terms used in this chapter have the meaning given to them in the International Registration Plan (IRP), in chapter 46.04 RCW, or as otherwise defined in this section. Definitions given to terms by the IRP prevail unless given a different meaning in this chapter or in rules adopted under authority of this chapter.

(1) "Apportionable vehicle" has the meaning given by the IRP, except that it does not include vehicles with a declared gross weight of twelve thousand pounds or less. Apportionable vehicles include trucks, tractors, truck tractors, road tractors, and buses, each as separate and licensable vehicles.

(2) "Cab card" is a certificate of registration issued for a vehicle upon which is disclosed the jurisdictions and registered gross weights in such jurisdictions for which the vehicle is registered.

(3) "Credentials" means cab cards, apportioned plates (for Washington-based fleets), and validation tabs issued for proportionally registered vehicles.

(4) "Declared combined gross weight" means the total unladen weight of any combination of vehicles plus the weight of the maximum load to be carried on the combination of vehicles as set by the registrant in the application pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid.

(5) "Declared gross weight" means the total unladen weight of any vehicle plus the weight of the maximum load to be carried on the vehicle as set by the registrant in the appli-

cation pursuant to chapter 46.44 RCW and for which registration fees have been or are to be paid. In the case of a bus, auto stage, or a passenger-carrying for hire vehicle with a seating capacity of more than six, the declared gross weight shall be determined by multiplying the average load factor of one hundred and fifty pounds by the number of seats in the vehicle, including the driver's seat, and add this amount to the unladen weight of the vehicle. If the resultant gross weight is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

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

(7) "Fleet" means one or more apportionable vehicles in the IRP.

(8) "In-jurisdiction miles" means the total miles accumulated in a jurisdiction during the preceding year by vehicles of the fleet while they were a part of the fleet.

(9) "IRP" means the International Registration Plan.

(10) "Jurisdiction" means and includes a state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(11) "Motor carrier" means an entity engaged in the transportation of goods or persons. The term includes a for-hire motor carrier, private motor carrier, contract motor carrier, or exempt motor carrier. The term includes a registrant licensed under this chapter, a motor vehicle lessor, and a motor vehicle lessee.

(12) "Owner" means a person or business firm who holds the legal title to a vehicle, or if a vehicle is the subject of an agreement for its conditional sale with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or if a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or if a mortgagor of a vehicle is entitled to possession, then the owner is deemed to be the person or business firm in whom is vested right of possession or control.

(13) "Preceding year" means the period of twelve consecutive months immediately before July 1st of the year immediately before the commencement of the registration or license year for which apportioned registration is sought.

(14) "Prorate percentage" is the factor that is applied to the total proratable fees and taxes to determine the apportionable or prorate fees required for registration in a particular jurisdiction. It is determined by dividing the in-jurisdiction miles for a particular jurisdiction by the total miles. This term is synonymous with the term "mileage percentage."

(15) "Registrant" means a person, business firm, or corporation in whose name or names a vehicle or fleet of vehicles is registered.

(16) "Registration year" means the twelve-month period during which the registration plates issued by the base jurisdiction are valid according to the laws of the base jurisdiction.

(17) "Total miles" means the total number of miles accumulated in all jurisdictions during the preceding year by all vehicles of the fleet while they were a part of the fleet. Mileage accumulated by vehicles of the fleet that did not engage in interstate operations is not included in the fleet miles. [2005 c 194 § 2; 2003 c 85 § 1; 1997 c 183 § 2; 1994 c 262 §

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12; 1993 c 307 § 12; 1991 c 163 § 4; 1990 c 42 § 111; 1987 c 244 § 16; 1985 c 380 § 2.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.022 Rental trailers, converter gears. Owners of rental trailers and semitrailers over six thousand pounds gross vehicle weight, and converter gears used solely in pool fleets shall fully register a portion of the pool fleet in this state. To determine the percentage of total fleet vehicles that must be registered in this state, divide the gross revenue received in the preceding year for the use of the rental vehicles arising from rental transactions occurring in this state by the total revenue received in the preceding year for the use of the rental vehicles arising from rental transactions in all jurisdictions in which the vehicles are operated. Apply the resulting percentage to the total number of vehicles that shall be registered in this state. Vehicles registered in this state shall be representative of the vehicles in the fleet according to age, size, and value. [1990 c 250 § 74.]

Severability—1990 c 250: See note following RCW 46.16.301.

46.87.023 Rental car businesses. (1) Rental car businesses must register with the department of licensing. This registration must be renewed annually by the rental car business.

(2) Rental cars must be titled and registered under the provisions of chapters 46.12 and 46.16 RCW. The vehicle must be identified at the time of application with the rental car company business number issued by the department.

(3) Use of rental cars is restricted to the rental customer unless otherwise provided by rule.

(4) The department may suspend or cancel the exemptions, benefits, or privileges granted under this section to a rental car business that violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder. The department may initiate and conduct audits, investigations, and enforcement actions as may be reasonably necessary for administering this section.

(5) The department shall adopt such rules as may be necessary to administer and enforce the provisions of this section. [1994 c 227 § 2; 1992 c 194 § 7.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

46.87.025 Vehicles titled in owner's name. All vehicles being added to an existing Washington-based fleet or those vehicles that make up a new Washington-based fleet shall be titled in the name of the owner at time of registration, or evidence of filing application for title for such vehicles in the name of the owner shall accompany the application for proportional registration. [1990 c 250 § 75; 1987 c 244 § 17.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.030 Part-year registration—Credit for unused fees. (1) When application to register an apportionable vehicle is made, the Washington prorated fees may be reduced by one-twelfth for each full registration month that has elapsed at the time a temporary authorization permit (TAP) was

issued or if no TAP was issued, at such time as an application for registration is received in the department. If a vehicle is being added to a currently registered fleet, the prorated percentage previously established for the fleet for such registration year shall be used in the computation of the proportional fees and taxes due.

(2) If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under this chapter, the registrant of the fleet shall notify the department on appropriate forms prescribed by the department. The department may require the registrant to surrender credentials that were issued to the vehicle. If a motor vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the fleet registrant, the unused portion of the licensing fee paid under RCW 46.16.070 with respect to the vehicle reduced by one-twelfth for each calendar month and fraction thereof elapsing between the first day of the month of the current registration year in which the vehicle was registered and the date the notice of withdrawal, accompanied by such credentials as may be required, is received in the department, shall be credited to the fleet proportional registration account of the registrant. Credit shall be applied against the licensing fee liability for subsequent additions of motor vehicles to be proportionally registered in the fleet during such registration year or for additional licensing fees due under RCW 46.16.070 or to be due upon audit under RCW 46.87.310. If any credit is less than fifteen dollars, no credit will be entered. In lieu of credit, the registrant may choose to transfer the unused portion of the licensing fee for the motor vehicle to the new owner, in which case it shall remain with the motor vehicle for which it was originally paid. In no event may any amount be credited against fees other than those for the registration year from which the credit was obtained nor is any amount subject to refund. [2005 c 194 § 3; 1997 c 183 § 3; 1993 c 307 § 13; 1987 c 244 § 18; 1986 c 18 § 23; 1985 c 380 § 3.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.040 Purchase of additional gross weight. Additional gross weight may be purchased for proportionally registered motor vehicles to the limits authorized under chapter 46.44 RCW. Reregistration at the higher gross weight (maximum gross weights under this chapter are fifty-four thousand pounds for a solo three-axle truck or one hundred five thousand five hundred pounds for a combination) for the balance of the registration year, including the full registration month in which the vehicle is initially licensed at the higher gross weight. The apportionable or proportional fee initially paid to the state of Washington, reduced for the number of full registration months the license was in effect, will be deducted from the total fee to be paid to this state for licensing at the higher gross weight for the balance of the registration year. No credit or refund will be given for a reduction of gross weight. [1994 c 262 § 13; 1987 c 244 § 19; 1985 c 380 § 4.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.050 Deposit of fees. Each day the department shall forward to the state treasurer the fees collected under this chapter, and within ten days of the end of each registra-

tion quarter, a detailed report identifying the amount to be deposited to each account for which fees are required for the licensing of proportionally registered vehicles. Such fees shall be deposited pursuant to RCW 46.68.035 and *82.44.170. [2005 c 194 § 4; 1987 c 244 § 20; 1985 c 380 § 5.]

*Reviser's note: RCW 82.44.170 was repealed by 2006 c 318 § 10.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.060 Apportionment of fees, formula. The apportionment of fees to IRP member jurisdictions shall be in accordance with the provisions of the IRP agreement based on the apportionable fee multiplied by the prorated percentage for each jurisdiction in which the fleet will be registered or is currently registered. [1987 c 244 § 21; 1985 c 380 § 6.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.070 Reciprocity for trailers, semitrailers, pole trailers. Trailers, semitrailers, and pole trailers that are properly based in jurisdictions other than Washington, and that display currently registered license plates from such jurisdictions will be granted vehicle license reciprocity in this state without the need of further vehicle license registration. If pole trailers are not required to be licensed separately by a member jurisdiction, such vehicles may be operated in this state without displaying a current base license plate. [2005 c 194 § 5; 1993 c 123 § 1. Prior: 1991 c 339 § 9; 1991 c 163 § 5; 1990 c 42 § 112; 1987 c 244 § 22; 1985 c 380 § 7.]

Effective date of 1993 c 102 and c 123—1993 sp.s. c 23: See note following RCW 46.16.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.080 Cab cards, validation tabs, special license plates—Design, procedures—Issuance, refusal, revocation. (1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department shall issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle. License plates shall be displayed on vehicles as required by RCW 46.16.240. The number and plate shall be of a design, size, and color determined by the department. The plates shall be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card shall contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card shall be signed by the registrant, or a designated person if the registrant is a business firm, and shall at all times be carried in or on the vehicle to which it was issued.

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule

and shall be used only on the vehicle to which they are assigned by the department for as long as they are legible or until such time as the department requires them to be removed and returned to the department.

(4) Distinctive validation tab(s) of a design, size, and color determined by the department shall be affixed to the apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered.

(5) Renewals shall be effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified shall be deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee shall be collected for each permit issued. The permit fee shall be deposited in the motor vehicle fund, and the filing fee shall be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16, 46.85, 46.87, 82.36, or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16, 46.85, 46.87, 82.36, 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department shall grant the applicant a hearing and at least ten days written notice of the time and place of the hearing. [2005 c 194 § 6; 1998 c 115 § 1; 1993 c 307 § 14; 1987 c 244 § 23; 1985 c 380 § 8.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

(2008 Ed.)

46.87.090 Apportioned vehicle license plates, cab card, validation tabs—Replacement—Fees. (1) To replace an apportioned vehicle license plate(s), cab card, or validation tab(s) due to loss, defacement, or destruction, the registrant shall apply to the department on forms furnished for that purpose. The application, together with proper payment and other documentation as indicated, shall be filed with the department as follows:

(a) Apportioned plate(s) - a fee of ten dollars shall be charged for vehicles required to display two apportioned plates or five dollars for vehicles required to display one apportioned plate. The cab card of the vehicle for which a plate is requested shall accompany the application. The department shall issue a new apportioned plate(s) with validation tab(s) and a new cab card upon acceptance of the completed application form, old cab card, and the required replacement fee.

(b) Cab card - a fee of two dollars shall be charged for each card. If this is a duplicate cab card, it will be noted thereon.

(c) Validation year tab(s) - a fee of two dollars shall be charged for each vehicle.

(2) All fees collected under this section shall be deposited to the motor vehicle fund. [1994 c 262 § 14; 1987 c 244 § 24; 1986 c 18 § 24; 1985 c 380 § 9.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.120 Mileage data for applications. (1) The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If no operations were conducted with the fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in each of the jurisdictions in which operation is contemplated. The registrant shall determine the in-jurisdiction and total miles to be used in computing the fees and taxes due for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to its correctness.

(2) When operations of a Washington-based fleet is materially changed through merger, acquisition, or extended authority, the registrant shall notify the department, which shall then require the filing of an amended application setting forth the proposed operation by use of estimated mileage for all jurisdictions. The department may adjust the estimated mileage by audit or otherwise to an actual travel basis to insure proper fee payment. The actual travel basis may be used for determination of fee payments until such time as a normal mileage year is available under the new operation. [2005 c 194 § 7; 1997 c 183 § 4; 1990 c 42 § 113; 1987 c 244 § 25.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.130 Transaction fee. In addition to all other fees prescribed for the proportional registration of vehicles under this chapter, the department shall collect a vehicle transaction fee each time a vehicle is added to a Washington-based fleet, and each time the proportional registration of a Washington-based vehicle is renewed. The exact amount of the vehicle

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transaction fee shall be fixed by rule but shall not exceed ten dollars. This fee shall be deposited in the motor vehicle fund. [2005 c 194 § 8; 1987 c 244 § 26.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.140 Application—Filing, contents—Fees and taxes—Assessments, due date. (1) Any owner engaged in interstate operations of one or more fleets of apportionable vehicles may, in lieu of registration of the vehicles under chapter 46.16 RCW, register and license the vehicles of each fleet under this chapter by filing a proportional registration application for each fleet with the department. The application shall contain the following information and such other information pertinent to vehicle registration as the department may require:

(a) A description and identification of each vehicle of the fleet.

(b) The member jurisdictions in which registration is desired and such other information as member jurisdictions require.

(c) An original or renewal application shall also be accompanied by a mileage schedule for each fleet.

(d) The USDOT number issued to the registrant and the USDOT number of the motor carrier responsible for the safety of the vehicle, if different.

(e) A completed Motor Carrier Identification Report (MCS-150) at the time of fleet renewal or at the time of vehicle registration, if required by the department.

(f) The Taxpayer Identification Number of the registrant and the motor carrier responsible for the safety of the vehicle, if different.

(2) Each application shall, at the time and in the manner required by the department, be supported by payment of a fee computed as follows:

(a) Divide the in-jurisdiction miles by the total miles and carry the answer to the nearest thousandth of a percent (three places beyond the decimal, e.g. 10.543%). This factor is known as the prorated percentage.

(b) Determine the total proratable fees and taxes required for each vehicle in the fleet for which registration is requested, based on the regular annual fees and taxes or applicable fees and taxes for the unexpired portion of the registration year under the laws of each jurisdiction for which fees or taxes are to be calculated.

Applicable fees and taxes for vehicles of Washington-based fleets are those prescribed under RCW 46.16.070, 46.16.085, and 82.38.075, as applicable. If, during the registration period, the lessor of an apportioned vehicle changes and the vehicle remains in the fleet of the registrant, the department shall only charge those fees prescribed for the issuance of new apportioned license plates, validation tabs, and cab card.

(c) Multiply the total, proratable fees or taxes for each motor vehicle by the prorated percentage applicable to the desired jurisdiction and round the results to the nearest cent.

(d) Add the total fees and taxes determined in (c) of this subsection for each vehicle to the nonproratable fees required under the laws of the jurisdiction for which fees are being calculated. Nonproratable fees required for vehicles of Washington-based fleets are the administrative fee required by

RCW 82.38.075, if applicable, and the vehicle transaction fee pursuant to the provisions of RCW 46.87.130.

(e) The amount due and payable for the application is the sum of the fees and taxes calculated for each member jurisdiction in which registration of the fleet is desired.

(3) All assessments for proportional registration fees are due and payable in United States funds on the date presented or mailed to the registrant at the address listed in the proportional registration records of the department. The registrant may petition for reassessment of the fees or taxes due under this section within thirty days of the date of original service as provided for in this chapter. [2005 c 194 § 9; 2003 c 85 § 2; 1997 c 183 § 5; 1991 c 339 § 10; 1990 c 42 § 114; 1987 c 244 § 27.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.150 Overpayment, underpayment—Refund, additional charge. Whenever a person has been required to pay a fee or tax pursuant to this chapter that amounts to an overpayment of ten dollars or more, the person is entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Nothing in this subsection precludes anyone from applying for a refund of such overpayment if the overpayment is less than ten dollars. Conversely, if the department or its agents has failed to charge and collect the full amount of fees or taxes pursuant to this chapter, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the fees and taxes due. [1996 c 91 § 1; 1987 c 244 § 28.]

Effective date—1996 c 91: "This act takes effect July 1, 1996." [1996 c 91 § 5.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.190 Suspension or cancellation of benefits. The department may suspend or cancel the exemptions, benefits, or privileges granted under chapter 46.85 RCW or this chapter to any person or business firm who violates any of the conditions or terms of the IRP or who violates the laws of this state relating to the operation or registration of vehicles or rules lawfully adopted thereunder. [2005 c 194 § 10; 1987 c 244 § 32.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.200 Refusal of registration—Federal heavy vehicle use tax. The department may refuse registration of a vehicle if the applicant has failed to furnish proof, acceptable to the department, that the federal heavy vehicle use tax imposed by section 4481 of the internal revenue code of 1954 has been suspended or paid. The department may adopt rules as deemed necessary to administer this section. [1987 c 244 § 33.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.210 Refusal of application from nonreciprocal jurisdiction. The department may refuse to accept proportional registration applications for the registration of vehicles

based in another jurisdiction if the department finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state. [1987 c 244 § 34.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.220 Gross weight computation. The gross weight in the case of a motor truck, tractor, or truck tractor is the scale weight of the motor truck, tractor, or truck tractor, plus the scale weight of any trailer, semitrailer, converter gear, or pole trailer to be towed by it, to which shall be added the weight of the maximum load to be carried on it or towed by it as set forth by the licensee in the application providing it does not exceed the weight limitations prescribed by chapter 46.44 RCW.

The gross weight in the case of a bus, auto stage, or for hire vehicle, except a taxicab, with a seating capacity over six, is the scale weight of the bus, auto stage, or for hire vehicle plus the seating capacity, including the operator's seat, computed at one hundred and fifty pounds per seat.

If the resultant gross weight, according to this section, is not listed in RCW 46.16.070, it will be increased to the next higher gross weight so listed pursuant to chapter 46.44 RCW.

A motor vehicle or combination of vehicles found to be loaded beyond the licensed gross weight of the motor vehicle registered under this chapter shall be cited and handled under RCW 46.16.140 and 46.16.145. [1987 c 244 § 35.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.230 Responsibility for unlawful acts or omissions. Whenever an act or omission is declared to be unlawful under chapter 46.12, 46.16, or 46.44 RCW or this chapter, and if the operator of the vehicle is not the owner or lessee of the vehicle but is so operating or moving the vehicle with the express or implied permission of the owner or lessee, then the operator and the owner or lessee are both subject to this chapter, with the primary responsibility to be that of the owner or lessee.

If the person operating the vehicle at the time of the unlawful act or omission is not the owner or the lessee of the vehicle, that person is fully authorized to accept the citation or notice of infraction and execute the promise to appear on behalf of the owner or lessee. [1987 c 244 § 36.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.240 Relationship of department with other jurisdictions. Under the provisions of the IRP, the department may act in a quasi-agency relationship with other jurisdictions. The department may collect and forward applicable registration fees and taxes and applications to other jurisdictions on behalf of the applicant or another jurisdiction and may take other action that facilitates the administration of the plan. [1987 c 244 § 37.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.250 Authority of chapter. This chapter constitutes complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as expressly provided in this chapter. [1987 c 244 § 38.]

(2008 Ed.)

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.260 Alteration or forgery of cab card or letter of authority—Penalty. Any person who alters or forges or causes to be altered or forged any cab card, letter of authority, or other temporary authority issued by the department under this chapter or holds or uses a cab card, letter of authority, or other temporary authority, knowing the document to have been altered or forged, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 255; 1987 c 244 § 39.]

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

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.270 Gross weight on vehicle. Every Washington-based motor vehicle registered under this chapter shall have the maximum gross weight or maximum combined gross weight for which the vehicle is licensed in this state, painted or stenciled in letters or numbers of contrasting color not less than two inches in height in a conspicuous place on the right and left sides of the vehicle. It is unlawful for the owner or operator of any motor vehicle to display a maximum gross weight or maximum combined gross weight other than that shown on the current cab card of the vehicle. [1990 c 250 § 77; 1987 c 244 § 40.]

Severability—1990 c 250: See note following RCW 46.16.301.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.280 Effect of other registration. Nothing contained in this chapter relating to proportional registration of fleet vehicles requires any vehicle to be proportionally registered if it is otherwise registered for operation on the highways of this state. [1987 c 244 § 41.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.290 Refusal, cancellation of application, cab card—Procedures, penalties. (1) If the department determines at any time that an applicant for proportional registration of a vehicle or a fleet of vehicles is not entitled to a cab card for a vehicle or fleet of vehicles, the department may refuse to issue the cab card(s) or to license the vehicle or fleet of vehicles and may for like reason, after notice, and in the exercise of discretion, cancel the cab card(s) and license plate(s) already issued. The department shall send the notice of cancellation by first-class mail, addressed to the owner of the vehicle in question at the owner's address as it appears in the proportional registration records of the department, and record the transmittal on an affidavit of first-class mail. It is then unlawful for any person to remove, drive, or operate the vehicle(s) until a proper certificate(s) of registration or cab card(s) has been issued.

(2) Any person removing, driving, or operating the vehicle(s) after the refusal of the department to issue a cab card(s), certificate(s) of registration, license plate(s), or the revocation or cancellation of the cab card(s), certificate(s) of registration, or license plate(s) is guilty of a gross misdemeanor.

(3) At the discretion of the department, a vehicle that has been moved, driven, or operated in violation of this section

may be impounded by the Washington state patrol, county sheriff, or city police in a manner directed for such cases by the chief of the Washington state patrol until proper registration and license plate have been issued. [2003 c 53 § 256; 1997 c 183 § 6; 1987 c 244 § 42.]

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

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.294 Refusal under federal prohibition, placement of out-of-service order. The department shall refuse to register a vehicle under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW 46.16.004. [2007 c 419 § 15; 2003 c 85 § 3.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.87.296 Suspension, revocation under federal prohibition—Placement of out-of-service order. The department shall suspend or revoke the registration of a vehicle registered under this chapter if the registrant or motor carrier responsible for the safety of the vehicle has been prohibited under federal law from operating by the federal motor carrier safety administration. The department shall not register a vehicle if the Washington state patrol has placed an out-of-service order on the vehicle's department of transportation number, as defined in RCW 46.16.004. [2007 c 419 § 16; 2003 c 85 § 4.]

Findings—Short title—Application—2007 c 419: See notes following RCW 46.16.004.

46.87.300 Appeal of suspension, revocation, cancellation, refusal. The suspension, revocation, cancellation, or refusal by the director, or the director's designee, of a license plate(s), certificate(s) of registration, or cab card(s) provided for in this chapter is conclusive unless the person whose license plate(s), certificate(s) of registration, or cab card(s) is suspended, revoked, canceled, or refused appeals to the superior court of Thurston county, or at the person's option if a resident of Washington, to the superior court of his or her county of residence, for the purpose of having the suspension, revocation, cancellation, or refusal of the license plate(s), certificate(s) of registration, or cab card(s) set aside. Notice of appeal shall be filed within ten calendar days after service of the notice of suspension, revocation, cancellation, or refusal. Upon the filing of the appeal, the court shall issue an order to the director to show cause why the license(s) should not be granted or reinstated. The director shall respond to the order within ten days after the date of service of the order upon the director. Service shall be in the manner prescribed for service of summons and complaint in other civil actions. Upon the hearing on the order to show cause, the court shall hear evidence concerning matters related to the suspension, revocation, cancellation, or refusal of the license plate(s), certificate(s) of registration, or cab card(s) and shall

enter judgment either affirming or setting aside the suspension, revocation, cancellation, or refusal. [1987 c 244 § 43.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.310 Application records—Preservation, contents, audit—Additional assessments, penalties, refunds. Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four years following the preceding year or period upon which the application is based. These records shall be complete and shall include, but not be limited to, the following: Copies of proportional registration applications and supplements for all jurisdictions in which the fleet is prorated; proof of proportional or full registration with other jurisdictions; vehicle license or trip permits; temporary authorization permits; documents establishing the latest purchase year and cost of each fleet vehicle in ready-for-the-road condition; weight certificates indicating the unladen, ready-for-the-road, weight of each vehicle in the fleet; periodic summaries of mileage by fleet and by individual vehicles; individual trip reports, driver's daily logs, or other source documents maintained for each individual trip that provide trip dates, points of origin and destinations, total miles traveled, miles traveled in each jurisdiction, routes traveled, vehicle equipment number, driver's full name, and all other information pertinent to each trip. Upon request of the department, the owner shall make the records available to the department at its designated office for audit as to accuracy of records, computations, and payments. The department shall assess and collect any unpaid fees and taxes found to be due the state and provide credits or refunds for overpayments of Washington fees and taxes as determined in accordance with formulas and other requirements prescribed in this chapter. If the owner fails to maintain complete records as required by this section, the department shall attempt to reconstruct or reestablish such records. However, if the department is unable to do so and the missing or incomplete records involve mileages accrued by vehicles while they are part of the fleet, the department may assess an amount not to exceed the difference between the Washington proportional fees and taxes paid and one hundred percent of the fees and taxes. Further, if the owner fails to maintain complete records as required by this section, or if the department determines that the owner should have registered more vehicles in this state under this chapter, the department may deny the owner the right of any further benefits provided by this chapter until any final audit or assessment made under this chapter has been satisfied.

The department may audit the records of any owner and may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. No assessment for deficiency or claim for credit may be made for any period for which records are no longer required. Any fees, taxes, penalties, or interest found to be due and owing the state upon audit shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount should have been paid until the date of payment. If the audit discloses a deliberate and willful intent to evade the require-

ments of payment under RCW 46.87.140, a penalty of ten percent shall also be assessed.

If the audit discloses that an overpayment to the state in excess of ten dollars has been made, the department shall certify the overpayment to the state treasurer who shall issue a warrant for the overpayment to the vehicle operator. Overpayments shall bear interest at the rate of eight percent per annum from the date on which the overpayment is incurred until the date of payment. [1996 c 91 § 2; 1993 c 307 § 15; 1987 c 244 § 44.]

Effective date—1996 c 91: See note following RCW 46.87.150.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.320 Departmental audits, investigations—Subpoenas. The department may initiate and conduct audits and investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules adopted under it.

For the purpose of any audit, investigation, or proceeding under this chapter the director or any designee of the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, paper, correspondence, memoranda, agreements, or other documents or records that the department deems relevant or material to the inquiry.

In case of contumacy or refusal to obey a subpoena issued to any person, any court of competent jurisdiction upon application by the department, may issue an order requiring that person to appear before the director or the officer designated by the director to produce testimony or other evidence touching the matter under audit, investigation, or in question. Failure to obey an order of the court may be punishable by contempt. [1987 c 244 § 45.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.330 Assessments—When due, penalties—Reassessment—Petition, notice, service—Injunctions, writs of mandate restricted. An owner of proportionally registered vehicles against whom an assessment is made under RCW 46.87.310 may petition for reassessment thereof within thirty days after service of notice of the assessment upon the owner of the proportionally registered vehicles. If the petition is not filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that time period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the petitioner has so requested in the petition, shall grant the petitioner an oral hearing and give the petitioner ten days notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the petitioner of notice of the decision.

Every assessment made under RCW 46.87.310 becomes due and payable at the time it is served on the owner. If the assessment is not paid in full when it becomes final, the department shall add a penalty of ten percent of the amount of the assessment.

Any notice of assessment, reassessment, oral hearing, or decision required by this section shall be served personally or by mail. If served by mail, service is deemed to have been accomplished on the date the notice was deposited in the United States mail, postage prepaid, addressed to the owner of the proportionally registered vehicles at the owner's address as it appears in the proportional registration records of the department.

No injunction or writ of mandate or other legal or equitable process may be issued in any suit, action, or proceeding in any court against any officer of the state to prevent or enjoin the collection under this chapter of any fee or tax or any amount of fee or tax required to be collected, except as specifically provided for in chapter 34.05 RCW. [1996 c 91 § 3; 1987 c 244 § 46.]

Effective date—1996 c 91: See note following RCW 46.87.150.

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.335 Mitigation of assessments. Except in the case of violations of filing a false or fraudulent application, if the department deems mitigation of penalties, fees, and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter. [1994 c 262 § 15; 1991 c 339 § 5.]

46.87.340 Assessments—Lien for nonpayment. If an owner of proportionally registered vehicles liable for the remittance of fees and taxes imposed by this chapter fails to pay the fees and taxes, the amount thereof, including any interest, penalty, or addition to the fees and taxes together with any additional costs that may accrue, constitutes a lien in favor of the state upon all franchises, property, and rights to property, whether the property is employed by the person for personal or business use or is in the hands of a trustee, receiver, or assignee for the benefit of creditors, from the date the fees and taxes were due and payable until the amount of the lien is paid or the property is sold to pay the lien. The lien has priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that the lien is not valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached before the time the department has filed and recorded notice of the lien as provided in this chapter.

In order to avail itself of the lien created by this section, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent fees and taxes, penalties, and interest claimed by the department. From the time of filing for record, the amount required to be paid constitutes a lien upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state is of no effect, however, until the lien or a copy of it has been filed with the county auditor in the county where the property

is located. When a lien is filed in compliance with this section and with the secretary of state, the filing has the same effect as if the lien had been duly filed for record in the office of each county auditor of this state. [1993 c 307 § 16; 1987 c 244 § 47.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.350 Delinquent obligations—Notice—Restriction on credits or property—Default judgments—Lien. If an owner of proportionally registered vehicles for which an assessment has become final is delinquent in the payment of an obligation imposed under this chapter, the department may give notice of the amount of the delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to the vehicle owner or owing any debts to the owner, at the time of the receipt by them of the notice. Thereafter, a person so notified shall neither transfer nor make other disposition of those credits, personal property, or debts until the department consents to a transfer or other disposition. A person so notified shall, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall forthwith deliver such credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court upon application of the department and after the time to answer the notice has expired, to render judgment by default against the person for the full amount claimed by the department in the notice to withhold and deliver, together with costs.

Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice. [1994 c 262 § 16; 1987 c 244 § 48.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.360 Delinquent obligations—Collection by department—Seizure of property, notice, sale. Whenever the owner of proportionally registered vehicles is delinquent in the payment of an obligation imposed under this chapter, and the delinquency continues after notice and demand for payment by the department, the department may proceed to collect the amount due from the owner in the following manner: The department shall seize any property subject to the lien of the fees, taxes, penalties, and interest and sell it at public auction to pay the obligation and any and all costs that may have been incurred because of the seizure and sale. Notice of the intended sale and its time and place shall be given to the delinquent owner and to all persons appearing of record to have an interest in the property. The notice shall be given in writing at least ten days before the date set for the sale by registered or certified mail addressed to the owner as appearing in the proportional registration records of the department and, in the case of any person appearing of record

to have an interest in such property, addressed to that person at their last known residence or place of business. In addition, the notice shall be published at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper in the county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, a statement of the amount due under this chapter, the name of the owner of the proportionally registered vehicles, and the further statement that unless the amount due is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with law and the notice, and shall deliver to the purchaser a bill of sale or deed that vests title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under this chapter from the delinquent owner, the excess shall be returned to the delinquent owner and his receipt obtained for it. The department may withhold payment of the excess to the delinquent owner if a person having an interest in or lien upon the property has filed with the department their notice of the lien or interest before the sale, pending determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the delinquent owner is not available, the department shall deposit the excess with the state treasurer as trustee for the delinquent owner. [1987 c 244 § 49.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.370 Warrant for final assessments—Lien on property. Whenever any assessment has become final in accordance with this chapter, the department may file with the clerk of any county within this state a warrant in the amount of fees, taxes, penalties, interest, and a filing fee under RCW 36.18.012(10). The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the delinquent owner of proportionally registered vehicles mentioned in the warrant, the amount of the fees, taxes, penalties, interest, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed constitutes a lien upon the title to, and interest in, all real and personal property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. A warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. [2001 c 146 § 6; 1987 c 244 § 50.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.380 Delinquent obligations—Collection by attorney general. Whenever an owner of proportionally registered vehicles is delinquent in the payment of an obligation under this chapter the department may transmit notices of the

delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from the delinquent owner.

In a suit brought to enforce the rights of the state under this chapter, a certificate by the department showing the delinquency is prima facie evidence of the amount of the obligation, of the delinquency thereof, and of compliance by the department with all provisions of this chapter relating to the obligation. [1987 c 244 § 51.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.390 Remedies cumulative. The remedies of the state in this chapter are cumulative, and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy under this chapter to the exclusion of any other remedy provided for in this chapter. [1987 c 244 § 52.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.400 Civil immunity. (1) The director, the state of Washington, and its political subdivisions are immune from civil liability arising from the issuance of a vehicle license to a nonroadworthy vehicle.

(2) No suit or action may be commenced or prosecuted against the director or the state of Washington by reason of any act done or omitted to be done in the administration of the duties and responsibilities imposed upon the director under this chapter. [1987 c 244 § 53.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

46.87.410 Bankruptcy proceedings—Notice. A proportional registration licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 1.]

46.87.900 Severability—1985 c 380. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 380 § 26.]

46.87.910 Short title. This chapter may be known and cited as "Proportional Registration." [1987 c 244 § 54.]

Effective dates—1987 c 244: See note following RCW 46.12.020.

Chapter 46.88 RCW

OUT-OF-STATE COMMERCIAL VEHICLES— INTRASTATE PERMITS

Sections

46.88.010 Commercial vehicles registered in another state—Permits for intrastate operations.

46.88.010 Commercial vehicles registered in another state—Permits for intrastate operations. The owner of any commercial vehicle or vehicles lawfully registered in another state and who wishes to use such vehicle or vehicles in this state in intrastate operations for periods less than a

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year may obtain permits for such operations upon application to the department. Such permits may be issued for thirty, sixty, or ninety day periods. The cost of each such permit shall be one-twelfth of the fees provided for in RCW 46.16.070 or 46.16.085, as appropriate, and *\$2.44.020 for each thirty days' operations provided for in the permit. [1986 c 18 § 25; 1979 c 158 § 202; 1969 ex.s. c 281 § 32.]

***Reviser's note:** RCW 82.44.020 was repealed by 2000 1st sp.s. c 1 § 2.

Effective date—1969 ex.s. c 281: "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and except for sections 32 and 54 of this 1969 amendatory act shall take effect immediately. Sections 32 and 54 of this 1969 amendatory act shall take effect January 1, 1970." [1969 ex.s. c 281 § 63.]

Chapter 46.90 RCW

WASHINGTON MODEL TRAFFIC ORDINANCE

Sections

46.90.005 Purpose.

46.90.010 Adoption of model traffic ordinance—Amendments.

46.90.005 Purpose. The purpose of this chapter is to encourage highway safety and uniform traffic laws by authorizing the department of licensing to adopt a comprehensive compilation of sound, uniform traffic laws to serve as a guide which local authorities may adopt by reference or any part thereof, including all future amendments or additions thereto. Any local authority which adopts that body of rules by reference may at any time exclude any section or sections of those rules that it does not desire to include in its local traffic ordinance. The rules are not intended to deny any local authority its legislative power, but rather to enhance safe and efficient movement of traffic throughout the state by having current, uniform traffic laws available. [1993 c 400 § 1; 1975 1st ex.s. c 54 § 1.]

Effective dates—1993 c 400: "(1) Sections 3 through 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993].

(2) Sections 1 and 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.

(3) Section 6 of this act takes effect July 1, 1994." [1993 c 400 § 7.]

46.90.010 Adoption of model traffic ordinance—Amendments. In consultation with the chief of the Washington state patrol and the traffic safety commission, the director shall adopt in accordance with chapter 34.05 RCW a model traffic ordinance for use by any city, town, or county. The addition of any new section to, or amendment or repeal of any section in, the model traffic ordinance is deemed to amend any city, town, or county, ordinance which has adopted by reference the model traffic ordinance or any part thereof, and it shall not be necessary for the legislative authority of any city, town, or county to take any action with respect to such addition, amendment, or repeal notwithstanding the provisions of RCW 35.21.180, 35A.12.140, 35A.13.180, and 36.32.120(7). [1993 c 400 § 2; 1975 1st ex.s. c 54 § 2.]

Effective dates—1993 c 400: See note following RCW 46.90.005.

Chapter 46.93 RCW

MOTORSPORTS VEHICLES—DEALER AND MANUFACTURER FRANCHISES

Sections

46.93.010	Findings—Intent.
46.93.020	Definitions.
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46.93.040	Determination of good cause, good faith—Petition, notice, decision, appeal.
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46.93.060	Good cause, what constitutes—Burden of proof.
46.93.070	Notice of termination, cancellation, or nonrenewal.
46.93.080	Payments by manufacturer to dealer for inventory, equipment, etc.
46.93.090	Mitigation of damages.
46.93.100	Warranty work.
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46.93.120	Relevant market area—New or relocated dealerships, notice of.
46.93.130	Protest of new or relocated dealership—Hearing—Arbitration.
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46.93.160	Relocation requirements—Exceptions.
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46.93.180	Sale, transfer, or exchange of franchise.
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46.93.200	Department defining additional motorsports vehicles.
46.93.900	Severability.
46.93.901	Captions not law.

46.93.010 Findings—Intent. The legislature finds and declares that the distribution and sale of motorsports vehicles in this state vitally affect the general economy of the state and the public interest and public welfare, that provision for warranty service to motorsports vehicles is of substantial concern to the people of this state, that the maintenance of fair competition among dealers and others is in the public interest, and that the maintenance of strong and sound dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state. The legislature further finds that there is a substantial disparity in bargaining power between motorsports vehicle manufacturers and their dealers, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate the relationship between motorsports vehicle dealers and motorsports vehicle manufacturers, importers, distributors, and their representatives doing business in this state, not only for the protection of dealers but also for the benefit for the public in assuring the continued availability and servicing of motorsports vehicles sold to the public.

The legislature recognizes it is in the best interest for manufacturers and dealers of motorsports vehicles to conduct business with each other in a fair, efficient, and competitive manner. The legislature declares the public interest is best served by dealers being assured of the ability to manage their business enterprises under a contractual obligation with manufacturers where dealers do not experience unreasonable interference and are assured of the ability to transfer ownership of their business without undue constraints. It is the intent of the legislature to impose a regulatory scheme and to regulate competition in the motorsports vehicle industry to the extent necessary to balance fairness and efficiency. These actions will permit motorsports vehicle dealers to better serve consumers and allow dealers to devote their best

competitive efforts and resources to the sale and services of the manufacturer's products to consumers. [2003 c 354 § 1.]

46.93.020 Definitions. The definitions in this section apply throughout this chapter.

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

(2) "Director" means the director of the department of licensing.

(3) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motorsports vehicle dealer, under which the new motorsports vehicle dealer is authorized to sell, service, and repair new motorsports vehicles, parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motorsports vehicle dealer that purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motorsports vehicles manufactured, distributed, or imported by the manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motorsports vehicles, parts, and accessories.

(4) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:

(a) The spouse, biological or adopted child, grandchild, parent, brother, or sister of the owner of a new motorsports vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motorsports vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motorsports vehicle dealer who has been nominated by the owner of a new motorsports vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motorsports vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Manufacturer" means a person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused motorsports vehicles or remanufactures motorsports vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means a person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and unused motorsports vehicles to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, motorsports vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further

includes a sales promotion organization, whether a person, firm, or corporation, that is engaged in promoting the sale of new and unused motorsports vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their motorsports vehicles or for supervising or contracting with their dealers or prospective dealers.

(7) "Motorsports vehicle" means a motorcycle as defined in RCW 46.04.330; a moped as defined in RCW 46.04.304; a motor-driven cycle as defined in RCW 46.04.332; a personal watercraft as defined in RCW 79A.60.010; a snowmobile as defined in RCW 46.10.010; a four-wheel, all-terrain vehicle; and any other motorsports vehicle defined under RCW 46.93.200 by the department that is otherwise not subject to chapter 46.96 RCW.

(8) "New motorsports vehicle dealer" or "dealer" means a person engaged in the business of buying, selling, exchanging, or otherwise dealing in new motorsports vehicles or new and used motorsports vehicles at an established place of business under a franchise, sales and service agreement, or any other contract with a manufacturer of any one or more types of new motorsports vehicles. The term does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011.

(9) "Owner" means a person holding an ownership interest in the business entity operating as a new motorsports vehicle dealer and who is the designated dealer in the new motorsports vehicle franchise agreement.

(10) "Person" means a natural person, partnership, stock company, corporation, trust, agency, or any other legal entity, as well as any individual officers, directors, or other persons in active control of the activities of the entity.

(11) "Place of business" means a permanent, enclosed commercial building, situated within this state, and the real property on which it is located, at which the business of a motorsports vehicle dealer, including the display and repair of motorsports vehicles, may be lawfully conducted in accordance with the terms of all applicable laws and at which the public may contact the motorsports vehicle dealer and employees at all reasonable times.

(12) "Relevant market area" is defined as follows:

(a) If the population in the county in which the existing, proposed new, or relocated dealership is located or is to be located is four hundred thousand or more, the relevant market area is the geographic area within the radius of ten miles around the existing, proposed new, or relocated place of business for the dealership;

(b) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is two hundred thousand or more and less than four hundred thousand, the relevant market area is the geographic area within a radius of twelve miles around the existing, proposed new, or relocated place of business for the dealership;

(c) If the population in the county in which the existing, proposed new, or relocated dealership is to be located is less than two hundred thousand, the relevant market area is the geographic area within a radius of twenty miles around the existing, proposed new, or relocated place of business for the dealership;

(d) In determining population for this definition, the most recent census by the United States Bureau of Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, will be accumulated for all census tracts either wholly or partially within the relevant market area. [2003 c 354 § 2.]

46.93.030 Termination, cancellation, nonrenewal of franchise restricted. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, no manufacturer may terminate, cancel, or fail to renew a franchise with a new motorsports vehicle dealer, unless the manufacturer has complied with the notice requirements of RCW 46.93.070 and an administrative law judge has determined, if requested in writing by the dealer within forty-five days of receiving a notice from a manufacturer, after hearing, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith regarding the termination, cancellation, or nonrenewal. [2003 c 354 § 3.]

46.93.040 Determination of good cause, good faith—Petition, notice, decision, appeal. A new motorsports vehicle dealer who has received written notification from the manufacturer of the manufacturer's intent to terminate, cancel, or not renew the franchise, may file a petition with the department for a determination as to the existence of good cause and good faith for the termination, cancellation, or nonrenewal of a franchise. The petition must contain a short statement setting forth the reasons for the dealer's objection to the termination, cancellation, or nonrenewal of the franchise. Upon the filing of the petition and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely petition has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The franchise in question continues in full force and effect pending the administrative law judge's decision. If the decision of the administrative law judge terminating, canceling, or failing to renew a dealer's franchise is appealed by a dealer or manufacturer, the franchise continues in full force and effect until all appeals to a superior court or any appellate court have been completed. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review. [2003 c 354 § 4.]

46.93.050 Determination of good cause, good faith—Hearing, decision, procedures—Judicial review. (1) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a petition is filed. If the termination, cancellation, or nonrenewal is under RCW 46.93.070(2), the administrative law judge shall give the proceeding priority consideration and shall render a final decision not later than sixty days after a petition is filed.

(2) The administrative law judge shall conduct the hearing as an adjudicative proceeding in accordance with the procedures provided for in the Administrative Procedure Act, chapter 34.05 RCW. The administrative law judge shall render the final decision and shall enter a final order. Except as

otherwise provided in RCW 34.05.446 and 34.05.449, all hearing costs must be borne on an equal basis by the parties to the hearing.

(3) A party to a hearing under this chapter may be represented by counsel. A party to a hearing aggrieved by the final order of the administrative law judge concerning the termination, cancellation, or nonrenewal of a franchise may seek judicial review of the order in the superior court or appellate court in the manner provided for in RCW 34.05.510 through 34.05.598. A petitioner for judicial review need not exhaust all administrative appeals or administrative review processes as a prerequisite for seeking judicial review under this section. [2003 c 354 § 5.]

46.93.060 Good cause, what constitutes—Burden of proof. (1) Notwithstanding the terms of a franchise or the terms of a waiver, and except as otherwise provided in RCW 46.93.070(2) (a) through (d), good cause exists for termination, cancellation, or nonrenewal of a franchise when there is a failure by the dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship, if the dealer was notified of the failure within one hundred eighty days after the manufacturer first acquired knowledge of the failure, and the dealer did not correct the failure after being requested to do so.

If, however, the failure of the dealer relates to the performance of the dealer in sales, service, or level of customer satisfaction, good cause is the failure of the dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria, and:

- (a) The dealer was advised, in writing, by the manufacturer of the failure;
- (b) The notice under this subsection stated that notice was provided of a failure of performance under this section;
- (c) The manufacturer provided the dealer with specific, reasonable goals or reasonable performance standards with which the dealer must comply, together with a suggested timetable or program for attaining those goals or standards, and the dealer was given a reasonable opportunity, for a period of not more than ninety days, to comply with the goals or standards; and
- (d) The dealer did not substantially comply with the manufacturer's performance standards during that period and the failure to demonstrate substantial compliance was not due to market or economic factors within the dealer's relevant market area that were beyond the control of the dealer.

(2) The manufacturer has the burden of proof of establishing good cause and good faith for the termination, cancellation, or nonrenewal of the franchise under this section. [2003 c 354 § 6.]

46.93.070 Notice of termination, cancellation, or nonrenewal. Before the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall give written notification to both the department and the dealer. The notice must be by certified mail or personally delivered to the new motorsports vehicle dealer and must state the intention to terminate, cancel, or not renew the franchise, the reasons for the termination, cancellation, or nonrenewal, and the effective

date of the termination, cancellation, or nonrenewal. The notice must be given:

(1) Not less than ninety days, which runs concurrently with the ninety-day period provided in RCW 46.93.060(1)(c), before the effective date of the termination, cancellation, or nonrenewal;

(2) Not less than fifteen days before the effective date of the termination, cancellation, or nonrenewal with respect to any of the following that constitute good cause for termination, cancellation, or nonrenewal:

(a) Insolvency of the dealer or the filing of any petition by or against the dealer under bankruptcy or receivership law;

(b) Failure of the dealer to conduct sales and service operations during customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the dealer;

(c) Conviction of the dealer, or principal operator of the dealership, of a felony punishable by imprisonment; or

(d) Suspension or revocation of a license that the dealer is required to have to operate the dealership where the suspension or revocation is for a period in excess of thirty days;

(3) Not less than one hundred eighty days before the effective date of termination, cancellation, or nonrenewal, where the manufacturer intends to discontinue sale and distribution of the new motorsports vehicle line. [2003 c 354 § 7.]

46.93.080 Payments by manufacturer to dealer for inventory, equipment, etc. (1) Upon the termination, cancellation, or nonrenewal of a franchise by the manufacturer under this chapter, the manufacturer shall pay the dealer, at a minimum:

(a) Dealer cost, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motorsports vehicles in the dealer's inventory that were acquired from the manufacturer or another dealer of the same line make;

(b) Dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that in the case of sheet metal, a comparable substitute for original packaging may be used, if the supply, part, or accessory was acquired from the manufacturer or from another dealer ceasing operations as a part of the dealer's initial inventory, as long as the supplies, parts, and accessories appear in the manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory, whether vehicles, parts, or accessories, the purchase of which was required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and has not been depreciated by the dealer more than fifty percent of the value of the sign; and

(e) The fair market value of all special tools owned or leased by the dealer that were acquired from the manufacturer or persons approved by the manufacturer, and that were required by the manufacturer, and are in good and usable condition, less reasonable wear and tear. However, if the tools are leased by the dealer, the manufacturer shall pay the

dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement.

(2) To the extent the franchise agreement provides for payment or reimbursement to the dealer in excess of that specified in this section, the provisions of the franchise agreement will control.

(3) The manufacturer shall pay the dealer the sums specified in subsection (1) of this section within ninety days after the tender of the property, if the dealer has clear title to the property and is in a position to convey that title to the manufacturer. [2003 c 354 § 8.]

46.93.090 Mitigation of damages. RCW 46.93.030 through 46.93.080 do not relieve a dealer from the obligation to mitigate the dealer's damages upon termination, cancellation, or nonrenewal of the franchise. [2003 c 354 § 9.]

46.93.100 Warranty work. (1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products, and for work on and preparation of motorsports vehicles received from the manufacturer. The compensation may not be less than the rates reasonably charged by the dealer for like services and parts to retail customers. The compensation may not be reduced by the manufacturer for any reason or made conditional on an activity outside the performance of warranty work.

(2) All claims for warranty work for parts and labor made by dealers under this section must be paid by the manufacturer within thirty days after approval, and must be approved or denied within thirty days of receipt by the manufacturer. Denial of a claim must be in writing with the specific grounds for denial. The manufacturer may audit claims for warranty work and charge the dealer for any unsubstantiated, incorrect, or false claims for a period of one year after payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

(3) All claims submitted by dealers on the forms and in the manner specified by the manufacturer must be either approved or disapproved within thirty days after their receipt. The manufacturer shall notify the dealer in writing of a disapproved claim, and shall set forth the reasons why the claim was not approved. A claim not specifically disapproved in writing within thirty days after receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim. [2003 c 354 § 10.]

46.93.110 Designated successor to franchise ownership. (1) Notwithstanding the terms of a franchise, an owner may appoint a designated successor to succeed to the ownership of the dealer franchise upon the owner's death or incapacity.

(2) Notwithstanding the terms of a franchise, a designated successor of a deceased or incapacitated owner of a dealer franchise may succeed to the ownership interest of the owner under the existing franchise, if:

(a) In the case of a designated successor who meets the definition of a designated successor under RCW 46.93.020(5), but who is not experienced in the business of a new motorsports vehicle dealer, the person will employ an individual who is qualified and experienced in the business of a new motorsports vehicle dealer to help manage the day-to-day operations of the dealership; or in the case of a designated successor who meets the definition of a designated successor under RCW 46.93.020(5) (b) or (c), the person is qualified and experienced in the business of a new motorsports vehicle dealer and meets the normal, reasonable, and uniformly applied standards for grant of an application as a dealer by the manufacturer; and

(b) The designated successor furnishes written notice to the manufacturer of his or her intention to succeed to the ownership of the dealership within sixty days after the owner's death or incapacity; and

(c) The designated successor agrees to be bound by all terms and conditions of the franchise.

(3) The manufacturer may request, and the designated successor shall promptly provide, such personal and financial information as is reasonably necessary to determine whether the succession should be honored.

(4) A manufacturer may refuse to honor the succession to the ownership of a dealer franchise by a designated successor if the manufacturer establishes that good cause exists for its refusal to honor the succession. If the designated successor of a deceased or incapacitated owner of a dealer franchise fails to meet the requirements set forth in subsection (2)(a), (b), and (c) of this section, good cause for refusing to honor the succession is presumed to exist. If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership of a dealer franchise by a designated successor, the manufacturer shall serve written notice on the designated successor and on the department of its refusal to honor the succession no earlier than sixty days from the date the notice is served. The notice must be served not later than sixty days after the manufacturer's receipt of:

(a) Notice of the designated successor's intent to succeed to the ownership interest of the dealer's franchise; or

(b) Any personal or financial information requested by the manufacturer.

(5) The notice in subsection (4) of this section must state the specific grounds for the refusal to honor the succession. If the notice of refusal is not timely and properly served, the designated successor may continue the franchise in full force and effect, subject to termination only as otherwise provided under this chapter.

(6) Within twenty days after receipt of the notice, or within twenty days after the end of any appeal procedure provided by the manufacturer, whichever is greater, the designated successor may file a petition with the department protesting the refusal to honor the succession. The petition must contain a short statement setting forth the reasons for the designated successor's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed

and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer may not terminate or otherwise discontinue the existing franchise until the administrative law judge has held a hearing and has determined that there is good cause for refusing to honor the succession. If an appeal is taken, the manufacturer may not terminate or discontinue the franchise until all appeals to a superior court or any appellate court have been completed. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review.

(7) The manufacturer has the burden of proof to show that good cause exists for the refusal to honor the succession.

(8) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a protest is filed.

(9) The administrative law judge shall conduct a hearing concerning the refusal to the succession as provided in RCW 46.93.050(2), and all hearing costs must be borne as provided in that subsection. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.93.050(3).

(10) This section does not preclude the owner of a dealer franchise from designating any person as his or her successor by a written, notarized, and witnessed instrument filed with the manufacturer. In the event of a conflict between this section and such a written instrument that has not been revoked by written notice from the owner to the manufacturer, the written instrument governs. [2003 c 354 § 11.]

46.93.120 Relevant market area—New or relocated dealerships, notice of. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, if a manufacturer intends or proposes to enter into a franchise to establish an additional dealer or to relocate an existing dealer within or into a relevant market area in which the same line make of motorsports vehicle is then represented, the manufacturer shall provide at least ten days advance written notice to the department and to each dealer of the same line make in the relevant market area, of the manufacturer's intention to establish an additional dealer or to relocate an existing dealer within or into the relevant market area. The notice must be sent by certified mail to each such party and include the following information:

(1) The specific location at which the additional or relocated dealer will be established;

(2) The date on or after which the additional or relocated dealer intends to commence business at the proposed location;

(3) The identity of all dealers who are franchised to sell the same line make vehicles as the proposed dealer and who have licensed locations within the relevant market area;

(4) The names and addresses, if available, of the owners of and principal investors in the proposed additional or relocated dealership; and

(5) The specific grounds or reasons for the proposed establishment of an additional dealer or relocation of an existing dealer. [2003 c 354 § 12.]

46.93.130 Protest of new or relocated dealership—Hearing—Arbitration. (1) Within thirty days after receipt of the notice under RCW 46.93.120, or within thirty days after the end of an appeal procedure provided by the manufacturer, whichever is greater, a dealer notified or entitled to notice may file a petition with the department protesting the proposed establishment or relocation. The petition must contain a short statement setting forth the reasons for the dealer's objection to the proposed establishment or relocation. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer may not establish or relocate the dealer until the administrative law judge has held a hearing and administrative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, and has determined that there is good cause for permitting the proposed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the administrative law judge shall consolidate the hearings to expedite disposition of the matter.

(2) If a manufacturer provides in the franchise agreement or by written statement distributed and provided to its dealers for arbitration under the Washington Arbitration Act, *chapter 7.04 RCW, as a mechanism for resolving disputes relating to the establishment of an additional new motorsports vehicle dealer or the relocation of a new motorsports vehicle dealer, subsection (1) of this section and RCW 46.93.140 will take precedence and the arbitration provision in the franchise agreement or a written statement is void, unless the manufacturer and dealer agree to use arbitration.

(3) If the manufacturer and dealer agree to use arbitration, the dispute must be referred for arbitration to such arbitrator as may be agreed upon by the parties to the dispute. The thirty-day period for filing a protest under subsection (1) of this section still applies except the protesting dealer shall file the protest with the manufacturer. If the parties cannot agree upon a single arbitrator within thirty days from the date the protest is filed, the protesting dealer will select an arbitrator, the manufacturer will select an arbitrator, and the two arbitrators will then select a third arbitrator. If a third arbitrator is not agreed upon within thirty days, any party may apply to the superior court, and the judge of the superior court having jurisdiction will appoint the third arbitrator. The protesting dealer will pay the arbitrator selected by him or her, and the manufacturer will pay the arbitrator it selected. The expense of the third arbitrator and all other expenses of arbitration will be shared equally by the parties. Attorneys' fees and fees paid to expert witnesses are not expenses of arbitration and will be paid by the person incurring them.

(4) Notwithstanding the terms of a franchise or written statement of the manufacturer and notwithstanding the terms of a waiver, the arbitration will take place in this state in the county where the protesting dealer has its principal place of business. RCW 46.93.140 applies to a determination made by the arbitrator or arbitrators in determining whether good cause exists for permitting the proposed establishment or relocation of a dealer, and the manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation. After a hearing has

been held, the arbitrator or arbitrators shall render a decision as expeditiously as possible, but in any event not later than one hundred twenty days from the date the arbitrator or arbitrators are selected or appointed. The manufacturer may not establish or relocate the new motorsports vehicle dealer until the arbitration hearing has been held and the arbitrator or arbitrators have determined that there is good cause for permitting the proposed establishment or relocation and any judicial appeals under *chapter 7.04 RCW have been completed. The written decision of the arbitrator is binding upon the parties unless modified, corrected, or vacated under the Washington Arbitration Act. Any party may appeal the decision of the arbitrator or arbitrators under the Washington Arbitration Act, *chapter 7.04 RCW. [2003 c 354 § 13.]

**Reviser's note:* Chapter 7.04 RCW was repealed in its entirety by 2005 c 433 § 50, effective January 1, 2006. Cf. chapter 7.04A RCW.

46.93.140 Factors considered by administrative law judge. In determining whether good cause exists for permitting the proposed establishment or relocation of a dealer of the same line make, the factors that the administrative law judge shall consider must include, but are not limited to the following:

- (1) The extent, nature, and permanency of the investment of both the existing dealers of the same line make in the relevant market area and the proposed additional or relocating dealer, including obligations reasonably incurred by the existing dealers to perform their obligations under their respective franchises;
- (2) The growth or decline in population and new motorsports vehicle registrations during the past five years in the relevant market area;
- (3) The effect on the consuming public;
- (4) The effect on the existing dealers in the relevant market area, including any adverse financial impact;
- (5) The reasonably expected or anticipated vehicle market for the relevant market area, including demographic factors such as age of population, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers in the relevant market area;
- (6) Whether it is injurious or beneficial to the public welfare for an additional dealership to be established;
- (7) Whether the dealers of the same line make in the relevant market area are providing adequate competition and convenient customer care for the motorsports vehicles of the same line make in the relevant market area, including the adequacy of motorsports vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel;
- (8) Whether the establishment of an additional dealer would increase competition and be in the public interest;
- (9) Whether the manufacturer is motivated principally by good faith to establish an additional or new dealer and not by noneconomic considerations;
- (10) Whether the manufacturer has denied its existing dealers of the same line make the opportunity for reasonable growth, market expansion, or relocation;
- (11) Whether the protesting dealer or dealers are in substantial compliance with their dealer agreements or franchises; and

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(12) Whether the manufacturer has complied with the requirements of RCW 46.93.120 and 46.93.130. [2003 c 354 § 14.]

46.93.150 Hearing—Procedures, costs, appeal. (1) The manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation.

(2) The administrative law judge shall conduct any hearing as provided in RCW 46.93.050(2) and all hearing costs will be borne as provided in that subsection. The administrative law judge shall render the final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. If more than one protest is filed, the one hundred twenty days commences to run from the date the last protest is filed. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.93.050(3). [2003 c 354 § 15.]

46.93.160 Relocation requirements—Exceptions. RCW 46.93.120 through 46.93.150 do not apply:

- (1) To the sale or transfer of the ownership or assets of an existing dealer where the transferee proposes to engage in business representing the same line make at the same location or within two miles of that location;
- (2) To the relocation of an existing dealer within the dealer's relevant market area, if the relocation is not at a site within eight miles of any dealer of the same line make;
- (3) If the proposed dealer is to be established at or within two miles of a location at which a former dealer of the same line make had ceased operating within the previous twenty-four months;
- (4) Where the proposed relocation is two miles or less from the existing location of the relocating dealer; or
- (5) Where the proposed relocation is to be further away from all other existing dealers of the same line make in the relevant market area. [2003 c 354 § 16.]

46.93.170 Unfair practices. (1) Notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

- (a) Discriminate between dealers by selling or offering to sell a like motorsports vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;
- (b) Discriminate between dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;
- (c) Discriminate between dealers by using a promotion plan, marketing plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;
- (d) Discriminate between dealers by adopting a method, or changing an existing method, for the allocation, scheduling, or delivery of new motorsports vehicles, parts, or acces-

sories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer shall disclose in writing to the dealer the method by which new motorsports vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles;

(e) Give preferential treatment to some dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motorsports vehicles sold or distributed by the manufacturer, a new vehicle, parts, or accessories, if the vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(f) Compete with a dealer by acting in the capacity of a dealer, or by owning, operating, or controlling, whether directly or indirectly, a dealership in this state. It is not, however, a violation of this subsection for:

(i) A manufacturer to own or operate a dealership for a temporary period, not to exceed two years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price. The temporary operation may be extended for one twelve-month period on petition of the temporary operator to the department. The matter will be handled as an adjudicative proceeding under chapter 34.05 RCW. A dealer who is a franchisee of the petitioning manufacturer or distributor may intervene and participate in a proceeding under this subsection (1)(f)(i). The temporary operator has the burden of proof to show justification for the extension and a good faith effort to sell the dealership to an independent person at a fair and reasonable price;

(ii) A manufacturer to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person (A) has made a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions;

(iii) A manufacturer to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person (A) has made a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide

written agreement with the manufacturer under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacture [manufacturer] has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(f)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of dealer franchises in this state;

(iv) A manufacturer to own, operate, or control a dealership trading exclusively in a single line make of the manufacturer if (A) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of forty-five percent of the total ownership interest in the dealership; (B) at the time the manufacturer first acquires ownership or assumes operation or control of any such dealership, the distance between any dealership thus owned, operated, or controlled and the nearest dealership trading in the same line make of vehicle and in which the manufacturer has no ownership or control complies with the applicable provisions in the relevant market area sections of this chapter; (C) all of the manufacturer's franchise agreements confer rights on the dealer of that line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and the manufacturer agree are appropriate; and (D) the manufacturer had no more than four new motorsports vehicle dealers of that manufacturer's line make in this state, and at least half of those dealers owned and operated two or more dealership facilities in the geographic territory or area covered by their franchise agreements with the manufacturer;

(g) Compete with a dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motorsports vehicles under the manufacturer's new motorsports vehicle warranty and extended warranty. Nothing in this subsection (1)(g), however, prohibits a manufacturer from owning or operating a service facility for the purpose of providing or performing maintenance, repair, or service work on motorsports vehicles that are owned by the manufacturer;

(h) Use confidential or proprietary information obtained from a dealer to unfairly compete with the dealer without the prior written consent of the dealer. For purposes of this subsection (1)(h), "confidential or proprietary information" means trade secrets as defined in RCW 19.108.010, business plans, marketing plans or strategies, customer lists, contracts, sales data, revenues, or other financial information;

(i) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to accept, buy, or order any motorsports vehicle, part, or accessory, or any other commodity or service not voluntarily ordered, or requested, or to buy, order, or pay anything of value for such items in order to obtain a motorsports vehicle, part, accessory, or other commodity that has been voluntarily ordered or requested;

(j) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to enter into any agreement that violates this chapter;

(k) Require a change in capital structure or means of financing for the dealership if the dealer at all times meets the

reasonable, written, and uniformly applied capital standards determined by the manufacturer;

(l) Prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed if the dealer meets the reasonable, written, and uniformly applied capital requirements determined by the manufacturer;

(m) Unreasonably require the dealer to change the location or require any substantial alterations to the place of business;

(n) Condition a renewal or extension of the franchise on the dealer's substantial renovation of the existing place of business or on the construction, purchase, acquisition, or release of a new place of business unless written notice is first provided one hundred eighty days before the date of renewal or extension and the manufacturer demonstrates the reasonableness of the requested actions. The manufacturer shall agree to supply the dealer with an adequate quantity of motorsports vehicles, parts, and accessories to meet the sales level necessary to support the overhead resulting from substantial construction, acquisition, or lease of a new place of business;

(o) Coerce, threaten, intimidate, or require, either directly or indirectly, a dealer to order or accept delivery of a motorsports vehicle with special features, accessories, or equipment not included in the list price of the vehicle as advertised by the manufacturer, except items that have been voluntarily requested or ordered by the dealer, and except items required by law;

(p) Fail to hold harmless and indemnify a dealer against losses, including lawsuits and court costs, arising from: (i) The manufacture or performance of a motorsports vehicle, part, or accessory if the lawsuit involves representations by the manufacturer on the manufacture or performance of a motorsports vehicle without negligence on the part of the dealer; (ii) damage to merchandise in transit where the manufacturer specifies the carrier; (iii) the manufacturer's failure to jointly defend product liability suits concerning the motorsports vehicle, part, or accessory provided to the dealer; or (iv) any other act performed by the manufacturer;

(q) Unfairly prevent or attempt to prevent a dealer from receiving reasonable compensation for the value of a motorsports vehicle;

(r) Fail to pay to a dealer, within a reasonable time after receipt of a valid claim, a payment agreed to be made by the manufacturer on grounds that a new motorsports vehicle, or a prior year's model, is in the dealer's inventory at the time of introduction of new model motorsports vehicles;

(s) Deny a dealer the right of free association with any other dealer for any lawful purpose;

(t) Charge increased prices without having given written notice to the dealer at least fifteen days before the effective date of the price increases;

(u) Permit factory authorized warranty service to be performed upon motorsports vehicles or accessories by persons other than their franchised dealers;

(v) Require or coerce a dealer to sell, assign, or transfer a retail sales installment contract, or require the dealer to act as an agent for a manufacturer, in the securing of a promissory note, a security agreement given in connection with the sale of a motorsports vehicle, or securing of a policy of insur-

ance for a motorsports vehicle. The manufacturer may not condition delivery of any motorsports vehicle, parts, or accessories upon the dealer's assignment, sale, or other transfer of sales installment contracts to specific finance companies;

(w) Require or coerce a dealer to grant a manufacturer a right of first refusal or other preference to purchase the dealer's franchise or place of business, or both.

(2) Subsections (1)(a), (b), and (c) of this section do not apply to sales to a dealer: (a) For resale to a federal, state, or local government agency; (b) where the motorsports vehicles will be sold or donated for use in a program of driver's education; (c) where the sale is made under a manufacturer's bona fide promotional program offering sales incentives or rebates; (d) where the sale of parts or accessories is under a manufacturer's bona fide quantity discount program; or (e) where the sale is made under a manufacturer's bona fide fleet vehicle discount program. For purposes of this subsection, "fleet" means a group of fifteen or more new motorsports vehicles purchased or leased by a dealer at one time under a single purchase or lease agreement for use as part of a fleet, and where the dealer has been assigned a fleet identifier code by the department.

(3) The following definitions apply to this section:

(a) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, whether paid to the dealer or the ultimate purchaser of the motorsports vehicle.

(b) "Control" or "controlling" means (i) the possession of, title to, or control of ten percent or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary, or (ii) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(c) "Operate" means to manage a dealership, whether directly or indirectly.

(d) "Own" or "ownership" means to hold the beneficial ownership of one percent or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW. [2003 c 354 § 17.]

46.93.180 Sale, transfer, or exchange of franchise.

(1) Notwithstanding the terms of a franchise, a manufacturer may not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a dealer or is capable of being approved by the department as a dealer in

this state. A manufacturer's failure to respond in writing to a request for consent under this subsection within sixty days after receipt of a written request on the forms, if any, generally used by the manufacturer containing the information and reasonable promises required by a manufacturer, is deemed to be consent to the request. A manufacturer may request, and, if so requested, the applicant for a franchise (a) shall promptly provide such personal and financial information as is reasonably necessary to determine whether the sale, transfer, or exchange should be approved, and (b) shall agree to be bound by all reasonable terms and conditions of the franchise.

(2) If a manufacturer refuses to approve the sale, transfer, or exchange of a franchise, the manufacturer shall serve written notice on the applicant, the transferring, selling, or exchanging dealer, and the department, of its refusal to approve the transfer of the franchise no later than sixty days after the date the manufacturer receives the written request from the dealer. If the manufacturer has requested personal or financial information from the applicant under subsection (1) of this section, the notice must be served not later than sixty days after the receipt of all of such documents. Service of all notices under this section must be made by personal service or by certified mail, return receipt requested.

(3) The notice in subsection (2) of this section must state the specific grounds for the refusal to approve the sale, transfer, or exchange of the franchise.

(4) Within twenty days after receipt of the notice of refusal to approve the sale, transfer, or exchange of the franchise by the transferring dealer, the dealer may file a petition with the department to protest the refusal to approve the sale, transfer, or exchange. The petition must contain a short statement setting forth the reasons for the dealer's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed, and the department shall arrange for a hearing with an administrative law judge as the presiding officer to determine if the manufacturer unreasonably withheld consent to the sale, transfer, or exchange of the franchise.

(5) In determining whether the manufacturer unreasonably withheld its approval to the sale, transfer, or exchange, the manufacturer has the burden of proof that it acted reasonably. A manufacturer's refusal to accept or approve a proposed buyer who otherwise meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer, or who otherwise is capable of operating as a dealer in this state, is presumed to be unreasonable.

(6) The administrative law judge shall conduct a hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. Only the selling, transferring, or exchanging dealer and the manufacturer may be parties to the hearing.

(7) The administrative law judge shall conduct any hearing as provided in RCW 46.93.050(2), and all hearing costs must be borne as provided in that subsection. Only the manufacturer and the selling, transferring, or exchanging dealer may appeal the final order of the administrative law judge to the superior court or the appellate court as provided in the

Administrative Procedure Act, chapter 34.05 RCW. [2003 c 354 § 18.]

46.93.190 Petition and hearing filing fees, costs, security. The department shall determine and establish the amount of the filing fees required in RCW 46.93.040, 46.93.110, 46.93.130, and 46.93.180. The fees must be set in accordance with RCW 43.24.086.

The department may also require the petitioning or protesting party to give security, in such sum as the department deems proper but not to exceed one thousand dollars, for the payment of such costs as may be incurred in conducting the hearing as required under this chapter. The security may be given in the form of a bond or stipulation or other undertaking with one or more sureties.

At the conclusion of the hearing, the department shall assess, in equal shares, each of the parties to the hearing for the cost of conducting the hearing. Upon receipt of payment of the costs, the department shall refund and return to the petitioning party any excess funds initially posted by the party as security for the hearing costs. If the petitioning party provided security in the form of a bond or other undertaking with one or more sureties, the bond or other undertaking will then be exonerated and the surety or sureties under it discharged. [2003 c 354 § 19.]

46.93.200 Department defining additional motor-sports vehicles. The department shall determine through rule making under the Administrative Procedure Act any motorsports vehicles not already defined in RCW 46.93.020(7) as of July 27, 2003, that are manufactured after July 27, 2003. [2003 c 354 § 20.]

46.93.900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [2003 c 354 § 21.]

46.93.901 Captions not law. Captions used in this chapter are not part of the law. [2003 c 354 § 22.]

Chapter 46.96 RCW

MANUFACTURERS' AND DEALERS' FRANCHISE AGREEMENTS

Sections

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46.96.900	Severability—1989 c 415.

46.96.010 Legislative findings. The legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affect the general economy of the state and the public interest and public welfare, that provision for warranty service to motor vehicles is of substantial concern to the people of this state, that the maintenance of fair competition among dealers and others is in the public interest, and that the maintenance of strong and sound dealerships is essential to provide continuing and necessary reliable services to the consuming public in this state and to provide stable employment to the citizens of this state. The legislature further finds that there is a substantial disparity in bargaining power between automobile manufacturers and their dealers, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate the relationship between motor vehicle dealers and motor vehicle manufacturers, importers, distributors, and their representatives doing business in this state, not only for the protection of dealers but also for the benefit for the public in assuring the continued availability and servicing of automobiles sold to the public.

The legislature recognizes it is in the best interest for manufacturers and dealers of motor vehicles to conduct business with each other in a fair, efficient, and competitive manner. The legislature declares the public interest is best served by dealers being assured of the ability to manage their business enterprises under a contractual obligation with manufacturers where dealers do not experience unreasonable interference and are assured of the ability to transfer ownership of their business without undue constraints. It is the intent of the legislature to impose a regulatory scheme and to regulate competition in the motor vehicle industry to the extent necessary to balance fairness and efficiency. These actions will permit motor vehicle dealers to better serve consumers and allow dealers to devote their best competitive efforts and resources to the sale and services of the manufacturer's products to consumers. [1989 c 415 § 1.]

46.96.020 Definitions. In addition to the definitions contained in RCW 46.70.011, which are incorporated by reference into this chapter, the definitions set forth in this section apply only for the purposes of this chapter.

(1) A "new motor vehicle" is a vehicle that has not been titled by a state and ownership of which may be transferred on a manufacturer's statement of origin (MSO).

(2) "New motor vehicle dealer" means a motor vehicle dealer engaged in the business of buying, selling, exchanging, or otherwise dealing in new motor vehicles or new and used motor vehicles at an established place of business, under a franchise, sales and service agreement, or contract with the manufacturer of the new motor vehicles. However, the term "new motor vehicle dealer" does not include a miscellaneous

vehicle dealer as defined in *RCW 46.70.011(3)(c) or a motorcycle dealer as defined in **chapter 46.94 RCW.

(3) "Franchise" means one or more agreements, whether oral or written, between a manufacturer and a new motor vehicle dealer, under which the new motor vehicle dealer is authorized to sell, service, and repair new motor vehicles, parts, and accessories under a common name, trade name, trademark, or service mark of the manufacturer.

"Franchise" includes an oral or written contract and includes a dealer agreement, either expressed or implied, between a manufacturer and a new motor vehicle dealer that purports to fix the legal rights and liabilities between the parties and under which (a) the dealer is granted the right to purchase and resell motor vehicles manufactured, distributed, or imported by the manufacturer; (b) the dealer's business is associated with the trademark, trade name, commercial symbol, or advertisement designating the franchisor or the products distributed by the manufacturer; and (c) the dealer's business relies on the manufacturer for a continued supply of motor vehicles, parts, and accessories.

(4) "Good faith" means honesty in fact and fair dealing in the trade as defined and interpreted in RCW 62A.2-103.

(5) "Designated successor" means:

(a) The spouse, biological or adopted child, stepchild, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealership who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealership under the terms of the owner's will or similar document, and if there is no such will or similar document, then under applicable intestate laws;

(b) A qualified person experienced in the business of a new motor vehicle dealer who has been nominated by the owner of a new motor vehicle dealership as the successor in a written, notarized, and witnessed instrument submitted to the manufacturer; or

(c) In the case of an incapacitated owner of a new motor vehicle dealership, the person who has been appointed by a court as the legal representative of the incapacitated owner's property.

(6) "Owner" means a person holding an ownership interest in the business entity operating as a new motor vehicle dealer and who is the designated dealer in the new motor vehicle franchise agreement.

(7) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity. [2003 c 21 § 1; 1989 c 415 § 2.]

Reviser's note: *(1) RCW 46.70.011 was amended by 2006 c 364 § 1, changing subsection (3) to subsection (4).

***(2) Chapter 46.94 RCW was repealed by 2003 c 354 § 24. Cf. chapter 46.93 RCW.

Captions not law—2003 c 21: "Captions used in this act are not part of the law." [2003 c 21 § 7.]

46.96.030 Termination, cancellation, nonrenewal of franchise restricted. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, no manufacturer may terminate, cancel, or fail to renew a franchise with a new motor vehicle dealer, unless the manufacturer has complied with the notice requirements of RCW 46.96.070 and an administrative law judge has determined, if requested in writing by the new motor vehicle dealer within the applicable

time period specified in RCW 46.96.070 (1), (2), or (3), after hearing, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith, as defined in this chapter, regarding the termination, cancellation, or nonrenewal. [1989 c 415 § 3.]

46.96.040 Determination of good cause, good faith—Petition, notice, decision, appeal. A new motor vehicle dealer who has received written notification from the manufacturer of the manufacturer's intent to terminate, cancel, or not renew the franchise may file a petition with the department for a determination as to the existence of good cause and good faith for the termination, cancellation, or nonrenewal of a franchise. The petition shall contain a short statement setting forth the reasons for the dealer's objection to the termination, cancellation, or nonrenewal of the franchise. Upon the filing of the petition and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely petition has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The franchise in question shall continue in full force and effect pending the administrative law judge's decision. If the decision of the administrative law judge terminating, canceling, or failing to renew a dealer's franchise is appealed by a dealer, the franchise in question shall continue in full force and effect until the appeal to superior court is finally determined or until the expiration of one hundred eighty days from the date of issuance of the administrative law judge's written decision, whichever is less. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review. [1989 c 415 § 4.]

46.96.050 Determination of good cause, good faith—Hearing, decision, procedures—Judicial review. (1) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a petition is filed. If the termination, cancellation, or nonrenewal is under RCW 46.96.070(2), the administrative law judge shall give the proceeding priority consideration and shall render a final decision not later than sixty days after a petition is filed.

(2) The administrative law judge shall conduct the hearing as an adjudicative proceeding in accordance with the procedures provided for in the Administrative Procedure Act, chapter 34.05 RCW. The administrative law judge shall render the final decision and shall enter a final order. Except as otherwise provided in RCW 34.05.446 and 34.05.449, all hearing costs shall be borne on an equal basis by the parties to the hearing.

(3) A party to a hearing under this chapter may be represented by counsel. A party to a hearing aggrieved by the final order of the administrative law judge concerning the termination, cancellation, or nonrenewal of a franchise may seek judicial review of the order in the superior court in the manner provided for in RCW 34.05.510 through 34.05.598. A petitioner for judicial review need not exhaust all administrative appeals or administrative review processes as a prerequi-

site for seeking judicial review under this section. [1989 c 415 § 5.]

46.96.060 Good cause, what constitutes—Burden of proof. (1) Notwithstanding the terms of a franchise or the terms of a waiver, and except as otherwise provided in RCW 46.96.070(2) (a) through (d), good cause exists for termination, cancellation, or nonrenewal when there is a failure by the new motor vehicle dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship, if the new motor vehicle dealer was notified of the failure within one hundred eighty days after the manufacturer first acquired knowledge of the failure and the new motor vehicle dealer did not correct the failure after being requested to do so.

If, however, the failure of the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales, service, or level of customer satisfaction, good cause is the failure of the new motor vehicle dealer to comply with reasonable performance standards determined by the manufacturer in accordance with uniformly applied criteria, and:

(a) The new motor vehicle dealer was advised, in writing, by the manufacturer of the failure;

(b) The notice under this subsection stated that notice was provided of a failure of performance under this section;

(c) The manufacturer provided the new motor vehicle dealer with specific, reasonable goals or reasonable performance standards with which the dealer must comply, together with a suggested timetable or program for attaining those goals or standards, and the new motor vehicle dealer was given a reasonable opportunity, for a period not less than one hundred eighty days, to comply with the goals or standards; and

(d) The new motor vehicle dealer did not substantially comply with the manufacturer's performance standards during that period and the failure to demonstrate substantial compliance was not due to market or economic factors within the new motor vehicle dealer's relevant market area that were beyond the control of the dealer.

(2) The manufacturer has the burden of proof of establishing good cause and good faith for the termination, cancellation, or nonrenewal of the franchise under this section. [1989 c 415 § 6.]

46.96.070 Notice of termination, cancellation, or nonrenewal. Before the termination, cancellation, or nonrenewal of a franchise, the manufacturer shall give written notification to both the department and the new motor vehicle dealer. The notice shall be by certified mail or personally delivered to the new motor vehicle dealer and shall state the intention to terminate, cancel, or not renew the franchise, the reasons for the termination, cancellation, or nonrenewal, and the effective date of the termination, cancellation, or nonrenewal. The notice shall be given:

(1) Not less than ninety days before the effective date of the termination, cancellation, or nonrenewal;

(2) Not less than fifteen days before the effective date of the termination, cancellation, or nonrenewal with respect to any of the following that constitute good cause for termination, cancellation, or nonrenewal:

(a) Insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under bankruptcy or receivership law;

(b) Failure of the new motor vehicle dealer to conduct sales and service operations during customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

(c) Conviction of the new motor vehicle dealer, or principal operator of the dealership, of a felony punishable by imprisonment; or

(d) Suspension or revocation of a license that the new motor vehicle dealer is required to have to operate the new motor vehicle dealership where the suspension or revocation is for a period in excess of thirty days;

(3) Not less than one hundred eighty days before the effective date of termination, cancellation, or nonrenewal, where the manufacturer intends to discontinue sale and distribution of the new motor vehicle line. [1989 c 415 § 7.]

46.96.080 Payments by manufacturer to dealer for inventory, equipment, etc. (1) Upon the termination, cancellation, or nonrenewal of a franchise by the manufacturer under this chapter, the manufacturer shall pay the new motor vehicle dealer, at a minimum:

(a) Dealer cost plus any charges by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motor vehicles in the new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make within the previous twelve months;

(b) Dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that in the case of sheet metal, a comparable substitute for original packaging may be used, if the supply, part, or accessory was acquired from the manufacturer or from another new motor vehicle dealer ceasing operations as a part of the new motor vehicle dealer's initial inventory as long as the supplies, parts, and accessories appear in the manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory, whether vehicles, parts, or accessories, the purchase of which was required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the new motor vehicle dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and has not been depreciated by the dealer more than fifty percent of the value of the sign;

(e) The fair market value of all equipment, furnishings, and special tools owned or leased by the new motor vehicle dealer that were acquired from the manufacturer or sources approved by the manufacturer and that were recommended or required by the manufacturer and are in good and usable condition, less reasonable wear and tear. However, if the equipment, furnishings, or tools are leased by the new motor vehicle dealer, the manufacturer shall pay the new motor vehicle dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement; and

(f) The cost of transporting, handling, packing, and loading of new motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

To the extent the franchise agreement provides for payment or reimbursement to the new motor vehicle dealer in excess of that specified in this section, the provisions of the franchise agreement shall control.

(2) The manufacturer shall pay the new motor vehicle dealer the sums specified in subsection (1) of this section within ninety days after the tender of the property, if the new motor vehicle dealer has clear title to the property and is in a position to convey that title to the manufacturer. [1989 c 415 § 8.]

46.96.090 Payments by manufacturer for dealership facilities. (1) In the event of a termination, cancellation, or nonrenewal under this chapter, except for termination, cancellation, or nonrenewal under RCW 46.96.070(2), the manufacturer shall, at the request and option of the new motor vehicle dealer, also pay to the new motor vehicle dealer:

(a) A sum equivalent to rent for the unexpired term of the lease or one year, whichever is less, or such longer term as provided in the franchise, if the new motor vehicle dealer is leasing the new motor vehicle dealership facilities from a lessor other than the manufacturer; or

(b) A sum equivalent to the reasonable rental value of the new motor vehicle dealership facilities for one year or until the facilities are leased or sold, whichever is less, if the new motor vehicle dealer owns the new motor vehicle dealership facilities.

(2) The rental payment required under subsection (1) of this section is only required to the extent that the facilities were used for activities under the franchise and only to the extent the facilities were not leased for unrelated purposes. If payment under subsection (1) of this section is made, the manufacturer is entitled to possession and use of the new motor vehicle dealership facilities for the period rent is paid. [1989 c 415 § 9.]

46.96.100 Mitigation of damages. RCW 46.96.030 through 46.96.090 do not relieve a new motor vehicle dealer from the obligation to mitigate the dealer's damages upon termination, cancellation, or nonrenewal of the franchise. [1989 c 415 § 10.]

46.96.105 Warranty work. (1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products.

(2) All claims for warranty work for parts and labor made by dealers under this section shall be submitted to the manufacturer within one year of the date the work was performed. All claims submitted must be paid by the manufacturer within thirty days following receipt, provided the claim

has been approved by the manufacturer. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect, or false claims for a period of one year following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

(3) All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim, and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim. [2003 c 21 § 2; 1998 c 298 § 1.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

Severability—1998 c 298: See note following RCW 19.118.021.

46.96.110 Designated successor to franchise ownership. (1) Notwithstanding the terms of a franchise, an owner may appoint a designated successor to succeed to the ownership of the new motor vehicle dealer franchise upon the owner's death or incapacity.

(2) Notwithstanding the terms of a franchise, a designated successor of a deceased or incapacitated owner of a new motor vehicle dealer franchise may succeed to the ownership interest of the owner under the existing franchise, if:

(a) In the case of a designated successor who meets the definition of a designated successor under RCW 46.96.020(5)(a), but who is not experienced in the business of a new motor vehicle dealer, the person will employ an individual who is qualified and experienced in the business of a new motor vehicle dealer to help manage the day-to-day operations of the motor vehicle dealership; or in the case of a designated successor who meets the definition of a designated successor under RCW 46.96.020(5) (b) or (c), the person is qualified and experienced in the business of a new motor vehicle dealer and meets the normal, reasonable, and uniformly applied standards for grant of an application as a new motor vehicle dealer by the manufacturer; and

(b) The designated successor furnishes written notice to the manufacturer of his or her intention to succeed to the ownership of the new motor vehicle dealership within sixty days after the owner's death or incapacity; and

(c) The designated successor agrees to be bound by all terms and conditions of the franchise.

(3) The manufacturer may request, and the designated successor shall promptly provide, such personal and financial information as is reasonably necessary to determine whether the succession should be honored.

(4) A manufacturer may refuse to honor the succession to the ownership of a new motor vehicle dealer franchise by a designated successor if the manufacturer establishes that good cause exists for its refusal to honor the succession. If the designated successor of a deceased or incapacitated owner of a new motor vehicle dealer franchise fails to meet the requirements set forth in subsections (2)(a), (b), and (c) of this section, good cause for refusing to honor the succession is pre-

sumed to exist. If a manufacturer believes that good cause exists for refusing to honor the succession to the ownership of a new motor vehicle dealer franchise by a designated successor, the manufacturer shall serve written notice on the designated successor and on the department of its refusal to honor the succession no earlier than sixty days from the date the notice is served. The notice must be served not later than sixty days after the manufacturer's receipt of:

(a) Notice of the designated successor's intent to succeed to the ownership interest of the new motor vehicle dealer's franchise; or

(b) Any personal or financial information requested by the manufacturer.

(5) The notice in subsection (4) of this section shall state the specific grounds for the refusal to honor the succession. If the notice of refusal is not timely and properly served, the designated successor may continue the franchise in full force and effect, subject to termination only as otherwise provided under this chapter.

(6) Within twenty days after receipt of the notice or within twenty days after the end of any appeal procedure provided by the manufacturer, whichever is greater, the designated successor may file a petition with the department protesting the refusal to honor the succession. The petition shall contain a short statement setting forth the reasons for the designated successor's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer shall not terminate or otherwise discontinue the existing franchise until the administrative law judge has held a hearing and has determined that there is good cause for refusing to honor the succession. If an appeal is taken, the manufacturer shall not terminate or discontinue the franchise until the appeal to superior court is finally determined or until the expiration of one hundred eighty days from the date of issuance of the administrative law judge's written decision, whichever is less. Nothing in this section precludes a manufacturer or dealer from petitioning the superior court for a stay or other relief pending judicial review.

(7) The manufacturer has the burden of proof to show that good cause exists for the refusal to honor the succession.

(8) The administrative law judge shall conduct the hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred eighty days after a protest is filed.

(9) The administrative law judge shall conduct any hearing concerning the refusal to the succession as provided in RCW 46.96.050(2) and all hearing costs shall be borne as provided in that subsection. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.96.050(3).

(10) This section does not preclude the owner of a new motor vehicle dealer franchise from designating any person as his or her successor by a written, notarized, and witnessed instrument filed with the manufacturer. In the event of a conflict between such a written instrument that has not been revoked by written notice from the owner to the manufacturer and this section, the written instrument governs. [1989 c 415 § 11.]

46.96.140 Relevant market area—Definition—New or relocated dealerships, notice of. (1) For the purposes of this section, and throughout this chapter, the term "relevant market area" is defined as follows:

(a) If the population in the county in which the proposed new or relocated dealership is to be located is four hundred thousand or more, the relevant market area is the geographic area within a radius of eight miles around the proposed site;

(b) If the population in the county in which the proposed new or relocated dealership is to be located is two hundred thousand or more and less than four hundred thousand, the relevant market area is the geographic area within a radius of twelve miles around the proposed site;

(c) If the population in the county in which the proposed new or relocated dealership is to be located is less than two hundred thousand, the relevant market area is the geographic area within a radius of sixteen miles around the proposed site. In determining population for this definition, the most recent census by the United States Bureau of Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

(2) For the purpose of RCW 46.96.140 through 46.96.180, the term "motor vehicle dealer" does not include dealerships who exclusively market vehicles 19,000 pounds gross vehicle weight and above.

(3) Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, if a manufacturer intends or proposes to enter into a franchise to establish an additional new motor vehicle dealer or to relocate an existing new motor vehicle dealer within or into a relevant market area in which the same line make of motor vehicle is then represented, the manufacturer shall provide at least sixty days advance written notice to the department and to each new motor vehicle dealer of the same line make in the relevant market area, of the manufacturer's intention to establish an additional new motor vehicle dealer or to relocate an existing new motor vehicle dealer within or into the relevant market area. The notice shall be sent by certified mail to each such party and shall include the following information:

(a) The specific location at which the additional or relocated motor vehicle dealer will be established;

(b) The date on or after which the additional or relocated motor vehicle dealer intends to commence business at the proposed location;

(c) The identity of all motor vehicle dealers who are franchised to sell the same line make vehicles as the proposed dealer and who have licensed locations within the relevant market area;

(d) The names and addresses, if available, of the owners of and principal investors in the proposed additional or relocated motor vehicle dealership; and

(e) The specific grounds or reasons for the proposed establishment of an additional motor vehicle dealer or relocation of an existing dealer. [1994 c 274 § 1.]

46.96.150 Protest of new or relocated dealership—Hearing—Arbitration. (1) Within thirty days after receipt of the notice under RCW 46.96.140, or within thirty days after the end of an appeal procedure provided by the manu-

facturer, whichever is greater, a new motor vehicle dealer so notified or entitled to notice may file a petition with the department protesting the proposed establishment or relocation. The petition shall contain a short statement setting forth the reasons for the dealer's objection to the proposed establishment or relocation. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed and shall request the appointment of an administrative law judge under chapter 34.12 RCW to conduct a hearing. The manufacturer shall not establish or relocate the new motor vehicle dealer until the administrative law judge has held a hearing and has determined that there is good cause for permitting the proposed establishment or relocation. When more than one protest is filed against the establishment or relocation of the same dealer, the administrative law judge shall consolidate the hearings to expedite disposition of the matter.

(2) If a manufacturer provides in the franchise agreement or by written statement distributed and provided to its dealers for arbitration under the Uniform Arbitration Act, chapter 7.04A RCW, as a mechanism for resolving disputes relating to the establishment of an additional new motor vehicle dealer or the relocation of a new motor vehicle dealer, then the provisions of this section and RCW 46.96.170 relating to hearings by an administrative law judge do not apply, and a dispute regarding the establishment of an additional new motor vehicle dealer or the relocation of an existing new motor vehicle dealer shall be determined in an arbitration proceeding conducted in accordance with the Uniform Arbitration Act, chapter 7.04A RCW. The thirty-day period for filing a protest under this section still applies except that the protesting dealer shall file his protest with the manufacturer within thirty days after receipt of the notice under RCW 46.96.140.

(3) The dispute shall be referred for arbitration to such arbitrator as may be agreed upon by the parties to the dispute. If the parties cannot agree upon a single arbitrator within thirty days from the date the protest is filed, the protesting dealer will select an arbitrator, the manufacturer will select an arbitrator, and the two arbitrators will then select a third. If a third arbitrator is not agreed upon within thirty days, any party may apply to the superior court, and the judge of the superior court having jurisdiction will appoint the third arbitrator. The protesting dealer will pay the arbitrator selected by him, and the manufacturer will pay the arbitrator it selected. The expense of the third arbitrator and all other expenses of arbitration will be shared equally by the parties. Attorneys' fees and fees paid to expert witnesses are not expenses of arbitration and will be paid by the person incurring them.

(4) Notwithstanding the terms of a franchise or written statement of the manufacturer and notwithstanding the terms of a waiver, the arbitration will take place in the state of Washington in the county where the protesting dealer has his principal place of business. RCW 46.96.160 applies to a determination made by the arbitrator or arbitrators in determining whether good cause exists for permitting the proposed establishment or relocation of a new motor vehicle dealer, and the manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation. After a hearing has been held, the

arbitrator or arbitrators shall render a decision as expeditiously as possible, but in any event not later than one hundred twenty days from the date the arbitrator or arbitrators are selected or appointed. The manufacturer shall not establish or relocate the new motor vehicle dealer until the arbitration hearing has been held and the arbitrator or arbitrators have determined that there is good cause for permitting the proposed establishment or relocation. The written decision of the arbitrator is binding upon the parties unless modified, corrected, or vacated under the Washington Arbitration Act. Any party may appeal the decision of the arbitrator under the Uniform Arbitration Act, chapter 7.04A RCW.

(5) If the franchise agreement or the manufacturer's written statement distributed and provided to its dealers does not provide for arbitration under the Uniform Arbitration Act as a mechanism for resolving disputes relating to the establishment of an additional new motor vehicle dealer or the relocation of a new motor vehicle dealer, then the hearing provisions of this section and RCW 46.96.170 apply. Nothing in this section is intended to preclude a new motor vehicle dealer from electing to use any other dispute resolution mechanism offered by a manufacturer. [2005 c 433 § 43; 1994 c 274 § 2.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

46.96.160 Factors considered by administrative law judge. In determining whether good cause exists for permitting the proposed establishment or relocation of a new motor vehicle dealer of the same line make, the administrative law judge shall take into consideration the existing circumstances, including, but not limited to:

(1) The extent, nature, and permanency of the investment of both the existing motor vehicle dealers of the same line make in the relevant market area and the proposed additional or relocating new motor vehicle dealer, including obligations reasonably incurred by the existing dealers to perform their obligations under their respective franchises;

(2) The growth or decline in population and new motor vehicle registrations during the past five years in the relevant market area;

(3) The effect on the consuming public in the relevant market area;

(4) The effect on the existing new motor vehicle dealers in the relevant market area, including any adverse financial impact;

(5) The reasonably expected or anticipated vehicle market for the relevant market area, including demographic factors such as age of population, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers in the relevant market area;

(6) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

(7) Whether the new motor vehicle dealers of the same line make in the relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the relevant market area, including the adequacy of motor vehicle sales and service

facilities, equipment, supply of vehicle parts, and qualified service personnel;

(8) Whether the establishment of an additional new motor vehicle dealer would increase competition and be in the public interest;

(9) Whether the manufacturer is motivated principally by good faith to establish an additional or new motor vehicle dealer and not by noneconomic considerations;

(10) Whether the manufacturer has denied its existing new motor vehicle dealers of the same line make the opportunity for reasonable growth, market expansion, establishment of a subagency, or relocation;

(11) Whether the protesting dealer or dealers are in substantial compliance with their dealer agreements or franchises; and

(12) Whether the manufacturer has complied with the requirements of RCW 46.96.140 and 46.96.150.

In considering the factors set forth in this section, the administrative law judge shall give the factors equal weight, and in making a determination as to whether good cause exists for permitting the proposed establishment or relocation of a new motor vehicle dealer of the same line make, the administrative law judge must find that at least nine of the factors set forth in this section weigh in favor of the manufacturer and in favor of the proposed establishment or relocation of a new motor vehicle dealer. [1994 c 274 § 3.]

46.96.170 Hearing—Procedures, costs, appeal. (1) The manufacturer has the burden of proof to establish that good cause exists for permitting the proposed establishment or relocation.

(2) The administrative law judge shall conduct any hearing as provided in RCW 46.96.050(2), and all hearing costs shall be borne as provided in that subsection. The administrative law judge shall render the final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. If more than one protest is filed, the one hundred twenty days commences to run from the date the last protest is filed. A party to such a hearing aggrieved by the final order of the administrative law judge may appeal as provided and allowed in RCW 46.96.050(3). [1994 c 274 § 4.]

46.96.180 Exceptions. RCW 46.96.140 through 46.96.170 do not apply:

(1) To the sale or transfer of the ownership or assets of an existing new motor vehicle dealer where the transferee proposes to engage in business representing the same line make at the same location or within two miles of that location;

(2) To the relocation of an existing new motor vehicle dealer within the dealer's relevant market area, if the relocation is not at a site within eight miles of any new motor vehicle dealer of the same line make;

(3) If the proposed new motor vehicle dealer is to be established at or within two miles of a location at which a former new motor vehicle dealer of the same line make had ceased operating within the previous twenty-four months;

(4) Where the proposed relocation is two miles or less from the existing location of the relocating new motor vehicle dealer; or

(5) Where the proposed relocation is to be further away from all other existing new motor vehicle dealers of the same line make in the relevant market area. [1994 c 274 § 5.]

46.96.185 Unfair practices. (1) Notwithstanding the terms of a franchise agreement, a manufacturer, distributor, factory branch, or factory representative, or an agent, officer, parent company, wholly or partially owned subsidiary, affiliated entity, or other person controlled by or under common control with a manufacturer, distributor, factory branch, or factory representative, shall not:

(a) Discriminate between new motor vehicle dealers by selling or offering to sell a like vehicle to one dealer at a lower actual price than the actual price offered to another dealer for the same model similarly equipped;

(b) Discriminate between new motor vehicle dealers by selling or offering to sell parts or accessories to one dealer at a lower actual price than the actual price offered to another dealer;

(c) Discriminate between new motor vehicle dealers by using a promotion plan, marketing plan, or other similar device that results in a lower actual price on vehicles, parts, or accessories being charged to one dealer over another dealer;

(d) Discriminate between new motor vehicle dealers by adopting a method, or changing an existing method, for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to its dealers that is not fair, reasonable, and equitable. Upon the request of a dealer, a manufacturer, distributor, factory branch, or factory representative shall disclose in writing to the dealer the method by which new motor vehicles, parts, and accessories are allocated, scheduled, or delivered to its dealers handling the same line or make of vehicles;

(e) Give preferential treatment to some new motor vehicle dealers over others by refusing or failing to deliver, in reasonable quantities and within a reasonable time after receipt of an order, to a dealer holding a franchise for a line or make of motor vehicles sold or distributed by the manufacturer, distributor, factory branch, or factory representative, a new vehicle, parts, or accessories, if the vehicle, parts, or accessories are being delivered to other dealers, or require a dealer to purchase unreasonable advertising displays or other materials, or unreasonably require a dealer to remodel or renovate existing facilities as a prerequisite to receiving a model or series of vehicles;

(f) Compete with a new motor vehicle dealer by acting in the capacity of a new motor vehicle dealer, or by owning, operating, or controlling, whether directly or indirectly, a motor vehicle dealership in this state. It is not, however, a violation of this subsection for:

(i) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership for a temporary period, not to exceed two years, during the transition from one owner of the dealership to another where the dealership was previously owned by a franchised dealer and is currently for sale to any qualified independent person at a fair and reasonable price. The temporary operation may be extended for one twelve-month period on petition of the temporary operator to the department. The matter will be handled as an adjudicative proceeding under chapter 34.05 RCW. A dealer who

is a franchisee of the petitioning manufacturer or distributor may intervene and participate in a proceeding under this subsection (1)(f)(i). The temporary operator has the burden of proof to show justification for the extension and a good faith effort to sell the dealership to an independent person at a fair and reasonable price;

(ii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship for the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, and where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. Nothing in this subsection (1)(f)(ii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with RCW 46.96.185(1) (a) through (e);

(iii) A manufacturer, distributor, factory branch, or factory representative to own or operate a dealership in conjunction with an independent person in a bona fide business relationship where the independent person: (A) Has made, or within a period of two years from the date of commencement of operation will have made, a significant, bona fide capital investment in the dealership that is subject to loss; (B) has an ownership interest in the dealership; and (C) operates the dealership under a bona fide written agreement with the manufacturer, distributor, factory branch, or factory representative under which he or she will acquire all of the ownership interest in the dealership within a reasonable period of time and under reasonable terms and conditions. The manufacturer, distributor, factory branch, or factory representative has the burden of proof of establishing that the acquisition of the dealership by the independent person was made within a reasonable period of time and under reasonable terms and conditions. The number of dealerships operated under this subsection (1)(f)(iii) may not exceed four percent rounded up to the nearest whole number of a manufacturer's total of new motor vehicle dealer franchises in this state. Nothing in this subsection (1)(f)(iii) relieves a manufacturer, distributor, factory branch, or factory representative from complying with RCW 46.96.185(1) (a) through (e);

(iv) A truck manufacturer to own, operate, or control a new motor vehicle dealership that sells only trucks of that manufacturer's line make with a gross vehicle weight rating of 12,500 pounds or more, and the truck manufacturer has

been continuously engaged in the retail sale of the trucks at least since January 1, 1993; or

(v) A manufacturer to own, operate, or control a new motor vehicle dealership trading exclusively in a single line make of the manufacturer if (A) the manufacturer does not own, directly or indirectly, in the aggregate, in excess of forty-five percent of the total ownership interest in the dealership, (B) at the time the manufacturer first acquires ownership or assumes operation or control of any such dealership, the distance between any dealership thus owned, operated, or controlled and the nearest new motor vehicle dealership trading in the same line make of vehicle and in which the manufacturer has no ownership or control is not less than fifteen miles and complies with the applicable provisions in the relevant market area sections of this chapter, (C) all of the manufacturer's franchise agreements confer rights on the dealer of that line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and the manufacturer agree are appropriate, and (D) as of January 1, 2000, the manufacturer had no more than four new motor vehicle dealers of that manufacturer's line make in this state, and at least half of those dealers owned and operated two or more dealership facilities in the geographic territory or area covered by their franchise agreements with the manufacturer;

(g) Compete with a new motor vehicle dealer by owning, operating, or controlling, whether directly or indirectly, a service facility in this state for the repair or maintenance of motor vehicles under the manufacturer's new car warranty and extended warranty. Nothing in this subsection (1)(g), however, prohibits a manufacturer, distributor, factory branch, or factory representative from owning or operating a service facility for the purpose of providing or performing maintenance, repair, or service work on motor vehicles that are owned by the manufacturer, distributor, factory branch, or factory representative;

(h) Use confidential or proprietary information obtained from a new motor vehicle dealer to unfairly compete with the dealer. For purposes of this subsection (1)(h), "confidential or proprietary information" means trade secrets as defined in RCW 19.108.010, business plans, marketing plans or strategies, customer lists, contracts, sales data, revenues, or other financial information;

(i) Terminate, cancel, or fail to renew a franchise with a new motor vehicle dealer based upon any of the following events, which do not constitute good cause for termination, cancellation, or nonrenewal under RCW 46.96.060: (A) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a franchise agreement for the sale or service of another make or line of new motor vehicles, or (B) the fact that the new motor vehicle dealer has established another make or line of new motor vehicles or service in the same dealership facilities as those of the manufacturer or distributor with the prior written approval of the manufacturer or distributor, if the approval was required under the terms of the new motor vehicle dealer's franchise agreement; or

(j) Coerce or attempt to coerce a motor vehicle dealer to refrain from, or prohibit or attempt to prohibit a new motor vehicle dealer from acquiring, owning, having an investment in, participating in the management of, or holding a franchise

agreement for the sale or service of another make or line of new motor vehicles or related products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, if the prohibition against acquiring, owning, investing, managing, or holding a franchise for such additional make or line of vehicles or products, or establishing another make or line of new motor vehicles or service in the same dealership facilities, is not supported by reasonable business considerations. The burden of proving that reasonable business considerations support or justify the prohibition against the additional make or line of new motor vehicles or products or nonexclusive facilities is on the manufacturer.

(2) Subsection (1)(a), (b), and (c) of this section do not apply to sales to a motor vehicle dealer: (a) For resale to a federal, state, or local government agency; (b) where the vehicles will be sold or donated for use in a program of driver's education; (c) where the sale is made under a manufacturer's bona fide promotional program offering sales incentives or rebates; (d) where the sale of parts or accessories is under a manufacturer's bona fide quantity discount program; or (e) where the sale is made under a manufacturer's bona fide fleet vehicle discount program. For purposes of this subsection, "fleet" means a group of fifteen or more new motor vehicles purchased or leased by a dealer at one time under a single purchase or lease agreement for use as part of a fleet, and where the dealer has been assigned a fleet identifier code by the department of licensing.

(3) The following definitions apply to this section:

(a) "Actual price" means the price to be paid by the dealer less any incentive paid by the manufacturer, distributor, factory branch, or factory representative, whether paid to the dealer or the ultimate purchaser of the vehicle.

(b) "Control" or "controlling" means (i) the possession of, title to, or control of ten percent or more of the voting equity interest in a person, whether directly or indirectly through a fiduciary, agent, or other intermediary, or (ii) the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, through director control, by contract, or otherwise, except as expressly provided under the franchise agreement.

(c) "Motor vehicles" does not include trucks that are 14,001 pounds gross vehicle weight and above or recreational vehicles as defined in RCW 43.22.335.

(d) "Operate" means to manage a dealership, whether directly or indirectly.

(e) "Own" or "ownership" means to hold the beneficial ownership of one percent or more of any class of equity interest in a dealership, whether the interest is that of a shareholder, partner, limited liability company member, or otherwise. To hold an ownership interest means to have possession of, title to, or control of the ownership interest, whether directly or indirectly through a fiduciary, agent, or other intermediary.

(4) A violation of this section is deemed to affect the public interest and constitutes an unlawful and unfair practice under chapter 19.86 RCW. A person aggrieved by an alleged violation of this section may petition the department to have the matter handled as an adjudicative proceeding under chapter 34.05 RCW. [2003 c 21 § 3; 2000 c 203 § 1.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

46.96.190 Prohibited practices by manufacturer. A manufacturer shall not coerce, threaten, intimidate, or require a new motor vehicle dealer, as a condition to granting or renewing a franchise, to waive, limit, or disclaim a right that the dealer may have to protest the establishment or relocation of another motor vehicle dealer in the relevant market area as provided in RCW 46.96.150. [1994 c 274 § 6.]

46.96.200 Sale, transfer, or exchange of franchise.

(1) Notwithstanding the terms of a franchise, a manufacturer shall not unreasonably withhold consent to the sale, transfer, or exchange of a franchise to a qualified buyer who meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer or is capable of being licensed as a new motor vehicle dealer in the state of Washington. A decision or determination made by the administrative law judge as to whether a qualified buyer is capable of being licensed as a new motor vehicle dealer in the state of Washington is not conclusive or determinative of any ultimate determination made by the department of licensing as to the buyer's qualification for a motor vehicle dealer license. A manufacturer's failure to respond in writing to a request for consent under this subsection within sixty days after receipt of a written request on the forms, if any, generally used by the manufacturer containing the information and reasonable promises required by a manufacturer is deemed to be consent to the request. A manufacturer may request, and, if so requested, the applicant for a franchise (a) shall promptly provide such personal and financial information as is reasonably necessary to determine whether the sale, transfer, or exchange should be approved, and (b) shall agree to be bound by all reasonable terms and conditions of the franchise.

(2) If a manufacturer refuses to approve the sale, transfer, or exchange of a franchise, the manufacturer shall serve written notice on the applicant, the transferring, selling, or exchanging new motor vehicle dealer, and the department of its refusal to approve the transfer of the franchise no later than sixty days after the date the manufacturer receives the written request from the new motor vehicle dealer. If the manufacturer has requested personal or financial information from the applicant under subsection (1) of this section, the notice shall be served not later than sixty days after the receipt of all of such documents. Service of all notices under this section shall be made by personal service or by certified mail, return receipt requested.

(3) The notice in subsection (2) of this section shall state the specific grounds for the refusal to approve the sale, transfer, or exchange of the franchise.

(4) Within twenty days after receipt of the notice of refusal to approve the sale, transfer, or exchange of the franchise by the transferring new motor vehicle dealer, the new motor vehicle dealer may file a petition with the department to protest the refusal to approve the sale, transfer, or exchange. The petition shall contain a short statement setting forth the reasons for the dealer's protest. Upon the filing of a protest and the receipt of the filing fee, the department shall promptly notify the manufacturer that a timely protest has been filed, and the department shall arrange for a hearing

with an administrative law judge as the presiding officer to determine if the manufacturer unreasonably withheld consent to the sale, transfer, or exchange of the franchise.

(5) In determining whether the manufacturer unreasonably withheld its approval to the sale, transfer, or exchange, the manufacturer has the burden of proof that it acted reasonably. A manufacturer's refusal to accept or approve a proposed buyer who otherwise meets the normal, reasonable, and uniformly applied standards established by the manufacturer for the appointment of a new dealer, or who otherwise is capable of being licensed as a new motor vehicle dealer in the state of Washington, is presumed to be unreasonable.

(6) The administrative law judge shall conduct a hearing and render a final decision as expeditiously as possible, but in any event not later than one hundred twenty days after a protest is filed. Only the selling, transferring, or exchanging new motor vehicle dealer and the manufacturer may be parties to the hearing.

(7) The administrative law judge shall conduct any hearing as provided in RCW 46.96.050(2), and all hearing costs shall be borne as provided in that subsection. Only the manufacturer and the selling, transferring, or exchanging new motor vehicle dealer may appeal the final order of the administrative law judge as provided in RCW 46.96.050(3).

(8) This section and RCW 46.96.030 through 46.96.110 apply to all franchises and contracts existing on July 23, 1989, between manufacturers and new motor vehicle dealers as well as to all future franchises and contracts between manufacturers and new motor vehicle dealers.

(9) RCW 46.96.140 through 46.96.190 apply to all franchises and contracts existing on October 1, 1994, between manufacturers and new motor vehicle dealers as well as to all future franchises and contracts between manufacturers and new motor vehicle dealers. [1994 c 274 § 7; 1989 c 415 § 18. Formerly RCW 46.96.120.]

46.96.210 Petition and hearing—Filing fee, costs, security. The department shall determine and establish the amount of the filing fee required in RCW 46.96.040, 46.96.110, 46.96.150, and 46.96.200. The fees shall be set in accordance with RCW 43.24.086.

The department may also require the petitioning or protesting party to give security, in such sum as the department deems proper but not in any event to exceed one thousand dollars, for the payment of such costs as may be incurred in conducting the hearing as required under this chapter. The security may be given in the form of a bond or stipulation or other undertaking with one or more sureties.

At the conclusion of the hearing, the department shall assess, in equal shares, each of the parties to the hearing for the cost of conducting the hearing. Upon receipt of payment of the costs, the department shall refund and return to the petitioning party such excess funds, if any, initially posted by the party as security for the hearing costs. If the petitioning party provided security in the form of a bond or other undertaking with one or more sureties, the bond or other undertaking shall then be exonerated and the surety or sureties under it discharged. [1994 c 274 § 8; 1989 c 415 § 19. Formerly RCW 46.96.130.]

46.96.220 Right of first refusal. (1) In the event of a proposed sale or transfer of a new motor vehicle dealership involving the transfer or sale of more than fifty percent of the ownership interest in, or more than fifty percent of the assets of, the dealership at the time of the transfer or sale, where the franchise agreement for the dealership contains a right of first refusal in favor of the manufacturer or distributor, then notwithstanding the terms of the franchise agreement, the manufacturer or distributor must be permitted to exercise a right of first refusal to acquire the dealership only if all of the following requirements are met:

(a) The manufacturer or distributor sends by certified mail, return receipt requested, or delivers by personal service, notice of its intent to exercise its right of first refusal within the lesser of (i) forty-five days of receipt of the completed proposal for the proposed sale or transfer, or (ii) the time period specified in the dealership's franchise agreement; and

(b) The exercise of the right of first refusal will result in the motor vehicle dealer receiving consideration, terms, and conditions that are equal to or better than that for which the dealer has contracted in connection with the proposed transaction.

(2) Notwithstanding subsection (1) of this section, the manufacturer's or distributor's right of first refusal does not apply to transfer of a dealership under RCW 46.96.110, and does not apply to a proposed transaction involving any of the following purchasers or transferees:

(a) A purchaser or transferee who has been preapproved by the manufacturer or distributor with respect to the transaction;

(b) A family member or members, including the spouse, biological or adopted child, stepchild, grandchild, spouse of a child or grandchild, brother, sister, or parent of the dealer-operator, or one or more of the dealership's owners;

(c) A manager continuously employed by the motor vehicle dealer in the dealership during the previous three years who is otherwise qualified as a dealer-operator by meeting the reasonable and uniformly applied standards for approval of an application as a new motor vehicle dealer-operator by the manufacturer;

(d) A partnership, corporation, limited liability company, or other entity controlled by any of the family members, identified in (b) of this subsection, of the dealer-operator; or

(e) A trust established or to be established for the purpose of allowing the new motor vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards, or provides for the succession of the franchise agreement to designated family members identified in (b) of this subsection, or qualified management identified in (c) of this subsection, in the event of the death or incapacity of the dealer-operator or its principal owner or owners.

(3) As a condition to the manufacturer or distributor exercising its right of first refusal, the manufacturer or distributor shall pay the reasonable expenses, including attorneys' fees, incurred by the dealer's proposed purchaser or transferee in negotiating, and undertaking any action to consummate, the contract for the proposed sale of the dealership up to the time of the manufacturer's or distributor's exercise of that right. In addition, the manufacturer or distributor shall pay any fees and expenses of the motor vehicle dealer arising

on and after the date the manufacturer or distributor gives notice of the exercise of its right of first refusal, and incurred by the motor vehicle dealer as a result of alterations to documents, or additional appraisals, valuations, or financial analyses caused or required of the dealer by the manufacturer or distributor to consummate the contract for the sale of the dealership to the manufacturer's or distributor's proposed transferee, that would not have been incurred but for the manufacturer's or distributor's exercise of its right of first refusal. These expenses and fees must be paid by the manufacturer or distributor to the dealer and to the dealer's proposed purchaser or transferee on or before the closing date of the sale of the dealership to the manufacturer or distributor if the party entitled to reimbursement has submitted or caused to be submitted to the manufacturer or distributor, an accounting of these expenses and fees within thirty days after receipt of the manufacturer's or distributor's written request for the accounting. A manufacturer or distributor may request the accounting before exercising its right of first refusal.

(4) As a further condition to the exercise of its right of first refusal, a manufacturer or distributor shall assume and guarantee the lease or shall acquire the real property on which the motor vehicle franchise is conducted. Unless otherwise agreed to by the dealer and manufacturer or distributor, the lease terms or the real property acquisition terms must be the same as those on which the lease or property was to be transferred or sold to the dealer's proposed purchaser or transferee.

(5) If the selling dealer has disclosed to the proposed purchaser or transferee, in writing, the existence of the manufacturer's or distributor's right of first refusal, then the selling dealer has no liability to the proposed purchaser or transferee for a claim for damages resulting from the manufacturer or distributor exercising its right of first refusal. If the existence of the manufacturer's or distributor's right of first refusal was disclosed by the selling dealer to the proposed purchaser or transferee, in writing, before or at the time of execution of the purchase and sale or transfer agreement, the manufacturer or distributor shall indemnify, hold harmless, and defend the selling dealer from and against any and all claims, damages, losses, actions, or causes of action asserted by the dealer's proposed purchaser or transferee against the selling dealer arising from the manufacturer's or distributor's exercise of its right of first refusal, and has the right, under this section, to file a motion on behalf of the dealer to dismiss the actions or causes of action asserted by the dealer's proposed purchaser or transferee. [2003 c 21 § 4.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

46.96.230 Manufacturer incentive programs. (1) A manufacturer or distributor shall pay a motor vehicle dealer's claim for payment or other compensation due under a manufacturer incentive program within thirty days after approval of the claim. A claim that is not disapproved or disallowed within thirty days after the manufacturer or distributor receives the claim is deemed automatically approved. If the motor vehicle dealer's claim is not approved, the manufacturer or distributor shall provide the dealer with written notice of the reasons for the disapproval at the time notice of disapproval is given.

(2) A manufacturer may not deny a claim based solely on a motor vehicle dealer's incidental failure to comply with a specific claim-processing requirement that results in a clerical error or other administrative technicality.

(3) Notwithstanding the terms of a franchise agreement or other contract with a manufacturer or distributor, a motor vehicle dealer has one year after the expiration of a manufacturer or distributor incentive program to submit a claim for payment or compensation under the program.

(4) Notwithstanding the terms of a franchise agreement or other contract with a dealer and except as provided in subsection (5) of this section, after the expiration of one year after the date of payment of a claim under a manufacturer or distributor incentive program, a manufacturer or distributor may not:

(a) Charge back to a motor vehicle dealer, whether directly or indirectly, the amount of a claim that has been approved and paid by the manufacturer or distributor under an incentive program;

(b) Charge back to a motor vehicle dealer, whether directly or indirectly, the cash value of a prize or other thing of value awarded to the dealer under an incentive program; or

(c) Audit the records of a motor vehicle dealer to determine compliance with the terms of an incentive program. Where, however, a manufacturer or distributor has reasonable grounds to believe that the dealer committed fraud with respect to the incentive program, the manufacturer or distributor may audit the dealer for a fraudulent claim during any period for which an action for fraud may be commenced under applicable state law.

(5) Notwithstanding subsection (4)(a) and (b) of this section, a manufacturer or distributor may make charge-backs to a motor vehicle dealer if, after completion of an audit of the dealer's records, the manufacturer or distributor can show, by a preponderance of the evidence, that (a) the claim was intentionally false or fraudulent at the time it was submitted to the manufacturer or distributor, or (b) with respect to a claim under a service incentive program, the repair work was improperly performed in a substandard manner or was unnecessary to correct a defective condition. [2003 c 21 § 5.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

46.96.240 Venue. Notwithstanding the provisions of a franchise agreement or other provision of law to the contrary, the venue for a cause of action, claim, lawsuit, administrative hearing or proceeding, arbitration, or mediation, whether arising under this chapter or otherwise, in which the parties or litigants are a manufacturer or distributor and one or more motor vehicle dealers, is the state of Washington. It is the public policy of this state that venue provided for in this section may not be modified or waived in any contract or other agreement, and any provision contained in a franchise agreement that requires arbitration or litigation to be conducted outside the state of Washington is void and unenforceable.

This section does not apply to a voluntary dispute resolution procedure that is not binding on the dealer. [2003 c 21 § 6.]

Captions not law—2003 c 21: See note following RCW 46.96.020.

(2008 Ed.)

46.96.900 Severability—1989 c 415. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 415 § 22.]

Chapter 46.98 RCW

CONSTRUCTION

Sections

46.98.010	Continuation of existing law.
46.98.020	Provisions to be construed in pari materia.
46.98.030	Title, chapter, section headings not part of law.
46.98.040	Invalidity of part of title not to affect remainder.
46.98.041	Severability—1963 ex.s. c 3.
46.98.042	Severability—1965 ex.s. c 170.
46.98.043	Severability—1969 ex.s. c 281.
46.98.050	Repeals and saving—1961 c 12.
46.98.060	Emergency—1961 c 12.

46.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 12 § 46.98.010.]

46.98.020 Provisions to be construed in pari materia. The provisions of this title shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 47 RCW, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively. [1961 c 12 § 46.98.020.]

46.98.030 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 12 § 46.98.030.]

46.98.040 Invalidity of part of title not to affect remainder. If any provision of this title or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 12 § 46.98.040.]

46.98.041 Severability—1963 ex.s. c 3. See RCW 47.98.041.

46.98.042 Severability—1965 ex.s. c 170. See RCW 47.98.042.

46.98.043 Severability—1969 ex.s. c 281. See RCW 47.98.045.

46.98.050 Repeals and saving—1961 c 12. See 1961 c 12 § 46.98.050.

46.98.060 Emergency—1961 c 12. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions and shall take effect immediately. [1961 c 12 § 46.98.060.]

Title 47

PUBLIC HIGHWAYS AND TRANSPORTATION

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- 47.02 Department buildings.
- 47.04 General provisions.
- 47.05 Priority programming for highway development.
- 47.06 Statewide transportation planning.
- 47.06A Freight mobility.
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DEPARTMENT OF TRANSPORTATION

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Traffic safety commission, secretary of transportation member of: RCW 43.59.030.

Trails system, Washington state recreation, department of transportation participation: RCW 79A.35.120.

47.01.011 Legislative declaration. The legislature hereby recognizes the following imperative needs within the state: To create a statewide transportation development plan which identifies present status and sets goals for the future; to coordinate transportation modes; to promote and protect land use programs required in local, state, and federal law; to coordinate transportation with the economic development of the state; to supply a broad framework in which regional, metropolitan, and local transportation needs can be related; to facilitate the supply of federal and state aid to those areas which will most benefit the state as a whole; to provide for public involvement in the transportation planning and development process; to administer programs within the jurisdiction of this title relating to the safety of the state's transportation systems; and to coordinate and implement national transportation policy with the state transportation planning program.

The legislature finds and declares that placing all elements of transportation in a single department is fully consistent with and shall in no way impair the use of moneys in the motor vehicle fund exclusively for highway purposes.

Through this chapter, a unified department of transportation is created. To the jurisdiction of this department will be transferred the present powers, duties, and functions of the department of highways, the highway commission, the toll bridge authority, the aeronautics commission, and the canal commission, and the transportation related powers, duties, and functions of the *planning and community affairs agency. The powers, duties, and functions of the department of transportation must be performed in a manner consistent with the policy goals set forth in RCW 47.04.280. [2007 c 516 § 2; 1977 ex.s. c 151 § 1.]

***Reviser's note:** "Planning and community affairs agency" means "department of community, trade, and economic development," but the name is retained here for historical purposes.

Findings—Intent—2007 c 516: "The legislature finds and declares that the citizens of the state expect clear and concise goals, objectives, and responsibilities regarding the operation of the statewide transportation system. Furthermore, the state's citizens expect that the state periodically receive clear and streamlined information that measures whether the goals and objectives are being satisfied. Therefore, it is the intent of the legislature that this act serve to clarify existing goals, objectives, and responsibilities related to the operation of an efficient statewide transportation system." [2007 c 516 § 1.]

47.01.021 Definitions. As used in this title unless the context indicates otherwise:

(1) "Department" means the department of transportation created in RCW 47.01.031;

(2) "Commission" means the transportation commission created in RCW 47.01.051;

(3) "Secretary" means the secretary of transportation as provided for in RCW 47.01.041. [1977 ex.s. c 151 § 2.]

Additional definitions: RCW 47.04.010.

47.01.031 Department created—Transfer of powers, duties, and functions. (1) There is created a department of state government to be known as the department of transportation.

(2) All powers, duties, and functions vested by law in the department of highways, the state highway commission, the

director of highways, the Washington toll bridge authority, the aeronautics commission, the director of aeronautics, and the canal commission, and the transportation related powers, duties, and functions of the *planning and community affairs agency, are transferred to the jurisdiction of the department, except those powers, duties, and functions which are expressly directed elsewhere in **this or in any other act of the 1977 legislature.

(3) The board of pilotage commissioners is transferred to the jurisdiction of the department for its staff support and administration: PROVIDED, That nothing in this section shall be construed as transferring any policy making powers of the board of pilotage commissioners to the transportation commission or the department of transportation. [1988 c 167 § 11; 1977 ex.s. c 151 § 3.]

Reviser's note: *(1) The "planning and community affairs agency" has been renamed the "department of community, trade, and economic development."

** (2) For codification of "this act" [1977 ex.s. c 151], see Codification Tables, Volume 0.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.01.041 Secretary of transportation—Appointment, salary, removal. The executive head of the department of transportation shall be the secretary of transportation, who shall be appointed by the governor with the advice and consent of the senate, and shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The secretary shall be an ex officio member of the transportation commission without a vote. The secretary shall serve at the pleasure of the governor. [2005 c 319 § 3; 1983 1st ex.s. c 53 § 28; 1977 ex.s. c 151 § 4.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

47.01.051 Commission created—Appointment of members—Terms—Qualifications—Removal. There is hereby created a transportation commission, which shall consist of seven voting members appointed by the governor, with the consent of the senate. The present five members of the highway commission shall serve as five initial members of the transportation commission until their terms of office as highway commission members would have expired. The additional two members provided herein for the transportation commission shall be appointed for initial terms to expire on June 30, 1982, and June 30, 1983. Thereafter all terms shall be for six years. No elective state official, state officer, or state employee shall be a member of the commission. At the time of appointment or thereafter during their respective terms of office, four members of the commission shall reside in the western part of the state and three members shall reside in the eastern part of the state as divided north and south by the summit of the Cascade mountains. No more than two members of the commission shall reside in the same county; however, the governor, or his or her designee, shall serve as a nonvoting member of the commission. Commission appointments should reflect both a wide range of transportation interests and a balanced statewide geographic representation. Commissioners may be removed from office by the governor

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before the expiration of their terms for cause. No member shall be appointed for more than two consecutive terms. [2006 c 334 § 1; 1977 ex.s. c 151 § 5.]

Effective date—2006 c 334: "This act takes effect July 1, 2006." [2006 c 334 § 52.]

47.01.061 Commission—Procedures and internal operations. (1) The commission shall meet at such times as it deems advisable but at least on a quarterly basis with meetings to be held in different parts of the state. It may adopt its own rules and regulations and may establish its own procedure. It shall act collectively in harmony with recorded resolutions or motions adopted by majority vote of at least four members. The commission may appoint an executive director, and shall elect one of its members chair for a term of one year. The chair may vote on all matters before the commission. The commission may from time to time retain planners, consultants, and other technical personnel to advise it in the performance of its duties.

(2) The commission shall submit to each regular session of the legislature held in an odd-numbered year its own budget proposal necessary for the commission's operations separate from that proposed for the department.

(3) Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission, and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the secretary of transportation, but in no event shall the entire commission membership be compensated for more than one thousand two hundred thirty days combined. Service on the commission shall not be considered as service credit for the purposes of any public retirement system.

(4) Each member of the commission shall disclose any actual or potential conflict of interest, if applicable under the circumstance, regarding any commission business. [2006 c 334 § 2; 2005 c 319 § 4; 1987 c 364 § 2; 1984 c 287 § 94; 1983 1st ex.s. c 53 § 29; 1981 c 59 § 1; 1977 ex.s. c 151 § 6.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

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

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.

47.01.070 Director's and commissioner's prior assignments may be delegated. In all situations wherein the director of highways, the director of aeronautics or any one of their designees, or any member of the highway commission, the toll bridge authority, the aeronautics commission, or the canal commission or any one of their designees was on September 21, 1977, designated or serving as a member of any board, commission, committee, or authority, the chairman of the transportation commission or the chairman's designee who shall be an employee of the department of transportation, shall hereafter determine who shall serve as such member. [1977 ex.s. c 151 § 27; 1961 c 13 § 47.01.070. Prior: 1951 c 247 § 5. Formerly RCW 43.27.120.]

47.01.071 Commission—Functions, powers, and duties. The transportation commission shall have the following functions, powers, and duties:

(1) To propose policies to be adopted by the governor and the legislature designed to assure the development and maintenance of a comprehensive and balanced statewide transportation system which will meet the needs of the people of this state for safe and efficient transportation services. Wherever appropriate, the policies shall provide for the use of integrated, intermodal transportation systems. The policies must be aligned with the goals established in RCW 47.04.280. To this end the commission shall:

(a) Develop transportation policies which are based on the policies, goals, and objectives expressed and inherent in existing state laws;

(b) Inventory the adopted policies, goals, and objectives of the local and area-wide governmental bodies of the state and define the role of the state, regional, and local governments in determining transportation policies, in transportation planning, and in implementing the state transportation plan;

(c) Establish a procedure for review and revision of the state transportation policy and for submission of proposed changes to the governor and the legislature; and

(d) Integrate the statewide transportation plan with the needs of the elderly and persons with disabilities, and coordinate federal and state programs directed at assisting local governments to answer such needs;

(2) To provide for the effective coordination of state transportation planning with national transportation policy, state and local land use policies, and local and regional transportation plans and programs;

(3) In conjunction with the provisions under RCW 47.01.075, to provide for public involvement in transportation designed to elicit the public's views both with respect to adequate transportation services and appropriate means of minimizing adverse social, economic, environmental, and energy impact of transportation programs;

(4) By December 2010, to prepare a comprehensive and balanced statewide transportation plan consistent with the state's growth management goals and based on the transportation policy goals provided under RCW 47.04.280 and applicable state and federal laws. The plan must reflect the priorities of government developed by the office of financial management and address regional needs, including multimodal transportation planning. The plan must, at a minimum:

(a) Establish a vision for the development of the statewide transportation system; (b) identify significant statewide transportation policy issues; and (c) recommend statewide transportation policies and strategies to the legislature to fulfill the requirements of subsection (1) of this section. The plan must be the product of an ongoing process that involves representatives of significant transportation interests and the general public from across the state. Every four years, the plan shall be reviewed and revised, and submitted to the governor and the house of representatives and senate standing committees on transportation.

The plan shall take into account federal law and regulations relating to the planning, construction, and operation of transportation facilities;

(5) By December 2007, the office of financial management shall submit a baseline report on the progress toward attaining the policy goals under RCW 47.04.280 in the 2005-2007 fiscal biennium. By October 1, 2008, beginning with the development of the 2009-2011 biennial transportation budget, and by October 1st biennially thereafter, the office of financial management shall submit to the legislature and the governor a report on the progress toward the attainment by state transportation agencies of the state transportation policy goals and objectives prescribed by statute, appropriation, and governor directive. The report must, at a minimum, include the degree to which state transportation programs have progressed toward the attainment of the policy goals established under RCW 47.04.280, as measured by the objectives and performance measures established by the office of financial management under RCW 47.04.280;

(6) To propose to the governor and the legislature prior to the convening of each regular session held in an odd-numbered year a recommended budget for the operations of the commission as required by RCW 47.01.061;

(7) To adopt such rules as may be necessary to carry out reasonably and properly those functions expressly vested in the commission by statute;

(8) To contract with the office of financial management or other appropriate state agencies for administrative support, accounting services, computer services, and other support services necessary to carry out its other statutory duties;

(9) To conduct transportation-related studies and policy analysis to the extent directed by the legislature or governor in the biennial transportation budget act, or as otherwise provided in law, and subject to the availability of amounts appropriated for this specific purpose; and

(10) To exercise such other specific powers and duties as may be vested in the transportation commission by this or any other provision of law. [2007 c 516 § 4; 2006 c 334 § 3; 2005 c 319 § 5; 1981 c 59 § 2; 1980 c 87 § 45; 1977 ex.s. c 151 § 7.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

47.01.075 Transportation policy development. (1) The transportation commission shall provide a public forum for the development of transportation policy in Washington state to include coordination with regional transportation planning organizations, transportation stakeholders, counties, cities, and citizens. At least every five years, the commission shall convene regional forums to gather citizen input on transportation issues. The commission shall consider the input gathered at the forums as it establishes the statewide transportation plan under RCW 47.01.071(4).

(2) In fulfilling its responsibilities under this section, the commission may create ad hoc committees or other such committees of limited duration as necessary.

(3) In order to promote a better transportation system, the commission may offer policy guidance and make recommendations to the governor and the legislature in key issue areas, including but not limited to:

(a) Transportation finance;

(b) Preserving, maintaining, and operating the statewide transportation system;

- (c) Transportation infrastructure needs;
- (d) Promoting best practices for adoption and use by transportation-related agencies and programs;
- (e) Transportation efficiencies that will improve service delivery and/or coordination;
- (f) Improved planning and coordination among transportation agencies and providers; and
- (g) Use of intelligent transportation systems and other technology-based solutions. [2007 c 516 § 5; 2006 c 334 § 4; 2005 c 319 § 6.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Transfers—2005 c 319: "(1)(a) All reports, documents, surveys, books, records, files, papers, or written material relating to the conduct of performance reviews and audits in the possession of the legislative transportation committee must be delivered to the custody of the transportation commission. Any remaining documents, books, records, files, papers, and written materials must be delivered to the custody of the joint transportation committee. All funds, credits, or other assets held by the legislative transportation committee for the purposes of staffing the transportation performance audit board are assigned to the transportation commission. Any remaining funds, credits, or other assets held by the legislative transportation committee are assigned to the joint transportation committee.

(b) If any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(2) All employees of the legislative transportation committee are transferred to the jurisdiction of the transportation commission for the support of the transportation performance audit board. However, the commission may, if staffing needs warrant, assign the employees to other commission functions." [2005 c 319 § 15.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

47.01.078 Transportation system policy goals—Duties. To support achievement of the policy goals described in RCW 47.04.280, the department shall:

- (1) Maintain an inventory of the condition of structures and corridors in most urgent need of retrofit or rehabilitation;
- (2) Develop long-term financing tools that reliably provide ongoing maintenance and preservation of the transportation infrastructure;
- (3) Balance system safety and convenience through all phases of a project to accommodate all users of the transportation system to safely, reliably, and efficiently provide mobility to people and goods;
- (4) Develop strategies to gradually reduce the per capita vehicle miles traveled based on consideration of a range of reduction methods;
- (5) Consider efficiency tools, including high occupancy vehicle and high occupancy toll lanes, corridor-specific and systemwide pricing strategies, active traffic management, commute trip reduction, and other demand management tools;
- (6) Promote integrated multimodal planning; and
- (7) Consider engineers and architects to design environmentally sustainable, context-sensitive transportation systems. [2007 c 516 § 6.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

47.01.081 Department—Organization—Management personnel. (1) Initially the department shall be orga-

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nized into divisions, including the division of highways, the division of public transportation, the division of aeronautics, the division of marine transportation, and the division of transportation planning and budget.

(2) The secretary may reorganize divisions in order to attain the maximum possible efficiency in the operation of the department. Each division shall be headed by an assistant secretary to be appointed by the secretary. The secretary may also appoint a deputy secretary as may be needed for the performance of the duties and functions vested in the department and may also appoint up to twelve ferry system management positions as defined in RCW 47.64.011. The secretary may delegate to officers within the several divisions of the department authority to employ personnel necessary to discharge the responsibilities of the department.

(3) The officers appointed under this section shall be exempt from the provisions of the state civil service law and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the operation of the state civil service law. [1984 c 48 § 1; 1977 ex.s. c 151 § 8.]

47.01.091 Advisory councils. The secretary shall establish such advisory councils as are necessary to carry out the purposes of this title, and to insure adequate public participation in the planning and development of transportation facilities. Members of such councils shall serve at the pleasure of the secretary and may receive per diem and necessary expenses, in accordance with RCW 43.03.050 and 43.03.060, as now or hereafter amended. [2006 c 334 § 5; 1977 ex.s. c 151 § 9.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.01.101 Secretary—Authority and duties. The secretary shall have the authority and it shall be his or her duty:

- (1) To serve as chief executive officer of the department with full administrative authority to direct all its activities;
- (2) To organize the department as he or she may deem necessary to carry out the work and responsibilities of the department effectively;
- (3) To designate and establish such transportation district, region, or branch offices as may be necessary or convenient, and to appoint assistants and delegate any powers, duties, and functions to them or any officer or employee of the department as deemed necessary to administer the department efficiently;
- (4) To direct and coordinate the programs of the various divisions of the department to assure that they achieve the greatest possible mutual benefit, produce a balanced overall effort, and eliminate unnecessary duplication of activity;
- (5) To adopt all department rules that are subject to the adoption procedures contained in the state administrative procedure act, except rules subject to adoption by the commission pursuant to statute;
- (6) To maintain and safeguard the official records of the department, including the commission's recorded resolutions and orders;
- (7) To provide, under contract or interagency agreement, staff support to the commission, including long-term techni-

cal and administrative support as needed, to assist it in carrying out its functions, powers, and duties;

(8) To execute and implement the biennial operating budget for the operation of the department in accordance with chapter 43.88 RCW and with legislative appropriation;

(9) To advise the governor and the legislature with respect to matters under the jurisdiction of the department; and

(10) To exercise all other powers and perform all other duties as are now or hereafter provided by law. [2006 c 334 § 6; 2005 c 319 § 7. Prior: 1987 c 505 § 48; 1987 c 179 § 1; 1983 1st ex.s. c 53 § 30; 1977 ex.s. c 151 § 10.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Severability—1983 1st ex.s. c 53: See note following RCW 47.10.802.
Regulations governing parking facilities: RCW 46.61.577.

47.01.131 Continuation of state services to department. All state officials required to maintain contact with or provide services for any of the departments or agencies whose functions are transferred by RCW 47.01.031 shall continue to perform such services for the department of transportation unless otherwise directed by this title. [1977 ex.s. c 151 § 18.]

47.01.141 Biennial report. The department shall submit a biennial report to the governor and chairs of the transportation committees of the senate and house of representatives with a copy to the staff of each of the committees, including but not limited to operational and construction activities of the preceding fiscal period as the department deems important and recommendations for future operations of the department. [1987 c 505 § 49; 1984 c 7 § 75; 1977 c 75 § 68; 1973 2nd ex.s. c 12 § 1.]

Severability—1984 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 7 § 389.]

47.01.170 Right of entry. The department or its duly authorized and acting assistants, agents, or appointees have the right to enter upon any land, real estate, or premises in this state, whether public or private, for purposes of making examinations, locations, surveys, and appraisals for highway purposes. The making of any such entry for those purposes does not constitute any trespass by the department or by its duly authorized and acting assistants, agents, or appointees. [1984 c 7 § 77; 1961 c 13 § 47.01.170. Prior: 1945 c 176 § 1; Rem. Supp. 1945 § 6400-3f. Formerly RCW 43.27.030.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.180 Roads and bridges in state parks. The department is authorized at the request of, and upon plans approved by the state parks and recreation commission, to construct and maintain vehicular roads, highways, and bridges within the limits of the several state parks. [1984 c 7 § 78; 1961 c 13 § 47.01.180. Prior: 1943 c 253 § 1; Rem. Supp. 1943 § 6402-35. Formerly RCW 43.27.040.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.190 State aid engineer. The secretary shall appoint, with the approval of the governor, a qualified assistant to be designated as "state aid engineer" whose duties shall consist of the administration of the program of state aid in the matter of county roads and city streets. [1984 c 7 § 79; 1961 c 13 § 47.01.190. Prior: 1949 c 220 § 2; Rem. Supp. 1949 § 4600-3g. Formerly RCW 43.27.050.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.210 Contract without bid or bond with public utilities and municipal corporations. It is lawful for the department to contract without advertising or bid, or performance bond, with any public utility, whether publicly or privately operated, or with any municipal corporation or political subdivision of the state, for the performance of any work or the furnishing of any service of a type ordinarily performed or furnished by such utility, or by such municipal corporation or political subdivision, whenever, in the opinion of the department, the interest of the public will be best served. [1984 c 7 § 80; 1961 c 13 § 47.01.210. Prior: 1955 c 84 § 1; 1953 c 100 § 1. Formerly RCW 43.27.105.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.01.230 Powers relating to toll bridges and facilities and state ferries. See RCW 47.56.030.

47.01.240 Coordination of long-range needs studies. The department and the transportation improvement board shall coordinate their activities relative to long-range needs studies, in accordance with the provisions of chapter 47.05 RCW and RCW 47.26.170, respectively, in order that long-range needs data may be developed and maintained on an integrated and comparable basis. Needs data for county roads and city streets in nonurban areas shall be provided by the counties and cities to the department in such form and extent as requested by the department, after consultation with the county road administration board and the association of Washington cities, in order that needs data may be obtained on a comparable basis for all highways, roads, and streets in Washington. [1988 c 167 § 12; 1984 c 7 § 82; 1971 ex.s. c 195 § 10.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1971 ex.s. c 195: See note following RCW 43.88.125.

47.01.250 Consultation with designated state officials. The chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing are designated as official consultants to the transportation commission so that the goals and activities of their respective agencies which relate to transportation are fully coordinated with other related responsibilities of the department of transportation. In this capacity, the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the transportation commission and the secretary of transportation on the implications and impacts on the transportation related functions

and duties of their respective agencies of any proposed comprehensive transportation plan, program, or policy.

In order to develop fully integrated, balanced, and coordinated transportation plans, programs, and budgets the chief of the Washington state patrol, the director of the traffic safety commission, the executive director of the county road administration board, and the director of licensing shall consult with the secretary of transportation on the matter of relative priorities during the development of their respective agencies' plans, programs, and budgets as they pertain to transportation activities. [1998 c 245 § 92; 1990 c 266 § 5; 1979 c 158 § 204; 1977 ex.s. c 151 § 26.]

Identification of environmental costs of transportation projects—Pilot project—1993 c 59: "Recognizing the importance of maintaining the quality of life in Washington state, the citizens of this state demand protection and preservation of our scarce natural resources. Citizens also demand an efficient and effective transportation system. The departments of transportation, ecology, fisheries, and wildlife and the Puget Sound water quality authority have worked jointly to develop cooperative approaches for mitigating environmental impacts resulting from transportation projects. Nevertheless, many transportation projects are costing more than was budgeted due to unanticipated and extensive environmental considerations. It is the intent of the legislature to find a process for accessing, budgeting, and accounting for environmental costs related to significant transportation projects in order to determine whether the environmental costs exceed the transportation benefits of a project.

Therefore, the department of transportation shall undertake a pilot program in at least one transportation district that will serve as a case study for the entire department. The department shall identify and cost out the discrete environmental elements of a representative sampling of transportation projects. The environmental elements should include, but not necessarily be limited to, wetlands, storm water, hazardous waste, noise, fish, and wildlife. The department shall also consider an assessment of the cost impacts resulting from delays associated with permitting requirements.

It is the intent of the legislature that the environmental cost estimates be developed during a detailed scoping process that will include preliminary engineering and design. After the detailed scoping process and design report is complete, the department shall submit project-specific recommendations and cost estimates to the transportation commission before approval is granted for the construction phase of the projects.

Based upon the findings of the pilot program the transportation commission shall recommend policies to the legislative transportation committee regarding: (1) The current practice of appropriating design and construction dollars simultaneously; (2) identification of reasonable thresholds for environmental costs; (3) budget and accounting modifications that may be warranted in order to accurately capture environmental costs associated with transportation projects; and (4) modification to the priority array statutes, chapter 47.05 RCW." [1993 c 59 § 1.]

47.01.260 Authority of department. (1) The department of transportation shall exercise all the powers and perform all the duties necessary, convenient, or incidental to the planning, locating, designing, constructing, improving, repairing, operating, and maintaining state highways, including bridges and other structures, culverts, and drainage facilities and channel changes necessary for the protection of state highways, and shall examine and allow or disallow bills, subject to the provisions of RCW 85.07.170, for any work or services performed or materials, equipment, or supplies furnished.

(2) Subject to the limitations of RCW 4.24.115, the department, in the exercise of any of its powers, may include in any authorized contract a provision for indemnifying the other contracting party against specific loss or damages arising out of the performance of the contract.

(3) The department is authorized to acquire property as provided by law and to construct and maintain thereon any

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buildings or structures necessary or convenient for the planning, design, construction, operation, maintenance, and administration of the state highway system and to acquire property and to construct and maintain any buildings, structures, appurtenances, and facilities necessary or convenient to the health and safety and for the accommodation of persons traveling upon state highways.

(4) The department is authorized to engage in planning surveys and may collect, compile, and analyze statistics and other data relative to existing and future highways and highway needs throughout the state, and shall conduct research, investigations, and testing as it deems necessary to improve the methods of construction and maintenance of highways and bridges. [2006 c 368 § 2; 1983 c 29 § 1; 1979 ex.s. c 58 § 1.]

47.01.270 Radioactive or hazardous cargo, notice of prohibition. The department of transportation shall adopt regulations to establish procedures for giving notice to transporters of placarded radioactive or hazardous cargo of times when transportation of such cargo is prohibited. [1983 c 205 § 2.]

Transportation of radioactive or hazardous cargo, prohibited, when: RCW 47.48.050.

47.01.280 Application for improvements to existing highways. (1) Upon receiving an application for improvements to an existing state highway or highways pursuant to RCW 43.160.074 from the community economic revitalization board, the department shall, in a timely manner, determine whether or not the proposed state highway improvements:

- (a) Meet the safety and design criteria of the department of transportation;
- (b) Will impair the operational integrity of the existing highway system; and
- (c) Will affect any other improvements planned by the department.

(2) Upon completion of its determination of the factors contained in subsection (1) of this section and any other factors it deems pertinent, the department shall forward its approval, as submitted or amended or disapproval of the proposed improvements to the board, along with any recommendation it may wish to make concerning the desirability and feasibility of the proposed development. If the department disapproves any proposed improvements, it shall specify its reasons for disapproval.

(3) Upon notification from the board of an application's approval pursuant to RCW 43.160.074, the department shall carry out the improvements in coordination with the applicant. [2006 c 334 § 7; 2005 c 319 § 121; 1999 c 94 § 10; 1985 c 433 § 6.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Nonseverability—1985 c 433: See note following RCW 43.160.074.

47.01.290 Environmental review of transportation projects. The legislature recognizes that environmental

review of transportation projects is a continuous process that should begin at the earliest stages of planning and continue through final project construction. Early and extensive involvement of the relevant environmental regulatory authorities is critical in order to avoid significant changes in substantially completed project design and engineering. It is the expectation of the legislature that if a comprehensive environmental approach is integrated throughout various transportation processes, onerous, duplicative, and time-consuming permit processes will be minimized. [1994 c 258 § 3; 1993 c 55 § 1.]

Captions not law—1994 c 258: See note following RCW 36.70A.420. *Statewide transportation planning: Chapter 47.06 RCW.*

47.01.300 Environmental review of transportation projects—Cooperation with other environmental regulatory authorities. The department shall, in cooperation with environmental regulatory authorities:

(1) Identify and document environmental resources in the development of the statewide multimodal plan under RCW 47.06.040;

(2) Allow for public comment regarding changes to the criteria used for prioritizing projects under chapter 47.05 RCW before final adoption of the changes by the commission;

(3) Use an environmental review as part of the project prospectus identifying potential environmental impacts, mitigation, and costs during the early project identification and selection phase, submit the prospectus to the relevant environmental regulatory authorities, and maintain a record of comments and proposed revisions received from the authorities;

(4) Actively work with the relevant environmental regulatory authorities during the design alternative analysis process and seek written concurrence from the authorities that they agree with the preferred design alternative selected;

(5) Develop a uniform methodology, in consultation with relevant environmental regulatory authorities, for submitting plans and specifications detailing project elements that impact environmental resources, and proposed mitigation measures, to the relevant environmental regulatory authorities during the preliminary specifications and engineering phase of project development;

(6) Screen construction projects to determine which projects will require complex or multiple permits. The permitting authorities shall develop methods for initiating review of the permit applications for the projects before the final design of the projects;

(7) Conduct special prebid meetings for those projects that are environmentally complex; and

(8) Review environmental considerations related to particular projects during the preconstruction meeting held with the contractor who is awarded the bid. [1994 c 258 § 4.]

Captions not law—1994 c 258: See note following RCW 36.70A.420.

47.01.310 Washington fruit express account. The Washington fruit express account is created in the state treasury. All receipts from the operations of the Washington fruit express program must be deposited into the account. Moneys in the account may be spent only after appropriation. Expen-

ditures from the account may be used only for the operations of the Washington fruit express program and for east-west passenger rail. [2001 2nd sp.s. c 14 § 606.]

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

47.01.321 Skills bank—Report. The department of transportation shall work with local transportation jurisdictions and representatives of transportation labor groups to establish a human resources skills bank of transportation professionals. The skills bank must be designed to allow all transportation authorities to draw from it when needed. The department shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2003. The report must include, but not be limited to, identification of any statutory or administrative rule changes necessary to create the skills bank and allow it to function in the manner described. [2003 c 363 § 203.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

47.01.330 Office of transit mobility. (1) The secretary shall establish an office of transit mobility. The purpose of the office is to facilitate the integration of decentralized public transportation services with the state transportation system. The goals of the office of transit mobility are: (a) To facilitate connection and coordination of transit services and planning; and (b) maximizing opportunities to use public transportation to improve the efficiency of transportation corridors.

(2) The duties of the office include, but are not limited to, the following:

(a) Developing a statewide strategic plan that creates common goals for transit agencies and reduces competing plans for cross-jurisdictional service;

(b) Developing a park and ride lot program;

(c) Encouraging long-range transit planning;

(d) Providing public transportation expertise to improve linkages between regional transportation planning organizations and transit agencies;

(e) Strengthening policies for inclusion of transit and transportation demand management strategies in route development, corridor plan standards, and budget proposals;

(f) Recommending best practices to integrate transit and demand management strategies with regional and local land use plans in order to reduce traffic and improve mobility and access;

(g) Producing recommendations for the public transportation section of the Washington transportation plan; and

(h) Participating in all aspects of corridor planning, including freight planning, ferry system planning, and passenger rail planning.

(3) In forming the office, the secretary shall use existing resources to the greatest extent possible.

(4) The office of transit mobility shall establish measurable performance objectives for evaluating the success of its initiatives and progress toward accomplishing the overall goals of the office.

(5) The office of transit mobility must report quarterly to the secretary, and annually to the transportation committees of the legislature, on the progress of the office in meeting the goals and duties provided in this section. [2005 c 318 § 2.]

Findings—Intent—2005 c 318: "The legislature finds that the state needs to reestablish itself as a leader in public transportation.

The legislature also finds that increased demands on transportation resources require increased coordination among public transportation service providers.

The legislature also finds that the efficiency of transportation corridors would be enhanced by a more proactive and integrated approach to public transportation service delivery and planning.

The legislature also finds that the state department of transportation is in the unique position of being able to improve connectivity between service territories of transit agencies and modes of transportation.

The legislature also finds that the state should be a center of excellence in public transportation planning and research and providing technical assistance to transit agencies serving urban, suburban, and rural areas.

Therefore, it is the intent of the legislature that the state department of transportation be a leader in public transportation. The department shall play a guiding role in coordinating decentralized public transportation services, increasing connectivity between them, advocating for public transportation as a means to increase corridor efficiency, and increasing the integration of public transportation and the highway system." [2005 c 318 § 1.]

47.01.340 Local and regional transportation goals.

Local and regional transportation agencies shall adopt common transportation goals. The office of transit mobility shall review local and regional transportation plans, including plans required under RCW 35.58.2795, 36.70A.070(6), 36.70A.210, and 47.80.023, to provide for the efficient integration of multimodal and multijurisdictional transportation planning. [2005 c 318 § 3.]

Findings—Intent—2005 c 318: See note following RCW 47.01.330.

47.01.350 Ferry grant program. (1) The department of transportation shall establish a ferry grant program subject to availability of amounts appropriated for this specific purpose. The purpose of the grant program is to provide operating or capital grants for ferry systems as provided in chapters 36.54, 36.57A, and 53.08 RCW to operate passenger-only ferry service.

(2) In providing grants under this section, the department may enter into multiple year contracts with the stipulation that future year allocations are subject to the availability of funding as provided by legislative appropriation. [2008 c 45 § 1; 2007 c 223 § 2; 2006 c 332 § 4.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

47.01.360 Back-up plan for passenger-only ferry service between Vashon and Seattle. The office of financial management shall contract to develop a back-up plan for operating the Vashon to Seattle passenger-only ferry route existing on January 1, 2006, that does not include operations by state government. [2006 c 332 § 6.]

47.01.380 State route No. 520 improvements. The department shall not commence construction on any part of the state route number 520 bridge replacement and HOV project until a record of decision has been reached providing reasonable assurance that project impacts will be avoided, minimized, or mitigated as much as practicable to protect against further adverse impacts on neighborhood environmental quality as a result of repairs and improvements made

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to the state route number 520 bridge and its connecting roadways, and that any such impacts will be addressed through engineering design choices, mitigation measures, or a combination of both. The requirements of this section shall not apply to off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project. [2006 c 311 § 26.]

Findings—2006 c 311: See note following RCW 36.120.020.

47.01.390 Alaskan Way viaduct, Seattle Seawall, and state route No. 520 improvements—Requirements—Exceptions.

(1) Prior to commencing construction on either project, the department of transportation must complete all of the following requirements for both the Alaskan Way viaduct and Seattle Seawall replacement project, and the state route number 520 bridge replacement and HOV project: (a) In accordance with the national environmental policy act, the department must designate the preferred alternative, prepare a substantial project mitigation plan, and complete a comprehensive cost estimate review using the department's cost estimate validation process, for each project; (b) in accordance with all applicable federal highway administration planning and project management requirements, the department must prepare a project finance plan for each project that clearly identifies secured and anticipated fund sources, cash flow timing requirements, and project staging and phasing plans if applicable; and (c) the department must report these results for each project to the joint transportation committee.

(2) The requirements of this section shall not apply to (a) utility relocation work, and related activities, on the Alaskan Way viaduct and Seattle Seawall replacement project and (b) off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project.

(3) The requirements of subsection (1) of this section shall not apply during the 2007-2009 fiscal biennium. [2007 c 518 § 705; 2006 c 311 § 27.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Findings—2006 c 311: See note following RCW 36.120.020.

47.01.400 Alaskan Way viaduct, Seattle Seawall, and state route No. 520 improvements—Expert review panel—Governor's finding.

The legislature recognizes that the finance and project implementation planning processes required for the Alaskan Way viaduct and Seattle Seawall replacement project and the state route number 520 bridge replacement and HOV project cannot guarantee appropriate decisions unless key study assumptions are reasonable with respect to each project.

To assure appropriate finance plan and project implementation plan assumptions, an expert review panel shall be appointed to provide independent financial and technical review for development of a finance plan and project implementation plan for the projects described in this section.

(1) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as planning, engineering, finance, law, the environment, emerging transportation technologies, geography, and economics.

(2) The expert review panel shall be selected cooperatively by the chairs of the senate and house transportation committees, the secretary of the department of transportation, and the governor to assure a balance of disciplines.

(3) The chair of the expert review panel shall be designated by the governor.

(4) The expert review panel shall, with respect to completion of the project alternatives as described in the draft environmental impact statement of each project:

(a) Review the finance plan for the project to ensure that it clearly identifies secured and anticipated funding sources and is feasible and sufficient;

(b) Review the project implementation plan covering all state and local permitting and mitigation approvals that ensure the most expeditious and cost-effective delivery of the project; and

(c) Report its findings and recommendations on the items described in (a) and (b) of this subsection to the joint transportation committee, the office of financial management, and the governor by September 1, 2006.

(5) Upon receipt of the expert review panel's findings and recommendations under subsection (4)(c) of this section, the governor must make a finding of whether each finance plan is feasible and sufficient to complete the project as described in the draft environmental impact statement.

(6) Nothing in this section shall be interpreted to delay construction of any of the projects referenced in this section. [2006 c 311 § 28.]

Findings—2006 c 311: See note following RCW 36.120.020.

47.01.405 State route No. 520 improvements—Project impact plan—Mediator, duties. (1) As soon as practicable after May 15, 2007, and after consulting with the city of Seattle, the office of financial management shall hire a mediator, and appropriate planning staff, including urban, transportation, and neighborhood planners, to develop a state route number 520 project impact plan for addressing the impacts of the state route number 520 bridge replacement and HOV project design on Seattle city neighborhoods, parks, including the Washington park arboretum, and institutions of higher education. The mediator must have significant professional experience in working with communities that surround major transportation construction projects, and mitigating the impacts of those transportation projects on those communities. The office of financial management shall hire the mediator and the planning staff within existing appropriations allocated for the state route number 520 bridge replacement and HOV project. The position of mediator under this section is not considered a certified or legally binding position.

(2) The mediator's responsibility to develop a project impact plan is highly time sensitive. As a result, competitive bidding is not cost-effective or appropriate for personal service contracts to hire the mediator. The director of the office of financial management shall, by the director's authority under RCW 39.29.011(5), exempt any such personal service contract from the competitive bidding requirements of chapter 39.29 RCW.

(3) In evaluating the project impacts, the mediator must consider the concerns of neighborhoods and institutions of higher education directly impacted by the proposed design,

establish a process that incorporates interest-based negotiation, and work with the appropriate planning staff to develop mitigation recommendations related to the project design. The mediator shall work to ensure that the project impact plan provides a comprehensive approach to mitigating the impacts of the project, including incorporating construction mitigation plans.

(4) The ultimate goal of the mediation and planning process established in subsection (1) of this section is to develop a project impact plan agreed to by all appropriate parties including, but not limited to, those parties listed in subsection (6) of this section. The project impact plan must be consistent with RCW 47.01.380, and must support and be consistent with the approved purpose and need statement for the project, which is: "The purpose of the project is to improve mobility for people and goods across Lake Washington within the SR 520 corridor from Seattle to Redmond in a manner that is safe, reliable, and cost-effective while avoiding, minimizing, and/or mitigating impacts on the affected neighborhoods and the environment." The mediator must strive to develop a consensus-based plan. In the event that the mediation process does not result in consensus, the mediator shall submit a project impact plan to the governor and the joint transportation committee that reflects the views of the majority of the mediation participants.

(5) The process established in subsection (1) of this section shall result in a project design that provides six total lanes, with four general purpose lanes and two lanes that are for high occupancy vehicle travel that could also accommodate high capacity transportation. The bridge shall also be designed to accommodate light rail in the future and to support a bus rapid transit system. Additionally, the mediator shall strive to develop a project impact plan within the constraints of the range of estimated project costs as of May 1, 2007.

(6)(a) In performing the duties of this section, and consistent with the governor's findings and conclusions, dated December 15, 2006, the mediator shall work with interested parties directly affected by the state route number 520 bridge replacement and HOV project including, but not limited to, at least the following:

- (i) Representation from each neighborhood directly impacted by the project;
- (ii) Representation from local governments on both ends of the bridge directly impacted by the project;
- (iii) Representation from King county;
- (iv) Representation from the Washington park arboretum;
- (v) Representation from the University of Washington; and
- (vi) Representation from sound transit.

(b) The mediator shall also work with the department and others as necessary.

(c) Before the mediator may submit the project impact plan, it must be reviewed by the mayor of Seattle and the Seattle city council. The project impact plan must reflect whether the mayor and council concur or do not concur with the plan and include an explanation regarding their positions.

(7) Until December 1, 2008, the mediator must provide periodic reports to the joint transportation committee and the governor regarding the status of the project impact plan

development process. The mediator must submit a progress report to the joint transportation committee and the governor by August 1, 2007. The mediator must submit a final project impact plan to the governor and legislature by December 1, 2008. [2007 c 517 § 2.]

Finding—2007 c 517: "The legislature finds that the replacement of the vulnerable state route number 520 corridor is a matter of urgency for the safety of Washington's traveling public and the needs of the transportation system in central Puget Sound. The state route number 520 floating bridge is susceptible to damage, closure, or even catastrophic failure from earthquakes, windstorms, and waves. Additionally, the bridge serves as a vital route for vehicles to cross Lake Washington, carrying over three times its design capacity in traffic, resulting in more than seven hours of congestion per day.

Therefore, it is the conclusion of the legislature that time is of the essence, and that Washington state cannot wait for a disaster to make it fully appreciate the urgency of the need to replace this vulnerable structure. The state must take the necessary steps to move forward with a state route number 520 bridge replacement project design that provides six total lanes, with four general purpose lanes and two lanes that are for high occupancy vehicle travel that could also accommodate high capacity transportation, and the bridge shall also be designed to accommodate light rail in the future. High occupancy vehicle lanes in the state route 520 corridor must also be able to support a bus rapid transit system." [2007 c 517 § 1.]

Severability—2007 c 517: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 517 § 8.]

Effective date—2007 c 517: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 517 § 9.]

47.01.406 State route No. 520 improvements—Review of project design plans—Goals. In developing the state route number 520 project impact plan provided in RCW 47.01.405, the mediator and associated planning staff shall review the department's project design plans in the draft environmental impact statement for conformance with the following legislative goals regarding the final design for the state route number 520 bridge replacement and HOV project:

(1) Minimize the total footprint and width of the bridge, and seek appropriate federal design variances to safety and mobility standards, while complying with other federal laws;

(2) Minimize the project impact on surrounding neighborhoods, including incorporation of green lids and connectors, and minimize any increases in additional traffic volumes through the Washington park arboretum and other adjacent neighborhoods;

(3) Incorporate the recommendations of a health impact assessment to calculate the project's impact on air quality, carbon emissions, and other public health issues, conducted by the Puget Sound clean air agency and King county public health;

(4) Ensure that the ultimate project configuration effectively prioritizes maintaining travel time, speed, and reliability on the two high occupancy vehicle lanes; and

(5) Clearly articulate in required environmental documents the alignment of the selected preferred alternative for the state route number 520 bridge replacement and HOV project and the footprint of the project and the affected areas. [2007 c 517 § 3.]

Finding—Severability—Effective date—2007 c 517: See notes following RCW 47.01.405.

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47.01.408 State route No. 520 improvements—Design requirements. (1) The state route number 520 bridge replacement and HOV project shall be designed to provide six total lanes, with two lanes that are for transit and high-occupancy vehicle travel, and four general purpose lanes.

(2) The state route number 520 bridge replacement and HOV project shall be designed to accommodate effective connections for transit, including high capacity transit, to the light rail station at the University of Washington. [2008 c 270 § 2.]

Finding—2008 c 270: "The legislature finds that the replacement of the vulnerable state route number 520 bridge is a matter of urgency for the safety of Washington's traveling public and the needs of the transportation system in central Puget Sound. The state route number 520 bridge is forty-four years old and has a useful remaining life of between thirteen and eighteen years. While one hundred fifteen thousand vehicles travel on the bridge each day, there is an ever present likelihood that wind or an earthquake could suddenly destroy the bridge or render it unusable. Therefore, the state must develop a comprehensive approach to fund a state route number 520 bridge replacement to be constructed by 2018." [2008 c 270 § 1.]

47.01.410 State route No. 520 improvements—Multimodal transportation plan. As part of the state route number 520 bridge replacement and HOV project, the governor's office shall work with the department, sound transit, King county metro, and the University of Washington, to plan for high capacity transportation in the state route number 520 corridor. The parties shall jointly develop a multimodal transportation plan that ensures the effective and efficient coordination of bus services and light rail services throughout the state route number 520 corridor. The plan shall include alternatives for a multimodal transit station that serves the state route number 520 - Montlake interchange vicinity, and mitigation of impacts on affected parties. The high capacity transportation planning work must be closely coordinated with the state route number 520 bridge replacement and HOV project's environmental planning process, and must be completed within the current funding for the project. A draft plan must be submitted to the governor and the joint transportation committee by October 1, 2007. A final plan must be submitted to the governor and the joint transportation committee by December 2008. [2007 c 517 § 6.]

Finding—Severability—Effective date—2007 c 517: See notes following RCW 47.01.405.

47.01.412 State route No. 520 improvements—Tax deferrals—Definition. (1)(a) Any person involved in the construction of the state route number 520 bridge replacement and HOV project may apply for deferral of state and local sales and use taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment that will become a part of, and the rental of equipment for use in, the project.

(b) Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application must contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW and RCW 81.104.170 on the project.

(3) A person granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The project is operationally complete under this section when the replacement bridge is constructed and opened to traffic. The first payment is due on December 31st of the fifth calendar year after the certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of a person granted a deferral under this section.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of any private entity granted a deferral under this section.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

(7) For purposes of this section, "person" has the same meaning as in RCW 82.04.030 and also includes the department of transportation. [2008 c 270 § 7.]

Finding—2008 c 270: See note following RCW 47.01.408.

47.01.415 State route No. 520 improvements—Finance plan. The state route number 520 bridge replacement and HOV project finance plan must include state funding, federal funding, at least one billion dollars in regional contributions, and revenue from tolling. The department must provide a proposed finance plan to be tied to the estimated cost of the recommended project solutions, as provided under RCW 47.01.406, to the governor and the joint transportation committee by January 1, 2008. [2007 c 517 § 7.]

Finding—Severability—Effective date—2007 c 517: See notes following RCW 47.01.405.

47.01.417 State route No. 520 improvements—Finance plan—Revenue sources and savings recognition. The state route number 520 bridge replacement and HOV project finance plan must include:

(1) Recognition of revenue sources that include: One billion seven hundred million dollars in state and federal funds allocated to the project; one billion five hundred million dollars to two billion dollars in tolling revenue, including early tolls that could begin in late 2009; eighty-five million dollars in federal urban partnership grant funds; and other contributions from private and other government sources; and

(2) Recognition of savings to be realized from:

(a) Potential early construction of traffic improvements from the eastern Lake Washington shoreline to 108th Avenue Northeast in Bellevue;

(b) Early construction of a single string of pontoons to support two lanes that are for transit and high-occupancy vehicle travel and four general purpose lanes;

(c) Preconstruction tolling to reduce total financing costs; and

(d) A deferral of the sales taxes paid on construction costs. [2008 c 270 § 3.]

Reviser's note: This section was directed to be codified in chapter 47.56 RCW. Placement in chapter 47.01 RCW is more appropriate.

Finding—2008 c 270: See note following RCW 47.01.408.

47.01.420 Naming and renaming state transportation facilities. (1) The commission may name or rename state transportation facilities including, but not limited to: State highways; state highway bridges, structures, and facilities; state rest areas; and state roadside facilities, such as viewpoints. The commission must consult with the department before taking final action to name or rename a state transportation facility.

(2)(a) The department, state and local governmental entities, citizen organizations, and any person may initiate the process to name or rename a state transportation facility.

(b) For the commission to consider a naming or renaming proposal, the requesting entity or person must provide sufficient evidence, as determined by the commission, indicating community support and acceptance of the proposal. Evidence may include the following:

(i) Letters of support from state and federal legislators representing the impacted area encompassing the state transportation facility;

(ii) Resolutions passed by local, publicly elected bodies in the impacted area encompassing the state transportation facility;

(iii) Department support; or

(iv) Supportive actions by or letters from local organizations including, but not limited to, local chambers of commerce and service clubs.

(3) After the commission takes final action in naming or renaming a state transportation facility, the department shall design and install the appropriate signs in accordance with state and federal standards. [2007 c 33 § 1.]

47.01.430 Wounded combat veterans internship program. Subject to the availability of amounts appropriated for this specific purpose, the department shall establish an internship program for returning wounded combat veterans. The purpose of the program is to assist returning wounded combat veterans by matching them with jobs within the department that require their military skill sets and would be of benefit to the department, or that would teach them new skills. The jobs may include, but are not limited to, the following classifications: Engineering; construction trades; logistics; and project planning. The emphasis of the program should be to assist veterans who served in southern or central Asia, Operation Enduring Freedom; and the Persian Gulf, Operation Iraqi Freedom. This program may assist with the placement of wounded combat veterans as apprentices under RCW 39.04.320. The department may adopt rules under chapter

34.05 RCW to implement the requirements of this section. For the purposes of this section, "veteran" has the same meaning as in RCW 41.04.005. [2007 c 92 § 1.]

47.01.440 Adoption of statewide goals to reduce annual per capita vehicle miles traveled by 2050—Department’s duties—Reports to the legislature. To support the implementation of RCW 47.04.280 and 47.01.078(4), the department shall adopt broad statewide goals to reduce annual per capita vehicle miles traveled by 2050 consistent with the stated goals of executive order 07-02. Consistent with these goals, the department shall:

(1) Establish the following benchmarks using a statewide baseline of seventy-five billion vehicle miles traveled less the vehicle miles traveled attributable to vehicles licensed under RCW 46.16.070 and weighing ten thousand pounds or more, which are exempt from this section:

- (a) Decrease the annual per capita vehicle miles traveled by eighteen percent by 2020;
- (b) Decrease the annual per capita vehicle miles traveled by thirty percent by 2035; and
- (c) Decrease the annual per capita vehicle miles traveled by fifty percent by 2050;

(2) By July 1, 2008, establish and convene a collaborative process to develop a set of tools and best practices to assist state, regional, and local entities in making progress towards the benchmarks established in subsection (1) of this section. The collaborative process must provide an opportunity for public review and comment and must:

- (a) Be jointly facilitated by the department, the department of ecology, and the department of community, trade, and economic development;
- (b) Provide for participation from regional transportation planning organizations, the Washington state transit association, the Puget Sound clean air agency, a statewide business organization representing the sale of motor vehicles, at least one major private employer that participates in the commute trip reduction program, and other interested parties, including but not limited to parties representing diverse perspectives on issues relating to growth, development, and transportation;
- (c) Identify current strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state;
- (d) Identify potential new revenue options for local and regional governments to authorize to finance vehicle miles traveled reduction efforts;
- (e) Provide for the development of measurement tools that can, with a high level of confidence, measure annual progress toward the benchmarks at the local, regional, and state levels, measure the effects of strategies implemented to reduce vehicle miles traveled and adequately distinguish between common travel purposes, such as moving freight or commuting to work, and measure trends of vehicle miles traveled per capita on a five-year basis;
- (f) Establish a process for the department to periodically evaluate progress toward the vehicle miles traveled benchmarks, measure achieved and projected emissions reductions, and recommend whether the benchmarks should be adjusted to meet the state’s overall goals for the reduction of greenhouse gas emissions;

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(g) Estimate the projected reductions in greenhouse gas emissions if the benchmarks are achieved, taking into account the expected implementation of existing state and federal mandates for vehicle technology and fuels, as well as expected growth in population and vehicle travel;

(h) Examine access to public transportation for people living in areas with affordable housing to and from employment centers, and make recommendations for steps necessary to ensure that areas with affordable housing are served by adequate levels of public transportation; and

(i) By December 1, 2008, provide a report to the transportation committees of the legislature on the collaborative process and resulting recommended tools and best practices to achieve the reduction in annual per capita vehicle miles traveled goals.

(3) Included in the December 1, 2008, report to the transportation committees of the legislature, the department shall identify strategies to reduce vehicle miles traveled in the state as well as successful strategies in other jurisdictions that may be applicable in the state that recognize the differing urban and rural transportation requirements.

(4) Prior to implementation of the goals in this section, the department, in consultation with the department of community, trade, and economic development, cities, counties, local economic development organizations, and local and regional chambers of commerce, shall provide a report to the appropriate committees of the legislature on the anticipated impacts of the goals established in this section on the following:

- (a) The economic hardship on small businesses as it relates to the ability to hire and retain workers who do not reside in the county in which they are employed;
- (b) Impacts on low-income residents;
- (c) Impacts on agricultural employers and their employees, especially on the migrant farmworker community;
- (d) Impacts on distressed rural counties; and
- (e) Impacts in counties with more than fifty percent of the land base of the county in public or tribal lands. [2008 c 14 § 8.]

Findings—Intent—Scope of chapter 14, Laws of 2008—Severability—2008 c 14: See RCW 70.235.005, 70.235.900, and 70.235.901.

**Chapter 47.02 RCW
DEPARTMENT BUILDINGS**

Sections	
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47.02.020	Issuance and sale of limited obligation bonds.
47.02.030	Bonds—Term—Terms and conditions.
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47.02.140	District 1 headquarters bonds—Duties of state finance committee.
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- 47.02.160 District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes.
- 47.02.170 District 1 headquarters bonds—Repayment procedure—Designated funds.
- 47.02.190 District 1 headquarters bonds—Equal charges against certain revenues.

47.02.010 Buildings on east capitol site authorized—Financing. The department is authorized in accordance with the provisions of this chapter and RCW 79.24.500 through 79.24.600 to provide for the acquisition of land and the construction of buildings, laboratories, and facilities on the east capitol site for the use of the commission and the department and to finance payment thereof by bonds payable out of special funds from the proceeds of state excise taxes on motor vehicle fuels, or by gifts, bequests, or grants or by such additional funds as the legislature may provide. [1984 c 7 § 83; 1977 ex.s. c 235 § 14; 1965 ex.s. c 167 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.02.020 Issuance and sale of limited obligation bonds. In order to finance the immediate acquisition and construction of the buildings and facilities referred to in RCW 47.02.010 there shall be issued and sold limited obligation bonds of the state of Washington in the sum of four million dollars, or such amount thereof and at such times as determined to be necessary by the state highway commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1965 ex.s. c 167 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.02.030 Bonds—Term—Terms and conditions. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance with such reserved rights of prior redemption, bearing such interest, and such terms and conditions as the state finance committee may prescribe, to be specified therein. [1965 ex.s. c 167 § 3.]

47.02.040 Bonds—Signatures—Registration—Where payable—Negotiable instruments. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bond shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1965 ex.s. c 167 § 4.]

47.02.050 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of this chapter shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 ex.s. c 167 § 5.]

47.02.060 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the acquisition of the land and construction of the buildings and facilities referred to in RCW 47.02.010, and for payment of the expenses incurred in the drafting, printing, issuance and sale of any such bonds. [1965 ex.s. c 167 § 6.]

47.02.070 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of this chapter shall distinctly state that they are not a general obligation of the state but are payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter. [1965 ex.s. c 167 § 7.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.02.080 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 84; 1965 ex.s. c 167 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.02.090 Bonds—Repayment procedure—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on

motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under the provisions of this chapter when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 ex.s. c 167 § 9.]

47.02.100 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due or current retirement of bonds, or in the event there is appropriated from time to time additional amounts to be placed in the said bond retirement fund, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 ex.s. c 167 § 10.]

47.02.110 Bonds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1967, the sum of four million dollars, or so much thereof as may be necessary to carry out the provisions of this chapter, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the money derived therefrom deposited to the credit of such fund. [1965 ex.s. c 167 § 11.]

47.02.120 District 1 headquarters bonds—Issuance and sale. For the purpose of providing funds for the acquisition of headquarters facilities for district 1 of the department of transportation and costs incidental thereto, together with all improvements and equipment required to make the facilities suitable for the department's use, there shall be issued and sold upon the request of the secretary of the department of transportation a total of fifteen million dollars of general obligation bonds of the state of Washington. [2006 c 334 § 39; 1990 c 293 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Severability—1990 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 293 § 10.]

47.02.130 District 1 headquarters bonds—Uses of proceeds. Authorized uses of proceeds from the sale of bonds authorized in RCW 47.02.120 through 47.02.190 include but are not limited to repayment to the motor vehicle

fund for the initial financing of the headquarters facilities. [1999 c 94 § 11; 1990 c 293 § 2.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.140 District 1 headquarters bonds—Duties of state finance committee. Upon the request of the secretary of the department of transportation, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.02.120 through 47.02.190 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.02.120 through 47.02.190 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. Except for the purpose of repaying the loan from the motor vehicle fund, no such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2006 c 334 § 40; 1990 c 293 § 3.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.150 District 1 headquarters bonds—Proceeds, deposit and use. The proceeds from the sale of bonds authorized by RCW 47.02.120 through 47.02.190 shall be available only for the purposes enumerated in RCW 47.02.120 and 47.02.130; for the payment of bond anticipation notes, if any; and for the payment of bond issuance costs, including the costs of underwriting. Proceeds shall be deposited in the motor vehicle fund. [1999 c 94 § 12; 1990 c 293 § 4.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.160 District 1 headquarters bonds—Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.02.120 through 47.02.190 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.02.120 through 47.02.190 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.02.120 through 47.02.190, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.02.120 through 47.02.190. [1995 c 274 § 5; 1990 c 293 § 5.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.170 District 1 headquarters bonds—Repayment procedure—Designated funds. Both principal and interest on the bonds issued for the purposes of RCW 47.02.120 through 47.02.190 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.02.120 through 47.02.190 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state under RCW 46.68.130. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state under RCW 46.68.130 proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1990 c 293 § 6.]

Severability—1990 c 293: See note following RCW 47.02.120.

47.02.190 District 1 headquarters bonds—Equal charges against certain revenues. Bonds issued under the authority of RCW 47.02.120 through *47.02.180 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1990 c 293 § 8.]

***Reviser's note:** RCW 47.02.180 was repealed by 1999 c 94 § 33, effective July 1, 1999.

Severability—1990 c 293: See note following RCW 47.02.120.

Chapter 47.04 RCW GENERAL PROVISIONS

Sections

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Mobile home or park model trailer movement permits and decals: RCW 46.44.170, 46.44.175.

47.04.010 Definitions. The following words and phrases, wherever used in this title, shall have the meaning as in this section ascribed to them, unless where used the context thereof shall clearly indicate to the contrary or unless otherwise defined in the chapter of which they are a part:

(1) "Alley." A highway within the ordinary meaning of alley not designated for general travel and primarily used as a means of access to the rear of residences and business establishments;

(2) "Arterial highway." Every highway, as herein defined, or portion thereof designated as such by proper authority;

(3) "Business district." The territory contiguous to and including a highway, as herein defined, when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway;

(4) "Center line." The line, marked or unmarked parallel to and equidistant from the sides of a two-way traffic roadway of a highway except where otherwise indicated by painted lines or markers;

(5) "Center of intersection." The point of intersection of the center lines of the roadways of intersecting highways;

(6) "City street." Every highway as herein defined, or part thereof located within the limits of incorporated cities and towns, except alleys;

(7) "Combination of vehicles." Every combination of motor vehicle and motor vehicle, motor vehicle and trailer, or motor vehicle and semitrailer;

(8) "Commercial vehicle." Any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire;

(9) "County road." Every highway as herein defined, or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway, or branch thereof;

(10) "Crosswalk." The portion of the roadway between the intersection area and a prolongation or connection of the

farthest sidewalk line or in the event there are no sidewalks then between the intersection area and a line ten feet therefrom, except as modified by a marked crosswalk;

(11) "Highway." Every way, lane, road, street, boulevard, and every way or place in the state of Washington open as a matter of right to public vehicular travel both inside and outside the limits of incorporated cities and towns;

(12) "Intersection area." (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict;

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection;

(c) The junction of an alley with a street or highway shall not constitute an intersection;

(13) "Intersection control area." The intersection area as herein defined, together with such modification of the adjacent roadway area as results from the arc or curb corners and together with any marked or unmarked crosswalks adjacent to the intersection;

(14) "Laned highway." A highway the roadway of which is divided into clearly marked lanes for vehicular traffic;

(15) "Local authorities." Every county, municipal, or other local public board or body having authority to adopt local police regulations under the Constitution and laws of this state;

(16) "Marked crosswalk." Any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof;

(17) "Metal tire." Every tire, the bearing surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material;

(18) "Motor truck." Any motor vehicle, as herein defined, designed or used for the transportation of commodities, merchandise, produce, freight, or animals;

(19) "Motor vehicle." Every vehicle, as herein defined, which is in itself a self-propelled unit;

(20) "Multiple lane highway." Any highway the roadway of which is of sufficient width to reasonably accommodate two or more separate lanes of vehicular traffic in the same direction, each lane of which shall be not less than the maximum legal vehicle width, and whether or not such lanes are marked;

(21) "Operator." Every person who drives or is in actual physical control of a vehicle as herein defined;

(22) "Peace officer." Any officer authorized by law to execute criminal process or to make arrests for the violation of the statutes generally or of any particular statute or statutes relative to the highways of this state;

(23) "Pedestrian." Any person afoot or who is using a wheelchair, power wheelchair as defined in RCW 46.04.415,

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or a means of conveyance propelled by human power other than a bicycle;

(24) "Person." Every natural person, firm, copartnership, corporation, association, or organization;

(25) "Personal wireless service." Any federally licensed personal wireless service;

(26) "Personal wireless service facilities." Unstaffed facilities that are used for the transmission or reception, or both, of personal wireless services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures;

(27) "Pneumatic tires." Every tire of rubber or other resilient material designed to be inflated with compressed air to support the load thereon;

(28) "Private road or driveway." Every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons;

(29) "Railroad." A carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns;

(30) "Railroad sign or signal." Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train;

(31) "Residence district." The territory contiguous to and including the highway, as herein defined, not comprising a business district, as herein defined, when the property on such highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business;

(32) "Roadway." The paved, improved, or proper driving portion of a highway designed, or ordinarily used for vehicular travel;

(33) "Safety zone." The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by painted marks, signs, buttons, standards, or otherwise so as to be plainly discernible;

(34) "Sidewalk." That property between the curb lines or the lateral lines of a roadway, as herein defined, and the adjacent property, set aside and intended for the use of pedestrians or such portion of private property parallel and in proximity to a highway and dedicated to use by pedestrians;

(35) "Solid tire." Every tire of rubber or other resilient material which does not depend upon inflation with compressed air for the support of the load thereon;

(36) "State highway." Every highway as herein defined, or part thereof, which has been designated as a state highway, or branch thereof, by legislative enactment;

(37) "Streetcar." A vehicle other than a train, as herein defined, for the transporting of persons or property and operated upon stationary rails principally within incorporated cities and towns;

(38) "Traffic." Pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel;

(39) "Traffic control signal." Any traffic device, as herein defined, whether manually, electrically, or mechani-

cally operated, by which traffic alternately is directed to stop or proceed or otherwise controlled;

(40) "Traffic devices." All signs, signals, markings, and devices not inconsistent with this title placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic;

(41) "Train." A vehicle propelled by steam, electricity, or other motive power with or without cars coupled thereto, operated upon stationary rails, except street cars;

(42) "Vehicle." Every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting power wheelchairs, as defined in RCW 46.04.415, or devices moved by human or animal power or used exclusively upon stationary rails or tracks.

Words and phrases used herein in the past, present, or future tense shall include the past, present, and future tenses; words and phrases used herein in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context thereof shall indicate to the contrary. [2003 c 244 § 2; 2003 c 141 § 8; 1975 c 62 § 50; 1967 ex.s. c 145 § 42; 1961 c 13 § 47.04.010. Prior: 1937 c 53 § 1; RRS § 6400-1.]

Reviser's note: This section was amended by 2003 c 141 § 8 and by 2003 c 244 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1975 c 62: See note following RCW 36.75.010.

Aeronautics, definitions relating to: RCW 47.68.020.

Canal, defined: RCW 47.72.060.

Department, commission, secretary—Defined: RCW 47.01.021.

Ferry workers, marine employees, definitions relating to: RCW 47.64.011.

Junkyards, definitions relating to: RCW 47.41.020.

Limited access facilities, definitions relating to: RCW 46.52.010.

Signs and scenic vistas, definitions relating to: RCW 47.42.020.

Toll bridges, roads, definitions relating to: RCW 47.56.010.

Urban arterials, definitions relating to: RCW 47.26.040, 47.26.090, 47.26.100, 47.26.110.

Urban public transportation systems—Defined: RCW 47.04.082.

47.04.015 Change of meaning, certain terms. Unless the language specifically indicates otherwise, or unless the context plainly requires a different interpretation:

Wherever in Title 47 RCW or in any provision in the Revised Code of Washington the term "Washington state highway commission", "the state highway commission", "the highway commission", "the commission" (when referring to the Washington state highway commission), "the department of highways", "Washington toll bridge authority", or "the authority" (when referring to the Washington toll bridge authority) is used, it shall mean the department of transportation created in RCW 47.01.031.

Wherever in Title 47 RCW or in any provision in the Revised Code of Washington the term "director of highways" is used, it shall mean the secretary of transportation, whose office is created in RCW 47.01.041. [1977 ex.s. c 151 § 23.]

47.04.020 Classification of highways. All public highways in the state of Washington, or portions thereof, outside

incorporated cities and towns shall be divided and classified as state highways and county roads. All state highways and branches thereof shall be established by the legislature of the state of Washington by appropriate general location and termini. Any prior distinctions between highways as primary or secondary are hereby abolished. All powers granted to, or duties imposed upon, the department with regard to either primary or secondary state highways shall be construed to relate to all state highways. Whenever these terms are used, either jointly or independently, each shall be construed to include all state highways. All public highways in the state of Washington, or portions thereof, outside incorporated cities and towns, not established as state highways, are hereby declared to be county roads. [1984 c 7 § 85; 1967 ex.s. c 145 § 41; 1963 c 24 § 3; 1961 c 13 § 47.04.020. Prior: 1937 c 207 § 1; RRS § 6402-1; 1937 c 53 § 5; RRS § 6400-5; 1913 c 65 § 1; RRS § 6790.]

Severability—1984 c 7: See note following RCW 47.01.141.

Highway designation system—Signs: RCW 47.36.095.

47.04.040 Title to rights-of-way vested in state. Upon and after April 1, 1937, all rights-of-way of any primary state highways, together with all appurtenances thereto, the right or interest in or to which was, or is, in any county, road district, township, local improvement district, or other highway or road district or political subdivision of the state of Washington shall be and the same is hereby transferred to and vested in the state of Washington for use in conjunction with such primary state highways under the department of transportation.

All public highways in the state of Washington which have been designated to be primary state highways or secondary state highways or classified as primary roads and which have been constructed and improved and maintained for a period of seven years prior to April 1, 1937, at the expense of the state shall operate to vest in the state of Washington all right, title, and interest to the right of ways thereof, including the roadway and ditches and existing drainage facilities, together with all appurtenances thereto and no informalities in the records of title to such public highways shall be construed to invalidate or vacate such public highways or to divest the state of Washington of any right, title and interest in the right-of-way thereof. [1979 ex.s. c 30 § 7; 1961 c 13 § 47.04.040. Prior: 1937 c 53 § 29; RRS § 6400-29.]

47.04.045 Wireless service facilities—Right-of-way leases—Rules. (1) For the purposes of this section:

(a) "Right-of-way" means all state-owned land within a state highway corridor.

(b) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, or person that owns, operates, or manages any personal wireless service facility. "Service provider" includes a service provider's contractors, subcontractors, and legal successors.

(2) The department shall establish a process for issuing a lease for the use of the right-of-way by a service provider and shall require that telecommunications equipment be co-located on the same structure whenever practicable. Consistent with federal highway administration approval, the lease

must include the right of direct ingress and egress from the highway for construction and maintenance of the personal wireless service facility during nonpeak hours if public safety is not adversely affected. Direct ingress and egress may be allowed at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods. The lease may specify an indirect ingress and egress to the facility if it is reasonable and available for the particular location.

(3) The cost of the lease must be limited to the fair market value of the portion of the right-of-way being used by the service provider and the direct administrative expenses incurred by the department in processing the lease application.

If the department and the service provider are unable to agree on the cost of the lease, the service provider may submit the cost of the lease to binding arbitration by serving written notice on the department. Within thirty days of receiving the notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or panel shall determine the cost of the lease based on comparable siting agreements. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding.

(4) The department shall act on an application for a lease within sixty days of receiving a completed application, unless a service provider consents to a different time period.

(5) The reasons for a denial of a lease application must be supported by substantial evidence contained in a written record.

(6) The department may adopt rules to implement this section.

(7) All lease money paid to the department under this section shall be deposited in the motor vehicle fund created in RCW 46.68.070. [2003 c 244 § 5.]

47.04.046 Wireless site leases—Pending applications. Applications for wireless site leases pending on July 27, 2003, must be treated as applications under RCW 47.04.045 with the consent of the applicant. [2003 c 244 § 8.]

47.04.047 Personal wireless service facilities. Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

It is the declared policy of this state to assure that the use of rights-of-way of state highways accommodate the deployment of personal wireless service facilities consistent with highway safety and the preservation of the public investment in state highway facilities. [2004 c 131 § 2.]

47.04.050 Acceptance of federal acts. The state of Washington hereby assents to the purposes, provisions, terms (2008 Ed.)

and conditions of the grant of money provided in an act of congress entitled: "An act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes," approved July 11, 1916, and all acts, grants and appropriations amendatory and supplementary thereto and affecting the state of Washington. [1961 c 13 § 47.04.050. Prior: 1937 c 53 § 43; RRS § 6400-43; 1917 c 76 § 1; RRS § 6844.]

47.04.060 Administration of federal grants. The department is authorized and directed to act for and on behalf of the state of Washington, and any political subdivision of the state, in all things pertaining to the selection, construction, and maintenance of highways and roads under the provisions of the act of congress approved July 11, 1916, and any and all acts amendatory thereto; and to enter into such agreement with the secretary of transportation or other duly authorized agent of the United States as may from time to time be desirable or necessary to secure the money or aid for any section of state highway, county road, or city or town street selected by law for construction or improvement through an appropriation for the period in which the construction or improvement is to be made. The money shall be added to and expended in connection with the appropriation aforesaid; and shall apply thereto, as may be required, cooperative expenditures from the motor vehicle fund, which may have been appropriated by the state legislature, and from any highway, road, or street fund of any political subdivision, and which are available for the construction and maintenance of any section of state highway, county road, or city or town street selected as aforesaid for such aid and improvement. [1984 c 7 § 86; 1961 c 13 § 47.04.060. Prior: 1937 c 53 § 47; RRS § 6400-47; 1917 c 76 § 5, part; RRS § 6848, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.070 Conformity with federal requirements. In all matters relating to the cooperative construction or improvement of any state highway, county road, or city or town street for which federal funds or aid is secured under any act of congress, the department shall act in the manner provided by state law relating to state highway construction from the motor vehicle fund, so far as the same may be consistent with the provisions of such act of congress and the rules and regulations made by the secretary of transportation or other authorized agent of the United States government pursuant to such act, to which the procedure shall be adapted by the department as may be necessary. [1984 c 7 § 87; 1961 c 13 § 47.04.070. Prior: 1937 c 53 § 44; RRS § 6400-44; 1917 c 76 § 5, part; RRS § 6848, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.080 Joint action with other governments and agencies. The department is empowered to join financially or otherwise with any other state or any county, city, or town of any other state, or with any foreign country, or any province or district of any foreign country, or with the federal government or any agency thereof, or with any or all thereof, for the erecting, constructing, operating, or maintaining of any bridge, trestle, or any other structure, for the continuation or connection of any state highway across any stream, body

of water, gulch, navigable water, swamp, or other topographical formation requiring any such structure and forming a boundary between the state of Washington and any other state or foreign country, and for the purchase or condemnation of right-of-way therefor. [1984 c 7 § 88; 1973 1st ex.s. c 151 § 11; 1961 c 13 § 47.04.080. Prior: 1937 c 53 § 47 1/2; RRS § 6400-47 1/2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.081 Urban public transportation systems—Participation in planning, development, and establishment. The department is empowered to join financially or otherwise with any public agency or any county, city, or town in the state of Washington or any other state, or with the federal government or any agency thereof, or with any or all thereof for the planning, development, and establishment of urban public transportation systems in conjunction with new or existing highway facilities. [1984 c 7 § 89; 1967 c 108 § 13; 1965 ex.s. c 170 § 63.]

Severability—1984 c 7: See note following RCW 47.01.141.

Urban public transportation system defined: RCW 47.04.082.

47.04.082 Urban public transportation systems—Defined. As used in *this act the term "urban public transportation system" shall mean a system for the public transportation of persons or property by buses, streetcars, trains, electric trolley coaches, other public transit vehicles, or any combination thereof operating in or through predominantly urban areas and owned and operated by the state, any city or county or any municipal corporation of the state, including all structures, facilities, vehicles and other property rights and interest forming a part of such a system. [1967 c 108 § 1.]

***Reviser's note:** For codification of "this act" [1967 c 108], see Codification Tables, Volume 0.

47.04.083 Urban public transportation systems—Declaration of public policy—Use of motor vehicle, city street, or county road funds. The separate and uncoordinated development of public highways and urban public transportation systems is wasteful of this state's natural and financial resources. It is the public policy of this state to encourage wherever feasible the joint planning, construction and maintenance of public highways and urban public transportation systems serving common geographical areas as joint use facilities. To this end the legislature declares it to be a highway purpose to use motor vehicle funds, city and town street funds or county road funds to pay the full proportionate highway, street or road share of the costs of design, right-of-way acquisition, construction and maintenance of any highway, street or road to be used jointly with an urban public transportation system. [1967 c 108 § 2.]

47.04.090 Penalty. It is a misdemeanor for any person to violate any of the provisions of this title unless specifically provided otherwise by this title or other law of this state.

Unless another penalty is provided in this title, every person convicted of a misdemeanor for violation of any provisions of this title shall be punished in accordance with chapter 9A.20 RCW. [1989 c 224 § 2; 1961 c 13 § 47.04.090. Prior: 1937 c 53 § 95; RRS § 6400-95.]

47.04.100 Temporary route pending construction of new highway—Streets, roads not to be maintained as. Unless otherwise provided, whenever by statute a new highway or extension is added to the state highway system, no existing city street or county road may be maintained or improved by the department as a temporary route of such new highway or extension pending the construction of the new highway or extension on the location adopted by the department. [1984 c 7 § 90; 1973 1st ex.s. c 151 § 12; 1965 ex.s. c 170 § 34.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.140 Counties obtaining federal aid for construction, reconstruction, etc., of ferry boats or approaches. Whenever a county that operates or proposes to operate ferries obtains federal aid for the construction, reconstruction, or modification of any ferry boat or approaches thereto under Title 23, United States Code, the following provisions apply to the county's operation of its ferries:

(1) The county shall obtain from the department a franchise authorizing the ferry operations. The county's application for a franchise or amended franchise shall designate all ferry routes it proposes to operate. The department shall issue the franchise or amended franchise for the operation of each route that it finds is not otherwise served by adequate transportation facilities. A county may terminate any ferry route without approval of the department.

(2) At least ninety days before applying for federal aid for the construction, reconstruction, or modification of any of its ferries or approaches thereto, and thereafter whenever new tolls or charges are proposed for use of its ferries, the county shall file with the department, the current or proposed schedule of tolls and charges for use of its ferries. Such tolls and charges shall be deemed approved by the department unless it finds that the aggregate revenues to be derived from the county's ferry operations will exceed the amount required to pay the actual and necessary costs of operation, maintenance, administration, and repair of the county's ferries and their appurtenances. [1989 c 62 § 1; 1984 c 7 § 91; 1975-'76 2nd ex.s. c 65 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.04.150 Outstanding bonds—Savings. While any bonds, whether definitive, temporary, or interim, or warrants, certificates, or receipts of any denomination, with or without coupons attached heretofore issued by the state aeronautics commission, the toll bridge authority, the highway commission, or any of the other agencies whose functions are transferred to the department of transportation by RCW 47.01.031, remain outstanding, the powers and duties relating thereto of such agencies or of any official or employee thereof transferred by *RCW 47.01.111 to the department of transportation, or any powers and duties of any other state official or state agency with respect to such bonds, warrants, certificates, or receipts shall not be diminished or impaired in any manner that will adversely affect the interests and rights of the holders of such bonds, warrants, certificates, or receipts. The holder of any such bond, warrant, certificate, or receipt may by mandamus or other appropriate proceeding require the performance by the department of transportation,

or other appropriate state official or agency, of any of the duties heretofore imposed upon any state department, official, or employee under the terms of any such prior bond, warrant, certificate, or receipt agreement or sale: PROVIDED, That the enumeration of such rights and remedies herein shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of such bonds, warrants, certificates, or receipts. [1977 ex.s. c 151 § 19.]

*Reviser's note: RCW 47.01.111 was decodified pursuant to 1985 c 6 § 26.

47.04.160 Lewis and Clark bridge. In commemoration of the 175th anniversary of captains Meriwether Lewis and William Clark's epic journey from Wood River, Illinois, to Cape Disappointment, Washington, and to fully honor the expedition's passing the present location of the city of Longview, Washington, in November, 1805, and to couple this commemoration with the dedication of the bridge from Longview, Washington, to Rainier, Oregon, on March 29, 1930, the official name of this bridge is changed from the Longview-Columbia bridge to the Lewis and Clark bridge. [1980 c 5 § 1.]

47.04.170 Federal agreements for public transportation, rail transportation. The department of transportation is authorized to enter into and perform agreements with federal agencies as may be necessary to secure federal grants, loans, or other assistance on its own behalf or on behalf of other public or private recipients for:

(1) Public transportation purposes, including but not limited to, bus transportation, specialized transportation services for the elderly and handicapped, and ride sharing activities; and

(2) Rail transportation. [1985 c 20 § 1.]

47.04.180 Twenty-four hour headlight policy. On the recommendation of their public works departments or designees, counties or cities can petition the department of transportation to create a "twenty-four hour headlight policy" on state highways in their respective jurisdictions. The department shall develop criteria for approval or disapproval, such as traffic volume, accident statistics, and costs of signs. The department shall notify all counties about this program.

A jurisdiction requesting such a policy shall periodically report to the department regarding its educational efforts. A jurisdiction may petition the department to remove such a policy.

The jurisdiction shall educate its citizens on the "twenty-four hour headlight policy." The department shall place and maintain appropriate signs along the designated highway. Participating jurisdictions shall share in the cost of signing in an amount as determined by the department. [1998 c 245 § 94; 1989 c 195 § 1.]

47.04.190 Bicycle transportation management program. (1) The department of transportation is responsible for the initiation, coordination, and operation of a bicycle transportation management program.

(2) To assist in the operation of the bicycle transportation management program, a full-time staff position of state bicycle program manager is established within the department of transportation. [1991 c 214 § 5.]

Bicycle awareness program: RCW 43.43.390.

Pavement marking standards: RCW 47.36.280.

47.04.200 Bicycle program manager. The state bicycle program manager shall:

(1) Design programs that encourage the use of bicycling for transportation;

(2) Coordinate bicycle safety related programs and bicycle tourism programs in all state agencies;

(3) Assist the department of transportation and the cities and counties of the state in assigning priorities to, programming, and developing bicycle-related projects;

(4) Serve as a clearinghouse for bicycle program information and resources;

(5) Provide assistance in revising and updating bicycle material of the superintendent of public instruction and the state patrol;

(6) Promote the use of bicycle helmets of a type certified to meet the requirements of standard Z-90.4 of the American National Standards Institute or such subsequent nationally recognized standard for bicycle helmet performance; and

(7) Promote bicycle safety equipment. [1991 c 214 § 6.]

47.04.210 Reimbursable transportation expenditures—Processing and accounting. Federal funds that are administered by the department of transportation and are passed through to municipal corporations or political subdivisions of the state and moneys that are received as total reimbursement for goods, services, or projects constructed by the department of transportation are removed from the transportation budget. To process and account for these expenditures a new treasury trust account is created to be used for all department of transportation one hundred percent federal and local reimbursable transportation expenditures. This new account is nonbudgeted and nonappropriated. At the same time, federal and private local appropriations and full-time equivalents in subprograms R2, R3, T6, Y6, and Z2 processed through this new account are removed from the department of transportation's 1997-99 budget.

The department of transportation may make expenditures from the account before receiving federal and local reimbursements. However, at the end of each biennium, the account must maintain a zero or positive cash balance. In the twenty-fourth month of each biennium the department of transportation shall calculate and transfer sufficient cash from either the motor vehicle fund or the multimodal transportation account to cover any negative cash balances. The amount transferred is calculated based on expenditures from each fund. In addition, any interest charges accruing to the new account must be distributed to the motor vehicle fund and the multimodal transportation account.

The department of transportation shall provide an annual report to the senate and house transportation committees and the office of financial management on expenditures and full-time equivalents processed through the new account. The report must also include recommendations for process

changes, if needed. [2005 c 319 § 122; 2001 2nd sp.s. c 14 § 601; 1997 c 94 § 1.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Severability—2001 2nd sp.s. c 14: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 14 § 612.]

Effective date—2001 2nd sp.s. c 14: "Except for section 608 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2001]." [2001 2nd sp.s. c 14 § 613.]

Effective date—1997 c 94: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 94 § 4.]

47.04.220 Miscellaneous transportation programs account. (1) The miscellaneous transportation programs account is created in the custody of the state treasurer.

(2) Moneys from the account may be used only for the costs of:

(a) Miscellaneous transportation services provided by the department that are reimbursed by other public and private entities;

(b) Local transportation projects for which the department is a conduit for federal reimbursement to a municipal corporation or political subdivision; or

(c) Other reimbursable activities as recommended by the senate and house transportation committees and approved by the office of financial management.

(3) Moneys received as reimbursement for expenditures under subsection (2) of this section must be deposited into the account.

(4) No appropriation is required for expenditures from this account. This fund is not subject to allotment procedures provided under chapter 43.88 RCW.

(5) Only the secretary of transportation or the secretary's designee may authorize expenditures from the account.

(6) It is the intent of the legislature that this account maintain a zero or positive cash balance at the end of each biennium. Toward this purpose the department may make expenditures from the account before receiving reimbursements under subsection (2) of this section. Before the end of the biennium, the department shall transfer sufficient cash to cover any negative cash balances from the motor vehicle fund and the multimodal transportation account to the miscellaneous transportation programs account for unrecovered reimbursements. The department shall calculate the distribution of this transfer based on expenditures. In the ensuing biennium the department shall transfer the reimbursements received in the miscellaneous transportation programs account back to the motor vehicle fund and the multimodal transportation account to the extent of the cash transferred at biennium end. The department shall also distribute any interest charges accruing to the miscellaneous transportation programs account to the motor vehicle fund and the multimodal transportation account. Adjustments for any indirect cost recoveries may also be made at this time.

(7) The department shall provide an annual report to the senate and house transportation committees and the office of

financial management on the expenditures and full-time equivalents processed through the miscellaneous transportation programs account. The report must also include recommendations for changes to the process, if needed. [2005 c 319 § 123; 2001 2nd sp.s. c 14 § 602; 1997 c 94 § 2.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Severability—Effective date—2001 2nd sp.s. c 14: See notes following RCW 47.04.210.

Effective date—1997 c 94: See note following RCW 47.04.210.

47.04.230 Dredge spoils—Cowlitz County. The legislature finds and declares that the December 19, 1991, Washington state conveyance of the Mt. St. Helens Recovery Program, LT-1 and Cook Ferry Road Sites, to Cowlitz County, should be amended to enable Cowlitz County to use dredge spoils revenues for recreational purposes throughout the county.

The legislature further declares that the department of transportation shall execute sufficient legal release to accomplish the following:

(1) Dredge spoil revenues from either the LT-1 or Cook Ferry Road Site must be dedicated for recreational facilities and recreational administration costs throughout the county;

(2) Any mining excavation must meet the requirements of the Shoreline Management Act of 1971 as identified in chapter 90.58 RCW;

(3) Both the LT-1 and Cook Ferry Road Site must be preserved as a long-term dredging facility;

(4) All other requirements in the December 19, 1991, conveyance between the state of Washington and Cowlitz County will remain in effect; and

(5) The LT-1 and Cook Ferry Road Site remains subject to any agreements with the United States Army Corps of Engineers and other agencies of the federal government. [1999 c 63 § 1.]

47.04.235 Dredge spoils—Castle Rock. The legislature finds and declares that the December 20, 1993, Washington state conveyance of the Mt. St. Helens recovery program, CR601F site, to the city of Castle Rock, should be amended to enable the city to use dredge spoil revenues for recreational purposes adjacent to the Cowlitz river in the city limits of Castle Rock, and also those other properties owned by the city of Castle Rock that are adjacent to the Cowlitz river.

The legislature further declares that the department of transportation shall execute sufficient legal release to accomplish the following:

(1) Dredge spoil revenues from the CR601F site must be dedicated for recreational facilities and recreational administration cost throughout the defined area listed above;

(2) Any mining excavation must meet the requirements of the Shoreline Management Act of 1971 as identified in chapter 90.58 RCW;

(3) All other requirements in the December 20, 1993, conveyance between the state of Washington and the city of Castle Rock will remain in effect; and

(4) The CR601F site remains subject to any agreements with the United States Army Corps of Engineers and other agencies of the federal government. [2000 c 13 § 1.]

47.04.240 Public transportation information—Confidentiality. The department, a county, city, town, any other public entity, and any private entity under the public-private transportation initiatives authorized under chapter 47.46 RCW, that provides transit, high-speed ground transportation, high capacity transportation service, ferry service, toll facilities, or other public transportation service or facilities may only use personally identifiable information obtained from the use of electronic toll payments, transit passes, or other fare media such as magnetic strip cards or stored value cards for billing purposes. This information may not be used to track or monitor individual use of the public transportation facilities or service, except for billing purposes and to provide statistical compilations and reports that do not identify an individual. [1999 c 215 § 2.]

Public records: Chapter 42.56 RCW.

47.04.250 Assaults by motorists on department employees. (1) For the purposes of this section only, "assault" means an act by a motorist that results in physical injury to an employee of the department while engaged in highway construction or maintenance activities along a roadway right-of-way (fence line to fence line, landscaped areas) or in the loading and unloading of passenger vehicles in service of the vessel as a maritime employee not covered under chapter 51.32 RCW or engaged in those work activities as a Washington State Ferries terminal employee covered under chapter 51.32 RCW.

(2) In recognition of the nature of employment in departmental highway construction or maintenance activities and by the Washington State Ferries, this section provides a supplementary program to reimburse employees of the department for some of their costs attributable to their being the victims of assault by motorists. This program is limited to the reimbursement provided in this section.

(3) An employee is entitled to receive the reimbursement provided in this section only if the secretary finds that each of the following has occurred:

(a) A motorist has assaulted the employee who is engaged in highway construction or maintenance along a roadway right-of-way (fence line to fence line, landscaped areas) or service of the vessel as a maritime employee or terminal employee engaged in the loading or unloading of passenger vehicles and as a result the employee has sustained demonstrated physical injuries that have required the employee to miss one or more days of work;

(b) The assault is not attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application under chapter 51.32 RCW, or for maritime employees the department of transportation risk management office has approved maintenance and cure benefits under 46 U.S.C. Sec. 688 et seq.

(4) The reimbursement authorized under this section is as follows:

(a) The employee's accumulated sick leave days will not be reduced for the workdays missed. The injured worker who qualifies for and receives assault benefits will also receive

full standard benefits (vacation leave, sick leave, health insurance, etc.) as if uninjured;

(b) For an employee covered by chapter 51.32 RCW, for each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee will receive the full amount of the injured worker's net pay at the time of injury; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, or under federal maritime law benefits, including the Jones Act, for an employee deemed a maritime employee assigned to work in service of the vessel or a non-maritime terminal employee covered under chapter 51.32 RCW, the employee will be reimbursed in an amount that, when added to that compensation, will result in the employee receiving no more than full net pay (gross pay less mandatory and voluntary deductions) for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury. No application for assault benefits is valid nor may a claim be enforced unless it was made within one year after the day upon which the injury occurred.

(6) The employee is not entitled to the reimbursement provided in subsection (4) of this section for a workday for which the secretary or an applicable designee finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW or federal maritime law, including the Jones Act.

(7) The reimbursement may be made only for absences that the secretary or an applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she will continue to be classified as a state employee, and the reimbursement amount is considered as salary or wages.

(9) The department shall make all reimbursement payments required to be made to employees under this section. The payments are considered as a salary or wage expense and must be paid by the department in the same manner and from the same appropriations as other salary and wage expenses for the department.

(10) Nothing in this section precludes the department from recovering the supplemental payments authorized by this section from the assaulting motorist, and that recovery is considered exclusive of recovery under chapter 51.24 RCW.

(11) If the legislature revokes the reimbursement authorized under this section or repeals this section, no affected employee is entitled after that to receive the reimbursement as a matter of contractual right. [2002 c 355 § 1.]

47.04.260 Latecomer fees. The department of transportation may impose and collect latecomer fees on behalf of another entity for infrastructure improvement projects initially funded partially or entirely by private sources. However, there must be an agreement in place between the department of transportation and the entity, before the imposition and collection of any such fees, that specifies (1) the collection process, (2) the maximum amount that may be collected, and (3) the period of time during which the collection may occur. [2005 c 317 § 30.]

47.04.270 Tire chain installation and removal. The department may issue written permits authorizing permittees to install or remove tire chains on motor vehicles with the following conditions:

(1) Chains may only be installed or removed at locations designated in the permit;

(2) Permittees must comply with terms and conditions in the permit relating to the safe and orderly movement of traffic; and

(3) Permittees may charge a fee to drivers for their services.

The department may issue sufficient permits for the installation or removal of tire chains that it finds necessary or desirable to accommodate the demand for those services consistent with the maximum convenience and safety to traffic. In issuing the permits, the department shall insure that the maximum practicable number of different individuals and entities receive permits, and that no one entity, to the extent practicable, is the sole permit holder for a particular location. The department may charge a fee no greater than fifty dollars to permittees for the issuance of permits. The department, in issuing a permit for the installation or removal of tire chains, assumes no responsibility for the actions, inactions, competence, or reliability of the permittee in performing those services and shall not be liable for the damages relating to acts or omissions of the permittees. The department shall adopt rules to implement this section, including requiring permittees to wear reflective clothing and use appropriate signage. [2006 c 324 § 1.]

47.04.280 Transportation system policy goals. (1) It is the intent of the legislature to establish policy goals for the planning, operation, performance of, and investment in, the state's transportation system. The policy goals established under this section are deemed consistent with the benchmark categories adopted by the state's blue ribbon commission on transportation on November 30, 2000. Public investments in transportation should support achievement of these policy goals:

(a) Preservation: To maintain, preserve, and extend the life and utility of prior investments in transportation systems and services;

(b) Safety: To provide for and improve the safety and security of transportation customers and the transportation system;

(c) Mobility: To improve the predictable movement of goods and people throughout Washington state;

(d) Environment: To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment; and

(e) Stewardship: To continuously improve the quality, effectiveness, and efficiency of the transportation system.

(2) The powers, duties, and functions of state transportation agencies must be performed in a manner consistent with the policy goals set forth in subsection (1) of this section.

(3) These policy goals are intended to be the basis for establishing detailed and measurable objectives and related performance measures.

(4) It is the intent of the legislature that the office of financial management establish objectives and performance

measures for the department of transportation and other state agencies with transportation-related responsibilities to ensure transportation system performance at local, regional, and state government levels progresses toward the attainment of the policy goals set forth in subsection (1) of this section. The office of financial management shall submit initial objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during the 2008 legislative session. The office of financial management shall submit objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during each regular session of the legislature during an even-numbered year thereafter.

(5) This section does not create a private right of action. [2007 c 516 § 3; 2002 c 5 § 101. Formerly RCW 47.01.012.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2002 c 5 § 101: "Section 101 of this act takes effect July 1, 2002." [2002 c 5 § 102.]

Captions not law—2002 c 5: "Captions and part headings used in this act are not part of the law." [2002 c 5 § 419.]

Severability—2002 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 5 § 420.]

47.04.290 Park and ride lot accommodation. (1) Any local transit agency that has received state funding for a park and ride lot shall make reasonable accommodation for use of that lot by auto transportation companies regulated under chapter 81.68 RCW and private, nonprofit transportation providers regulated under chapter 81.66 RCW, that intend to provide or already provide regularly scheduled service at that lot. The accommodation must be in the form of an agreement between the applicable local transit agency and private transit provider regulated under chapter 81.68 or 81.66 RCW. The transit agency may require that the agreement include provisions to recover costs and fair market value for the use of the lot and its related facilities and to provide adequate insurance and indemnification of the transit agency, and other reasonable provisions to ensure that the private transit provider's use does not unduly burden the transit agency. No accommodation is required, and any agreement may be terminated, if the park and ride lot is at or exceeds ninety percent capacity.

(2) A local transit agency described under subsection (1) of this section may enter into a cooperative agreement with a taxicab company regulated under chapter 81.72 RCW in order to accommodate the taxicab company at the agency's park and ride lot, provided the taxicab company must agree to provide service with reasonable availability, subject to schedule coordination provisions as agreed to by the parties. [2008 c 257 § 1.]

Chapter 47.05 RCW

PRIORITY PROGRAMMING FOR HIGHWAY DEVELOPMENT

Sections

47.05.010	Declaration of purpose.
47.05.021	Functional classification of highways.
47.05.022	Highways of statewide significance.
47.05.025	Highways of regional significance.

- 47.05.030 Ten-year programs—Investments, improvements, preservation.
- 47.05.035 Demand modeling tools.
- 47.05.200 Highways of statewide significance—State route No. 169.

47.05.010 Declaration of purpose. The legislature finds that solutions to state highway deficiencies have become increasingly complex and diverse and that anticipated transportation revenues will fall substantially short of the amount required to satisfy all transportation needs. Difficult investment trade-offs will be required.

It is the intent of the legislature that investment of state transportation funds to address deficiencies on the state highway system be based on a policy of priority programming having as its basis the rational selection of projects and services according to factual need and an evaluation of life cycle costs and benefits that are systematically scheduled to carry out defined objectives within available revenue. The state must develop analytic tools to use a common methodology to measure benefits and costs for all modes.

The priority programming system must ensure preservation of the existing state highway system, relieve congestion, provide mobility for people and goods, support the state's economy, and promote environmental protection and energy conservation.

The priority programming system must implement the state-owned highway component of the statewide transportation plan, consistent with local and regional transportation plans, by targeting state transportation investment to appropriate multimodal solutions that address identified state highway system deficiencies.

The priority programming system for improvements must incorporate a broad range of solutions that are identified in the statewide transportation plan as appropriate to address state highway system deficiencies, including but not limited to highway expansion, efficiency improvements, nonmotorized transportation facilities, high occupancy vehicle facilities, transit facilities and services, rail facilities and services, and transportation demand management programs. [2002 c 5 § 401; 1993 c 490 § 1; 1969 ex.s. c 39 § 1; 1963 c 173 § 1.]

Effective date—2002 c 5 §§ 401-404: "Sections 401 through 404 of this act take effect July 1, 2002." [2002 c 5 § 417.]

Captions not law—Severability—2002 c 5: See notes following RCW 47.04.280.

47.05.021 Functional classification of highways. (1)

The department shall conduct periodic analyses of the entire state highway system and report to the office of financial management and the chairs of the transportation committees of the senate and house of representatives, any subsequent recommendations to subdivide, classify, and subclassify all designated state highways into the following three functional classes:

(a) The "principal arterial system" shall consist of a connected network of rural arterial routes with appropriate extensions into and through urban areas, including all routes designated as part of the interstate system, which serve corridor movements having travel characteristics indicative of substantial statewide and interstate travel;

(b) The "minor arterial system" shall, in conjunction with the principal arterial system, form a rural network of arterial routes linking cities and other activity centers which

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generate long distance travel, and, with appropriate extensions into and through urban areas, form an integrated network providing interstate and interregional service; and

(c) The "collector system" shall consist of routes which primarily serve the more important intercounty, intracounty, and intraurban travel corridors, collect traffic from the system of local access roads and convey it to the arterial system, and on which, regardless of traffic volume, the predominant travel distances are shorter than on arterial routes.

(2) The department shall adopt a functional classification of highways. The department shall consider comments from the public and local municipalities. The department shall give consideration to criteria consistent with this section and federal regulations relating to the functional classification of highways, including but not limited to the following:

(a) Urban population centers within and without the state stratified and ranked according to size;

(b) Important traffic generating economic activities, including but not limited to recreation, agriculture, government, business, and industry;

(c) Feasibility of the route, including availability of alternate routes within and without the state;

(d) Directness of travel and distance between points of economic importance;

(e) Length of trips;

(f) Character and volume of traffic;

(g) Preferential consideration for multiple service which shall include public transportation;

(h) Reasonable spacing depending upon population density; and

(i) System continuity.

(3) The department or the legislature shall designate state highways of statewide significance under RCW 47.06.140. If the department designates a state highway of statewide significance, it shall submit a list of such facilities for adoption by the legislature. This statewide system shall include at a minimum interstate highways and other statewide principal arterials that are needed to connect major communities across the state and support the state's economy.

(4) The department shall designate a freight and goods transportation system. This statewide system shall include state highways, county roads, and city streets. The department, in cooperation with cities and counties, shall review and make recommendations to the legislature regarding policies governing weight restrictions and road closures which affect the transportation of freight and goods. [2006 c 334 § 8; 2005 c 319 § 8; 2002 c 56 § 301. Prior: 1998 c 245 § 95; 1998 c 171 § 5; 1993 c 490 § 2; 1987 c 505 § 50; 1979 ex.s. c 122 § 1; 1977 ex.s. c 130 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Severability—1979 ex.s. c 122: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 122 § 10.]

Effective dates—1977 ex.s. c 130: "Section 1 of this 1977 act modifying the functional classification of state highways shall apply to the long range plan for highway improvements and to the six year program for highway construction commencing July 1, 1979 and to the preparation thereof

and shall take effect July 1, 1977. Section 2 of this 1977 act shall take effect July 1, 1979." [1977 ex.s. c 130 § 3.]

47.05.022 Highways of statewide significance. The legislature designates as highways of statewide significance those highways so designated by transportation commission resolution number 660 as adopted on January 21, 2004. [2004 c 232 § 1; 2002 c 56 § 302.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

47.05.025 Highways of regional significance. Highways of regional significance may receive funding under the conditions of RCW 36.120.020(8)(c). The following highways are of regional significance:

(1) That portion of state route number 9 that runs from state route number 522 in the south to state route number 531 in the north;

(2) That portion of state route number 524 that runs from state route number 5 easterly to state route number 522;

(3) That portion of state route number 704 from state route number 5 to state route number 7. [2002 c 56 § 303.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

47.05.030 Ten-year programs—Investments, improvements, preservation. (1) The office of financial management shall propose a comprehensive ten-year investment program for the preservation and improvement programs defined in this section, consistent with the policy goals described under RCW 47.04.280. The proposed ten-year investment program must be forwarded as a recommendation by the office of financial management to the legislature, and must be based upon the needs identified in the statewide transportation plan established under RCW 47.01.071(4).

(2) The preservation program consists of those investments necessary to preserve the existing state highway system and to restore existing safety features, giving consideration to lowest life cycle costing.

(3) The improvement program consists of investments needed to address identified deficiencies on the state highway system to meet the goals established in RCW 47.04.280. [2007 c 516 § 7; 2006 c 334 § 45; 2005 c 319 § 9; 2002 c 5 § 402; 1998 c 171 § 6; 1993 c 490 § 3; 1987 c 179 § 2; 1979 ex.s. c 122 § 2; 1977 ex.s. c 151 § 44; 1975 1st ex.s. c 143 § 1; 1973 2nd ex.s. c 12 § 4; 1969 ex.s. c 39 § 3; 1965 ex.s. c 170 § 33; 1963 c 173 § 3.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.04.280.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.035 Demand modeling tools. (1) The department shall use the transportation demand modeling tools developed under subsection (2) of this section to evaluate investments based on the best mode or improvement, or mix

of modes and improvements, to meet current and future long-term demand within a corridor or system for the lowest cost. The end result of these demand modeling tools is to provide a cost-benefit analysis by which the department can determine the relative mobility improvement and congestion relief each mode or improvement under consideration will provide and the relative investment each mode or improvement under consideration will need to achieve that relief.

(2) The department will participate in the refinement, enhancement, and application of existing transportation demand modeling tools to be used to evaluate investments. This participation and use of transportation demand modeling tools will be phased in. [2007 c 516 § 8; 2006 c 334 § 46; 2005 c 319 § 10; 2002 c 5 § 403; 1993 c 490 § 4; 1987 c 179 § 3; 1979 ex.s. c 122 § 3; 1975 1st ex.s. c 143 § 2.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Effective date—2006 c 334: See note following RCW 47.01.051.

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.04.280.

Severability—1979 ex.s. c 122: See note following RCW 47.05.021.

47.05.200 Highways of statewide significance—State route No. 169. The legislature designates state route number 169, as defined in RCW 47.17.340, as a highway of statewide significance. [2006 c 83 § 1.]

See also: RCW 47.05.022.

Chapter 47.06 RCW

STATEWIDE TRANSPORTATION PLANNING

Sections

47.06.010	Findings.
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47.06.060	Aviation plan.
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47.06.080	Freight rail plan.
47.06.090	Intercity passenger rail plan.
47.06.100	Bicycle transportation and pedestrian walkways plan.
47.06.110	Public transportation plan.
47.06.120	High capacity transportation planning and regional transportation planning—Role of department.
47.06.130	Special planning studies—Cost-benefit analysis.
47.06.140	Transportation facilities and services of statewide significance—Level of service standards.
47.06.900	Captions not law—1993 c 446.

Environmental review of transportation projects: RCW 47.01.290.

47.06.010 Findings. The legislature recognizes that the ownership and operation of Washington's transportation system is spread among federal, state, and local government agencies, regional transit agencies, port districts, and the private sector. The legislature also recognizes that transportation planning authority is shared on the local, regional, and state levels, and that this planning must be a comprehensive and coordinated effort. While significant authority for transportation planning is vested with local agencies and regional transportation planning organizations under the growth man-

agement act, the legislature recognizes that certain transportation issues and facilities cross local and regional boundaries and are vital to the statewide economy and the cross-state mobility of people and goods. Therefore, the state has an appropriate role in developing statewide transportation plans that address state jurisdiction facilities and services as well as transportation facilities and services of state interest. These plans shall serve as a guide for short-term investment needs and provide a long-range vision for transportation system development. [1993 c 446 § 1.]

47.06.020 Role of department. The specific role of the department in transportation planning must be, consistent with the policy goals described under RCW 47.04.280: (1) Ongoing coordination and development of statewide transportation policies that guide all Washington transportation providers; (2) ongoing development of a statewide multimodal transportation plan that includes both state-owned and state-interest facilities and services; (3) coordinating the state high capacity transportation planning and regional transportation planning programs; (4) conducting special transportation planning studies that impact state transportation facilities or relate to transportation facilities and services of statewide significance; and (5) assisting the transportation commission in the development of the statewide transportation plan required under RCW 47.01.071(4). Specific requirements for each of these state transportation planning components are described in this chapter. [2007 c 516 § 9; 1993 c 446 § 2.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

47.06.040 Statewide multimodal transportation plan. The department shall develop a statewide multimodal transportation plan under *RCW 47.01.071(3) and in conformance with federal requirements, to ensure the continued mobility of people and goods within regions and across the state in a safe, cost-effective manner. The statewide multimodal transportation plan shall consist of:

(1) A state-owned facilities component, which shall guide state investment for state highways including bicycle and pedestrian facilities, and state ferries; and

(2) A state-interest component, which shall define the state interest in aviation, marine ports and navigation, freight rail, intercity passenger rail, bicycle transportation and pedestrian walkways, and public transportation, and recommend actions in coordination with appropriate public and private transportation providers to ensure that the state interest in these transportation modes is met.

The plans developed under each component must be consistent with the state transportation policy plan and with each other, reflect public involvement, be consistent with regional transportation planning, high capacity transportation planning, and local comprehensive plans prepared under chapter 36.70A RCW, and include analysis of intermodal connections and choices. A primary emphasis for these plans shall be the relief of congestion, the preservation of existing investments and downtowns, ability to attract or accommodate planned population, and employment growth, the improvement of traveler safety, the efficient movement of freight and goods, and the improvement and integration of all

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transportation modes to create a seamless intermodal transportation system for people and goods.

In the development of the statewide multimodal transportation plan, the department shall identify and document potential affected environmental resources, including, but not limited to, wetlands, storm water runoff, flooding, air quality, fish passage, and wildlife habitat. The department shall conduct its environmental identification and documentation in coordination with all relevant environmental regulatory authorities, including, but not limited to, local governments. The department shall give the relevant environmental regulatory authorities an opportunity to review the department's environmental plans. The relevant environmental regulatory authorities shall provide comments on the department's environmental plans in a timely manner. Environmental identification and documentation as provided for in RCW 47.01.300 and this section is not intended to create a private right of action or require an environmental impact statement as provided in chapter 43.21C RCW. [2002 c 189 § 4; 1998 c 199 § 1; 1994 c 258 § 5; 1993 c 446 § 4.]

***Reviser's note:** RCW 47.01.071 was amended by 2005 c 319 § 5, changing subsection (3) to subsection (4).

Captions not law—1994 c 258: See note following RCW 36.70A.420.

47.06.043 Technical workers—Skill enhancement. The state interest component of the statewide multimodal transportation plan must include a plan for enhancing the skills of the existing technical transportation workforce. [2003 c 363 § 204.]

Findings—Intent—2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

47.06.045 Freight mobility plan. The state-interest component of the statewide multimodal transportation plan shall include a freight mobility plan which shall assess the transportation needs to ensure the safe, reliable, and efficient movement of goods within and through the state and to ensure the state's economic vitality. [1998 c 175 § 10.]

Severability—1998 c 175: See RCW 47.06A.900.

47.06.050 State-owned facilities component. The state-owned facilities component of the statewide multimodal transportation plan shall consist of:

(1) The state highway system plan, which identifies program and financing needs and recommends specific and financially realistic improvements to preserve the structural integrity of the state highway system, ensure acceptable operating conditions, and provide for enhanced access to scenic, recreational, and cultural resources. The state highway system plan shall contain the following elements:

(a) A system preservation element, which shall establish structural preservation objectives for the state highway system including bridges, identify current and future structural deficiencies based upon analysis of current conditions and projected future deterioration, and recommend program funding levels and specific actions necessary to preserve the structural integrity of the state highway system consistent with adopted objectives. Lowest life cycle cost methodologies must be used in developing a pavement management

system. This element shall serve as the basis for the preservation component of the six-year highway program and the two-year biennial budget request to the legislature;

(b) A highway maintenance element, establishing service levels for highway maintenance on state-owned highways. The highway maintenance element must include an estimate of costs for achieving those service levels over twenty years. This element will serve as the basis for the maintenance component of the six-year highway program and the two-year biennial budget request to the legislature;

(c) A capacity and operational improvement element, which shall establish operational objectives, including safety considerations, for moving people and goods on the state highway system, identify current and future capacity, operational, and safety deficiencies, and recommend program funding levels and specific improvements and strategies necessary to achieve the operational objectives. In developing capacity and operational improvement plans the department shall first assess strategies to enhance the operational efficiency of the existing system before recommending system expansion. Strategies to enhance the operational efficiencies include but are not limited to access management, transportation system management, demand management, and high occupancy vehicle facilities. The capacity and operational improvement element must conform to the state implementation plan for air quality and be consistent with regional transportation plans adopted under chapter 47.80 RCW, and shall serve as the basis for the capacity and operational improvement portions of the six-year highway program and the two-year biennial budget request to the legislature;

(d) A scenic and recreational highways element, which shall identify and recommend designation of scenic and recreational highways, provide for enhanced access to scenic, recreational, and cultural resources associated with designated routes, and recommend a variety of management strategies to protect, preserve, and enhance these resources. The department, affected counties, cities, and towns, regional transportation planning organizations, and other state or federal agencies shall jointly develop this element;

(e) A paths and trails element, which shall identify the needs of nonmotorized transportation modes on the state transportation systems and provide the basis for the investment of state transportation funds in paths and trails, including funding provided under chapter 47.30 RCW.

(2) The state ferry system plan, which shall guide capital and operating investments in the state ferry system. The plan shall establish service objectives for state ferry routes, forecast travel demand for the various markets served in the system, develop strategies for ferry system investment that consider regional and statewide vehicle and passenger needs, support local land use plans, and assure that ferry services are fully integrated with other transportation services. The plan must provide for maintenance of capital assets. The plan must also provide for preservation of capital assets based on lowest life cycle cost methodologies. The plan shall assess the role of private ferries operating under the authority of the utilities and transportation commission and shall coordinate ferry system capital and operational plans with these private operations. The ferry system plan must be consistent with the regional transportation plans for areas served by the state ferry system, and shall be developed in conjunction with the

ferry advisory committees. [2007 c 516 § 10; 2002 c 5 § 413; 1993 c 446 § 5.]

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Finding—Intent—2002 c 5: "The legislature finds that roads, streets, bridges, and highways in the state represent public assets worth over one hundred billion dollars. These investments require regular maintenance and preservation, or rehabilitation, to provide cost-effective transportation services. Many of these facilities are in poor condition. Given the magnitude of public investment and the importance of safe, reliable roadways to the motoring public, the legislature intends to create stronger accountability to ensure that cost-effective maintenance and preservation is provided for these transportation facilities." [2002 c 5 § 408.]

Captions not law—Severability—2002 c 5: See notes following RCW 47.04.280.

47.06.060 Aviation plan. The state-interest component of the statewide multimodal transportation plan shall include an aviation plan, which shall fulfill the statewide aviation planning requirements of the federal government, coordinate statewide aviation planning, and identify the program needs for public use and state airports. [1993 c 446 § 6.]

47.06.070 Marine ports and navigation plan. The state-interest component of the statewide multimodal transportation plan shall include a state marine ports and navigation plan, which shall assess the transportation needs of Washington's marine ports, including navigation, and identify transportation system improvements needed to support the international trade and economic development role of Washington's marine ports. [1993 c 446 § 7.]

47.06.080 Freight rail plan. The state-interest component of the statewide multimodal transportation plan shall include a state freight rail plan, which shall fulfill the statewide freight rail planning requirements of the federal government, identify freight rail mainline issues, identify light-density freight rail lines threatened with abandonment, establish criteria for determining the importance of preserving the service or line, and recommend priorities for the use of state rail assistance and state rail banking program funds, as well as other available sources of funds. The plan shall also identify existing intercity rail rights-of-way that should be preserved for future transportation use. [1993 c 446 § 8.]

47.06.090 Intercity passenger rail plan. The state-interest component of the statewide multimodal transportation plan shall include an intercity passenger rail plan, which shall analyze existing intercity passenger rail service and recommend improvements to that service under the state passenger rail service program including depot improvements, potential service extensions, and ways to achieve higher train speeds.

For purposes of maintaining and preserving any state-owned component of the state's passenger rail program, the statewide multimodal transportation plan must identify all such assets and provide a preservation plan based on lowest life cycle cost methodologies. [2002 c 5 § 414; 1993 c 446 § 9.]

Finding—Intent—2002 c 5: See note following RCW 47.06.050.

Captions not law—Severability—2002 c 5: See notes following RCW 47.04.280.

47.06.100 Bicycle transportation and pedestrian walkways plan. The state-interest component of the statewide multimodal transportation plan shall include a bicycle transportation and pedestrian walkways plan, which shall propose a statewide strategy for addressing bicycle and pedestrian transportation, including the integration of bicycle and pedestrian pathways with other transportation modes; the coordination between local governments, regional agencies, and the state in the provision of such facilities; the role of such facilities in reducing traffic congestion; and an assessment of statewide bicycle and pedestrian transportation needs. This plan shall satisfy the federal requirement for a long-range bicycle transportation and pedestrian walkways plan. [1993 c 446 § 10.]

47.06.110 Public transportation plan. The state-interest component of the statewide multimodal transportation plan shall include a state public transportation plan that:

- (1) Articulates the state vision of an interest in public transportation and provides quantifiable objectives, including benefits indicators;
- (2) Identifies the goals for public transit and the roles of federal, state, regional, and local entities in achieving those goals;
- (3) Recommends mechanisms for coordinating state, regional, and local planning for public transportation;
- (4) Recommends mechanisms for coordinating public transportation with other transportation services and modes;
- (5) Recommends criteria, consistent with the goals identified in subsection (2) of this section and with RCW 82.44.180 (2) and (3), for existing federal authorizations administered by the department to transit agencies; and
- (6) Recommends a statewide public transportation facilities and equipment management system as required by federal law.

In developing the state public transportation plan, the department shall involve local jurisdictions, public and private providers of transportation services, nonmotorized interests, and state agencies with an interest in public transportation, including but not limited to the departments of community, trade, and economic development, social and health services, and ecology, the office of the superintendent of public instruction, the office of the governor, and the office of financial management.

The department shall submit to the senate and house transportation committees by December 1st of each year, reports summarizing the plan's progress. [2005 c 319 § 124; 1996 c 186 § 512; 1995 c 399 § 120; 1993 c 446 § 11.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Environmental review of transportation projects: RCW 47.01.290.

47.06.120 High capacity transportation planning and regional transportation planning—Role of department. The department's role in high capacity transportation planning and regional transportation planning is to administer state planning grants for these purposes, represent the interests of the state in these regional planning processes, and coordinate other department planning with these regional (2008 Ed.)

efforts, including those under RCW 81.104.060. [1993 c 446 § 12.]

47.06.130 Special planning studies—Cost-benefit analysis. (1) The department may carry out special transportation planning studies to resolve specific issues with the development of the state transportation system or other statewide transportation issues.

(2) The department shall conduct multimodal corridor analyses on major congested corridors where needed improvements are likely to cost in excess of one hundred million dollars. Analysis will include the cost-effectiveness of all feasible strategies in addressing congestion or improving mobility within the corridor, and must recommend the most effective strategy or mix of strategies to address identified deficiencies. A long-term view of corridors must be employed to determine whether an existing corridor should be expanded, a city or county road should become a state route, and whether a new corridor is needed to alleviate congestion and enhance mobility based on travel demand. To the extent practicable, full costs of all strategies must be reflected in the analysis. At a minimum, this analysis must include:

- (a) The current and projected future demand for total person trips on that corridor;
- (b) The impact of making no improvements to that corridor;
- (c) The daily cost per added person served for each mode or improvement proposed to meet demand;
- (d) The cost per hour of travel time saved per day for each mode or improvement proposed to meet demand; and
- (e) How much of the current and anticipated future demand will be met and left unmet for each mode or improvement proposed to meet demand.

The end result of this analysis will be to provide a cost-benefit analysis by which policymakers can determine the most cost-effective improvement or mode, or mix of improvements and modes, for increasing mobility and reducing congestion. [2002 c 5 § 404; 1993 c 446 § 13.]

Effective date—2002 c 5 §§ 401-404: See note following RCW 47.05.010.

Captions not law—Severability—2002 c 5: See notes following RCW 47.04.280.

47.06.140 Transportation facilities and services of statewide significance—Level of service standards. (1) The legislature declares the following transportation facilities and services to be of statewide significance: Highways of statewide significance as designated by the legislature under chapter 47.05 RCW, the interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, and high capacity transportation systems serving regions as defined in RCW 81.104.015. The department, in cooperation with regional transportation planning organizations, counties, cities, transit agencies, public ports, private railroad operators, and private transportation provid-

ers, as appropriate, shall plan for improvements to transportation facilities and services of statewide significance in the statewide multimodal transportation plan. Improvements to facilities and services of statewide significance identified in the statewide multimodal transportation plan, or to highways of statewide significance designated by the legislature under chapter 47.05 RCW, are essential state public facilities under RCW 36.70A.200.

(2) The department of transportation, in consultation with local governments, shall set level of service standards for state highways and state ferry routes of statewide significance. Although the department shall consult with local governments when setting level of service standards, the department retains authority to make final decisions regarding level of service standards for state highways and state ferry routes of statewide significance. In establishing level of service standards for state highways and state ferry routes of statewide significance, the department shall consider the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local communities using these facilities. When setting the level of service standards under this section for state ferry routes, the department may allow for a standard that is adjustable for seasonality. [2007 c 516 § 11; 2007 c 512 § 2; 1998 c 171 § 7.]

Reviser's note: This section was amended by 2007 c 512 § 2 and by 2007 c 516 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2007 c 516: See note following RCW 47.01.011.

Finding—Intent—2007 c 512: "The legislature finds from the 2006 Washington state ferries financing study that the state has limited information on state ferry users and markets. Accurate user and market information is vital in order to find ways to maximize the ferry systems' current capacity and to make the most efficient use of citizens' tax dollars. Therefore, it is the intent of the legislature that Washington state ferries be given the tools necessary to maximize the utilization of existing capacity and to make the most efficient use of existing assets and tax dollars. Furthermore, it is the intent of the legislature that the department of transportation adopt adaptive management practices in its operating and capital programs so as to keep the costs of the Washington state ferries system as low as possible while continuously improving the quality and timeliness of service." [2007 c 512 § 1.]

Highways of statewide significance: RCW 47.05.022.

47.06.900 Captions not law—1993 c 446. Captions used in this chapter do not constitute any part of the law. [1993 c 446 § 16.]

Chapter 47.06A RCW FREIGHT MOBILITY

Sections

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47.06A.060	Grants and loans.
47.06A.070	Records.
47.06A.080	Port district development plans.
47.06A.900	Severability—1998 c 175.

47.06A.001 Findings. The legislature finds that:

(1) Washington state is uniquely positioned as a gateway to the global economy. As the most trade-dependent state in the nation, per capita, Washington's economy is highly dependent on an efficient multimodal transportation network in order to remain competitive.

(2) The vitality of the state's economy is placed at risk by growing traffic congestion that impedes the safe and efficient movement of goods. The absence of a comprehensive and coordinated state policy that facilitates freight movements to local, national, and international markets limits trade opportunities.

(3) Freight corridors that serve international and domestic interstate and intrastate trade, and those freight corridors that enhance the state's competitive position through regional and global gateways are strategically important. In many instances, movement of freight on these corridors is diminished by: Barriers that block or delay access to intermodal facilities where freight is transferred from one mode of transport to another; conflicts between rail and road traffic; constraints on rail capacity; highway capacity constraints, congestion, and condition; waterway system depths that affect capacity; and institutional, regulatory, and operational barriers.

(4) Rapidly escalating population growth is placing an added burden on streets, roads, and highways that serve as freight corridors. Community benefits from economic activity associated with freight movement often conflict with community concerns over safety, mobility, [and] environmental quality. Efforts to minimize community impacts in areas of high freight movements that encourage the active participation of communities in the early stages of proposed public and private infrastructure investments will facilitate needed freight mobility improvements.

(5) Ownership of the freight mobility network is fragmented and spread across various public jurisdictions, private companies, and state and national borders. Transportation projects have grown in complexity and size, requiring more resources and longer implementation time frames. Currently, there is no comprehensive and integrated framework for planning the freight mobility needs of public and private stakeholders in the freight transportation system. A coordinated planning process should identify new infrastructure investments that are integrated by public and private planning bodies into a multimodal and multijurisdictional network in all areas of the state, urban and rural, east and west. The state should integrate freight mobility goals with state policy on related issues such as economic development, growth management, and environmental management.

(6) State investment in projects that enhance or mitigate freight movements, should pay special attention to solutions that utilize a corridor solution to address freight mobility issues with important transportation and economic impacts beyond any local area. The corridor approach builds partnerships and fosters coordinated planning among jurisdictions and the public and private sectors.

(7) It is the policy of the state of Washington that limited public transportation funding and competition between freight and general mobility improvements for the same fund sources require strategic, prioritized freight investments that reduce barriers to freight movement, maximize cost-effectiveness, yield a return on the state's investment, require

complementary investments by public and private interests, and solve regional freight mobility problems. State financial assistance for freight mobility projects must leverage other funds from all potential partners and sources, including federal, county, city, port district, and private capital. [1998 c 175 § 1.]

47.06A.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the freight mobility strategic investment board created in RCW 47.06A.030.

(2) "Department" means the department of transportation.

(3) "Freight mobility" means the safe, reliable, and efficient movement of goods within and through the state to ensure the state's economic vitality.

(4) "Local governments" means cities, towns, counties, special purpose districts, port districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts.

(5) "Public entity" means a state agency, city, town, county, port district, or municipal or regional planning organization.

(6) "Strategic freight corridor" means a transportation corridor of great economic importance within an integrated freight system that:

(a) Serves international and domestic interstate and intrastate trade;

(b) Enhances the state's competitive position through regional and global gateways;

(c) Carries freight tonnages of at least:

(i) Four million gross tons annually on state highways, city streets, and county roads;

(ii) Five million gross tons annually on railroads; or

(iii) Two and one-half million net tons on waterways; and

(d) Has been designated a strategic corridor by the board under RCW 47.06A.020(3). However, new alignments to, realignments of, and new links to strategic corridors that enhance freight movement may qualify, even though no tonnage data exists for facilities to be built in the future. [1998 c 175 § 2.]

47.06A.020 Board—Duties. (1) The board shall:

(a) Adopt rules and procedures necessary to implement the freight mobility strategic investment program;

(b) Solicit from public entities proposed projects that meet eligibility criteria established in accordance with subsection (4) of this section; and

(c) Review and evaluate project applications based on criteria established under this section, and prioritize and select projects comprising a portfolio to be funded in part with grants from state funds appropriated for the freight mobility strategic investment program. In determining the appropriate level of state funding for a project, the board shall ensure that state funds are allocated to leverage the greatest amount of partnership funding possible. After selecting projects comprising the portfolio, the board shall submit them as part of its budget request to the office of financial manage-

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ment and the legislature. The board shall ensure that projects submitted as part of the portfolio are not more appropriately funded with other federal, state, or local government funding mechanisms or programs. The board shall reject those projects that appear to improve overall general mobility with limited enhancement for freight mobility.

The board shall provide periodic progress reports on its activities to the office of financial management and the senate and house transportation committees.

(2) The board may:

(a) Accept from any state or federal agency, loans or grants for the financing of any transportation project and enter into agreements with any such agency concerning the loans or grants;

(b) Provide technical assistance to project applicants;

(c) Accept any gifts, grants, or loans of funds, property, or financial, or other aid in any form from any other source on any terms and conditions which are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(3) The board shall designate strategic freight corridors within the state. The board shall update the list of designated strategic corridors not less than every two years, and shall establish a method of collecting and verifying data, including information on city and county-owned roadways.

(4) The board shall utilize threshold project eligibility criteria that, at a minimum, includes the following:

(a) The project must be on a strategic freight corridor;

(b) The project must meet one of the following conditions:

(i) It is primarily aimed at reducing identified barriers to freight movement with only incidental benefits to general or personal mobility; or

(ii) It is primarily aimed at increasing capacity for the movement of freight with only incidental benefits to general or personal mobility; or

(iii) It is primarily aimed at mitigating the impact on communities of increasing freight movement, including roadway/railway conflicts; and

(c) The project must have a total public benefit/total public cost ratio of equal to or greater than one.

(5) From June 11, 1998, through the biennium ending June 30, 2001, the board shall use the multicriteria analysis and scoring framework for evaluating and ranking eligible freight mobility and freight mitigation projects developed by the freight mobility project prioritization committee and contained in the January 16, 1998, report entitled "Project Eligibility, Priority and Selection Process for a Strategic Freight Investment Program." The prioritization process shall measure the degree to which projects address important program objectives and shall generate a project score that reflects a project's priority compared to other projects. The board shall assign scoring points to each criterion that indicate the relative importance of the criterion in the overall determination of project priority. After June 30, 2001, the board may supplement and refine the initial project priority criteria and scoring framework developed by the freight mobility project

prioritization committee as expertise and experience is gained in administering the freight mobility program.

(6) It is the intent of the legislature that each freight mobility project contained in the project portfolio submitted by the board utilize the greatest amount of nonstate funding possible. The board shall adopt rules that give preference to projects that contain the greatest levels of financial participation from nonprogram fund sources. The board shall consider twenty percent as the minimum partnership contribution, but shall also ensure that there are provisions allowing exceptions for projects that are located in areas where minimal local funding capacity exists or where the magnitude of the project makes the adopted partnership contribution financially unfeasible.

(7) The board shall develop and recommend policies that address operational improvements that primarily benefit and enhance freight movement, including, but not limited to, policies that reduce congestion in truck lanes at border crossings and weigh stations and provide for access to ports during nonpeak hours. [2005 c 319 § 125; 1999 c 216 § 1; 1998 c 175 § 3.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

47.06A.030 Board—Creation—Membership. (1) The freight mobility strategic investment board is created. The board shall convene by July 1, 1998.

(2) The board is composed of twelve members. The following members are appointed by the governor for terms of four years, except that five members initially are appointed for terms of two years: (a) Two members, one of whom is from a city located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the association of Washington cities or its successor; (b) two members, one of whom is from a county having a strategic freight corridor within its boundaries, appointed from a list of at least four persons nominated by the Washington state association of counties or its successor; (c) two members, one of whom is from a port district located within or along a strategic freight corridor, appointed from a list of at least four persons nominated by the Washington public ports association or its successor; (d) one member representing the office of financial management; (e) one member appointed as a representative of the trucking industry; (f) one member appointed as a representative of the railroads; (g) the secretary of the department of transportation; (h) one member representing the steamship industry; and (i) one member of the general public. In appointing the general public member, the governor shall endeavor to appoint a member with special expertise in relevant fields such as public finance, freight transportation, or public works construction. The governor shall appoint the general public member as chair of the board. In making appointments to the board, the governor shall ensure that each geographic region of the state is represented.

(3) Members of the board shall be reimbursed for reasonable and customary travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) If a vacancy on the board occurs by death, resignation, or otherwise, the governor shall fill the vacant position for the unexpired term. Each vacancy in a position appointed from lists provided by the associations and departments

under subsection (2) of this section must be filled from a list of at least four persons nominated by the relevant association or associations.

(5) The appointments made in subsection (2) of this section are not subject to confirmation. [1999 c 216 § 2; 1998 c 175 § 4.]

47.06A.040 Board—Administration and staffing. The board, at its option, may either appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board or make provisions ensuring the responsibilities of the executive director are carried out by an existing transportation-related state agency or by private contract. Staff support to the board shall be provided by the department of transportation, the transportation improvement board, and the county road administration board, or their successor agencies. [1999 c 216 § 3; 1998 c 175 § 5.]

47.06A.050 Allocation of funds. (1) For the purpose of allocating funds for the freight mobility strategic investment program, the board shall allocate the first fifty-five percent of funds to the highest priority projects, without regard to location.

(2) The remaining funds shall be allocated equally among three regions of the state, defined as follows:

(a) The Puget Sound region includes King, Pierce, and Snohomish counties;

(b) The western Washington region includes Clallam, Jefferson, Island, Kitsap, San Juan, Skagit, Whatcom, Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum counties; and

(c) The eastern Washington region includes Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Whitman, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima counties.

(3) If a region does not have enough qualifying projects to utilize its allocation of funds, the funds will be made available to the next highest priority project, without regard to location.

(4) In the event that a proposal contains projects in more than one region, for purposes of assuring that equitable geographic distributions are made under subsection (2) of this section, the board shall evaluate the proposal and proportionally assign the benefits that are attributable to each region.

(5) If the board identifies a project for funding, but later determines that the project is not ready to proceed at the time the legislature's funding decision is pending, the board shall recommend removing the project from consideration and the next highest priority project shall be substituted in the project portfolio. Any project removed from funding consideration because it is not ready to proceed shall retain its position on the priority project list and is eligible to be recommended for funding in the next project portfolio submitted by the board. [1998 c 175 § 6.]

47.06A.060 Grants and loans. In order to aid the financing of eligible freight mobility projects, the board may:

(1) Make grants or loans from funds appropriated for the freight mobility strategic investment program for the purpose

of financing freight mobility projects. The board may require terms and conditions as it deems necessary or convenient to carry out the purposes of this chapter.

(2) The state shall not bear the financial burden for project costs unrelated to the movement of freight. Project amenities unrelated to the movement of freight may not be submitted to the board as part of a project proposal under the freight mobility strategic investment program.

(3) All freight mobility projects aided in whole or in part under this chapter must have a public entity designated as the lead project proponent. [1998 c 175 § 7.]

47.06A.070 Records. The board shall keep proper records and shall be subject to audit by the state auditor. [1998 c 175 § 8.]

47.06A.080 Port district development plans. Port districts in the state shall submit their development plans to the relevant regional transportation planning organization or metropolitan planning organization, the department, and affected cities and counties to better coordinate the development and funding of freight mobility projects. [1998 c 175 § 9.]

47.06A.900 Severability—1998 c 175. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 175 § 15.]

Chapter 47.06B RCW

COORDINATING SPECIAL NEEDS TRANSPORTATION

Sections

47.06B.010 Finding—Intent.
 47.06B.012 Definitions.
 47.06B.020 Agency council on coordinated transportation—Creation, membership, staff, meetings.
 47.06B.030 Council—Duties.
 47.06B.040 Council—Certification of regional transportation planning organization local plans.
 47.06B.050 Council—Progress report.
 47.06B.900 Council—Termination.
 47.06B.901 Repealer.

47.06B.010 Finding—Intent. (Effective until June 30, 2011.) The legislature finds that transportation systems for persons with special needs are not operated as efficiently as possible. In too many cases, programs established by the legislature to assist persons with special needs can not be accessed due to these inefficiencies and coordination barriers.

It is the intent of the legislature that public transportation agencies, pupil transportation programs, private nonprofit transportation providers, and other public agencies sponsoring programs that require transportation services coordinate those transportation services. Through coordination of transportation services, programs will achieve increased efficiencies and will be able to provide more rides to a greater number of persons with special needs. [2007 c 421 § 1; 1999 c 385 § 1; 1998 c 173 § 1.]

47.06B.012 Definitions. (Effective until June 30, 2011.) The definitions in this section apply throughout this chapter.

(1) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or purchase transportation.

(2) "Special needs coordinated transportation" is transportation for persons with special transportation needs that is developed through a collaborative community process involving transportation providers; human service programs and agencies; consumers; social, educational, and health service providers; employer and business representatives; employees and employee representatives; and other affected parties. [1999 c 385 § 2.]

47.06B.020 Agency council on coordinated transportation—Creation, membership, staff, meetings. (Effective until June 30, 2011.) (1) The agency council on coordinated transportation is created. The council is composed of ten voting members and four nonvoting, legislative members.

(2) The ten voting members are the superintendent of public instruction or a designee, the secretary of transportation or a designee, the secretary of the department of social and health services or a designee, and seven members appointed by the governor as follows:

- (a) One representative from the office of the governor;
- (b) Three persons who are consumers of special needs transportation services, which must include:
 - (i) One person designated by the executive director of the governor's committee on disability issues and employment; and
 - (ii) One person who is designated by the executive director of the developmental disabilities council;

- (c) One representative from the Washington association of pupil transportation;
- (d) One representative from the Washington state transit association; and

- (e) One of the following:
 - (i) A representative from the community transportation association of the Northwest; or
 - (ii) A representative from the community action council association.

(3) The four nonvoting members are legislators as follows:

- (a) Two members from the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives, including at least one member from the house transportation policy and budget committee or the house appropriations committee; and
- (b) Two members from the senate, one from each of the two largest caucuses, appointed by the president of the senate, including at least one member from the senate transportation committee or the senate ways and means committee.

(4) Gubernatorial appointees of the council will serve two-year terms. Members may not receive compensation for their service on the council, but will be reimbursed for actual and necessary expenses incurred in performing their duties as members as set forth in RCW 43.03.220.

(5) The secretary of transportation or a designee shall serve as the chair.

(6) The department of transportation shall provide necessary staff support for the council.

(7) The council may receive gifts, grants, or endowments from public or private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the council and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710.

(8) The meetings of the council must be open to the public, with the agenda published in advance, and minutes kept and made available to the public. The public notice of the meetings must indicate that accommodations for persons with disabilities will be made available upon request.

(9) All meetings of the council must be held in locations that are readily accessible to public transportation, and must be scheduled for times when public transportation is available.

(10) The council shall make an effort to include presentations by and work sessions including persons with special transportation needs. [2007 c 421 § 2; 1998 c 173 § 2.]

47.06B.030 Council—Duties. (Effective until June 30, 2011.) (1) To assure implementation of an effective system of coordinated transportation that meets the needs of persons with special transportation needs, the agency council on coordinated transportation shall adopt a biennial work plan that must, at a minimum:

(a) Focus on projects that identify and address barriers in laws, policies, and procedures;

(b) Focus on results; and

(c) Identify and advocate for transportation system improvements for persons with special transportation needs.

(2) The council shall, as necessary, convene work groups at the state, regional, or local level to develop and implement coordinated approaches to special needs transportation.

(3) To improve the service experienced by persons with special transportation needs, the council shall develop statewide guidelines for customer complaint processes so that information about policies regarding the complaint processes is available consistently and consumers are appropriately educated about available options. To be eligible for funding on or after January 1, 2008, organizations applying for state paratransit/special needs grants as described in section 226(1), chapter 370, Laws of 2006 must implement a process following the guidelines established by the council.

(4) The council shall represent the needs and interests of persons with special transportation needs in statewide efforts for emergency and disaster preparedness planning by advising the emergency management council on how to address transportation needs for high-risk individuals during and after disasters. [2007 c 421 § 3. Prior: 1999 c 385 § 5; (1999 c 372 § 13 repealed by 2007 c 421 § 10); 1998 c 173 § 3.]

47.06B.040 Council—Certification of regional transportation planning organization local plans. (Effective until June 30, 2011.) The agency council on coordinated transportation shall review and recommend certification of

local plans developed by regional transportation planning organizations based on meeting federal requirements. Each regional transportation planning organization must submit to the council an updated plan that includes the elements, consistent with federal planning requirements, identified by the council beginning on July 1, 2007, and every four years thereafter.

Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list. [2007 c 421 § 4; 1999 c 385 § 6.]

47.06B.050 Council—Progress report. (Effective until June 30, 2011.) The agency council on coordinated transportation shall submit a progress report on council activities to the legislature by December 1, 2009, and every other year thereafter. The report must describe the council's progress in attaining the applicable goals identified in the council's biennial work plan and highlight any problems encountered in achieving these goals. The information will be reported in a form established by the council. [2007 c 421 § 6.]

47.06B.900 Council—Termination. The agency council on coordinated transportation is terminated on June 30, 2010, as provided in RCW 47.06B.901. [2007 c 421 § 8; 1999 c 385 § 7; 1998 c 173 § 6.]

47.06B.901 Repealer. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2011:

(1) RCW 47.06B.010 and 2007 c 421 § 1, 1999 c 385 § 1, & 1998 c 173 § 1;

(2) RCW 47.06B.012 and 1999 c 385 § 2;

(3) RCW 47.06B.020 and 2007 c 421 § 2 & 1998 c 173 § 2;

(4) RCW 47.06B.030 and 2007 c 421 § 3, 1999 c 385 § 5, & 1998 c 173 § 3;

(5) RCW 47.06B.040 and 2007 c 421 § 4 & 1999 c 385 § 6; and

(6) RCW 47.06B.050 and 2007 c 421 § 6. [2007 c 421 § 9; 1999 c 385 § 8; 1998 c 173 § 7.]

Chapter 47.08 RCW HIGHWAY FUNDS

Sections

47.08.010	Control of allocated funds.
47.08.020	State to match federal funds.
47.08.040	Contracts with United States as to state highway property.
47.08.050	Contracts with United States—Governor to execute instrument to the United States.
47.08.060	Contracts with United States—Disposal of funds from the United States.
47.08.070	Cooperation in public works projects, urban public transportation systems.
47.08.080	Funds when department is in charge of county road improvements.
47.08.090	Funds when department is in charge of city street improvements.
47.08.100	Illegal use of county or city road funds—Procedure to correct.
47.08.110	Misuse of county or city road funds—General penalty.
47.08.120	Transportation equipment fund.

- 47.08.121 Transportation equipment fund declared revolving fund of proprietary nature—Use.
 47.08.130 Custody of federal funds—Disbursement.

Highway funds, constitutional limitations: State Constitution Art. 2 § 40 (Amendment 18).

47.08.010 Control of allocated funds. Whenever there is provided an allocation for the construction or improvement of state highways, the allocation shall be under the sole charge and direct control of the department. [1984 c 7 § 92; 1961 c 13 § 47.08.010. Prior: 1937 c 53 § 32, part; RRS § 6400-32, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.020 State to match federal funds. For the construction, alteration, repair and improvement of state highways, county roads, or city and town streets in the state of Washington which are part of the public highway system, the good faith of the state of Washington is hereby pledged to make available funds sufficient to equal the sums appropriated to the state by or under the United States government during succeeding fiscal years and to use and expend the same within one year after the fiscal year for which appropriated, and in the manner and under the rules and regulations imposed by the secretary of commerce and to maintain, or cause to be maintained, the highways or roads constructed or improved with the aid of funds so appropriated, and to make adequate provisions for carrying out such maintenance. [1961 c 13 § 47.08.020. Prior: 1937 c 53 § 46; RRS § 6400-46; 1917 c 76 § 3; RRS § 6846.]

47.08.040 Contracts with United States as to state highway property. Whenever it is necessary or desirable for the federal government or any agency thereof to acquire an interest in or in any way damage any property or interest therein owned by the state of Washington and used in connection with any highway in the state of Washington in connection with any federal project for the development of any river within or partially within the state of Washington, the department is authorized, empowered, and directed to negotiate and enter into an agreement with the proper agency of the federal government as to the rights which shall be acquired, the compensation which shall be made therefor and the character of instruments by which the rights shall be conveyed, and as to any other matters which may be necessary in order to satisfy the requirements of the federal government. If the agreement is required to be reduced to writing, the writing shall be approved as to form by the attorney general of the state of Washington. [1984 c 7 § 93; 1961 c 13 § 47.08.040. Prior: 1937 c 113 § 1; RRS § 6450-91.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.050 Contracts with United States—Governor to execute instrument to the United States. Whenever the department has entered into an agreement under RCW 47.08.040 with the federal government or any agency thereof requiring the execution of any deed, flowage easement, or instrument of any nature, to the federal government or agency, and the instrument is approved as to form by the attorney general of the state of Washington, the governor of the state of Washington is authorized and directed without

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further authority and in the name of the state of Washington to execute and deliver to the proper agency of the federal government any such instrument or instruments which shall be, when attested by the secretary of state, binding upon the state of Washington. [1984 c 7 § 94; 1961 c 13 § 47.08.050. Prior: 1937 c 113 § 2; RRS § 6450-92.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.060 Contracts with United States—Disposal of funds from the United States. Whenever any moneys shall be realized by the state of Washington as a result of any agreement authorized by RCW 47.08.040, the same shall be deposited in the treasury of the state of Washington to the credit of the motor vehicle fund, and shall be available for highway purposes only. [1967 ex.s. c 145 § 45; 1961 c 13 § 47.08.060. Prior: 1937 c 113 § 3; RRS § 6450-93.]

47.08.070 Cooperation in public works projects, urban public transportation systems. When it appears to the department that any state highway will be benefited or improved by the construction of any public works project, including any urban public transportation system, within the state of Washington by any of the departments of the state of Washington, by the federal government, or by any agency, instrumentality, or municipal corporation of either the state of Washington or the United States, the department is authorized to enter into cooperative agreements with any such state department, with the United States, or with any agency, instrumentality, or municipal corporation of either the state of Washington or the United States, wherein the state of Washington, acting through the department, will participate in the cost of the public works project in such amount as may be determined by the department to be the value of the benefits or improvements to the particular state highway derived from the construction of the public works project. Under any such agreement the department may contribute to the cost of the public works project by making direct payment to the particular state department, federal government, or to any agency, instrumentality, or municipal corporation of either the state or the United States, or any combination thereof, which may be involved in the project, from any funds appropriated to the department and available for highway purposes, or by doing a portion of the project either by day labor or by contract, or in any other manner as may be deemed advisable and necessary by the department. [1984 c 7 § 95; 1967 c 108 § 3; 1961 c 13 § 47.08.070. Prior: 1945 c 127 § 2; Rem. Supp. 1945 § 6400-121.]

Severability—1984 c 7: See note following RCW 47.01.141.

Urban public transportation system defined: RCW 47.04.082.

47.08.080 Funds when department is in charge of county road improvements. If any funds become available from the federal government or otherwise for expenditure in conjunction with county funds for the construction, alteration, repair, or improvement of any county road and the work is to be performed by the department, the state treasurer shall, upon notice from the department, set aside from any moneys in the motor vehicle fund credited to any such county, the cost thereof, together with the cost of engineering, supervision, and other proper items, or so much of the

money in the state treasury to the credit of the county as may be necessary for use in conjunction with funds from the federal government to accomplish the work. The work shall then be performed by the department and paid from the money so set aside upon vouchers approved and submitted by the department in the same manner as payment is made for such work on state highways: PROVIDED, That the legislative authority of any such county shall have, by proper resolution, filed in duplicate in the office of the department and approved by it, determined the county road construction, alteration, repair, or improvement to be performed in such county and the same is found to conform in all respects to the requirements necessary for the use of such funds of the federal government. [1984 c 7 § 96; 1973 c 106 § 22; 1961 c 13 § 47.08.080. Prior: 1937 c 187 § 59; RRS § 6450-59.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.090 Funds when department is in charge of city street improvements. If any funds become available from the federal government or otherwise for expenditure in conjunction with funds accruing to any incorporated city or town for the construction, alteration, repair, or improvement of its city streets designated as forming a part of the route of any state highway through the incorporated city or town and the work is to be performed by the department, the state treasurer shall, upon notice from the department, set aside from any moneys in the motor vehicle fund credited to the incorporated city or town, the cost thereof or so much money in the state treasury to the credit of the incorporated city or town as may be necessary in conjunction with the funds from the federal government or otherwise to accomplish the work, the cost to be paid by the state treasurer from the money so set aside upon vouchers approved and submitted by the department in the same manner as payment is made for work on state highways. If any such incorporated city or town has agreed with the state of Washington or the federal government as a condition precedent to the acquiring of federal funds for construction on any city street of the incorporated city or town designated as forming a part of the route of any state highways, that the street will be maintained to a standard and the incorporated city or town fails to so maintain the city street, then the department may perform the maintenance, and the state treasurer is authorized to deduct the cost thereof from any funds credited or to be credited to the incorporated city or town and pay the same on vouchers approved and submitted by the department in the same manner as payment is made for work performed on state highways. [1984 c 7 § 97; 1973 c 106 § 23; 1961 c 13 § 47.08.090. Prior: 1937 c 187 § 65; RRS § 6450-65.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.100 Illegal use of county or city road funds—Procedure to correct. The department is authorized from time to time to investigate expenditures from the county road fund and the city street fund; and if it determines that unauthorized, illegal, or wrongful expenditures are being or have been made from the fund it is authorized to proceed as follows: If the county road fund is involved it shall notify in writing the county legislative authority and the county treasurer of its determination; and if the city street fund is

involved it shall notify the city council or commission and the mayor and city treasurer of the city or town of its determination. In its determination the department is authorized to demand of those officials that the wrongful or illegal expenditures shall be stopped, adjusted, or remedied and that restitution of any wrongful or illegal diversion or use shall be made; and it may notify the officials that if the wrong is not stopped, remedied, or adjusted, or restitution made to its satisfaction within a specified period fixed by it, it will direct the withholding of further payments to the county or city from the motor vehicle fund. The county or city shall have ten days after the notice is given within which to correct or remedy the wrong, or wrongful and illegal practices, to make restitution, or to adjust the matter to the satisfaction of the department.

If no correction, remedy, adjustment, or restitution is made within ten days to the satisfaction of the department, it has power to request in writing that the state treasurer withhold further payments from the motor vehicle fund to the county or city; and it is the duty of the state treasurer upon being so notified to withhold further payments from the motor vehicle fund to the county or city involved until the officials are notified in writing by the department that payments may be resumed.

The department is also authorized to notify in writing the prosecuting attorney of the county in which the violation occurs of the facts, and it is the duty of the prosecuting attorney to file charges and to criminally prosecute any and all persons guilty of any such violation. [1984 c 7 § 98; 1973 c 106 § 24; 1961 c 13 § 47.08.100. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.08.110 Misuse of county or city road funds—General penalty. It shall be unlawful and a misdemeanor, unless the same is by this title or other law of this state declared to be a felony or gross misdemeanor, to divert or use, or authorize, permit or participate in the diversion or use of any moneys in the county road fund or in the city street fund for any other purpose or in any other manner than that authorized by law. [1961 c 13 § 47.08.110. Prior: 1943 c 82 § 13, part; 1937 c 187 § 66, part; Rem. Supp. 1943 § 6450-66, part.]

47.08.120 Transportation equipment fund. There is hereby created in the state treasury a state fund to be known as the "transportation equipment fund," the same to be used by the department of transportation as a revolving fund to be expended for salaries, wages and operations required for the repair, replacement, purchase and operation of equipment and for purchase of equipment, materials and supplies to be used as follows: (1) In the administration and operation of this fund; and (2) in the administration, maintenance and construction of highways and transportation facilities.

The transportation equipment fund shall be credited, in the case of equipment, with a reasonable rental assessed upon the use of such equipment by the various state departments, and in the case of materials and supplies, with a reasonable charge for such materials and supplies. Such credit for rental and charges for materials and supplies shall be charged against the proper appropriation therefor.

Equipment may be rented and materials and supplies may be sold out of this fund to any federal, state, county or city political subdivision or governmental agency. The terms and charges for such rental and the prices for such sale shall be solely within the discretion of the department of transportation and its determination of the charge for rental or sale price shall be considered a reasonable rental charge or a reasonable sale price. Any political subdivision or governmental agency shall make payment for such rental or for purchase of such materials or supplies directly to the transportation equipment fund at the office of the department of transportation at Olympia. [1979 c 39 § 1; 1961 c 13 § 47.08.120. Prior: 1943 c 135 § 1; 1935 c 144 § 10; Rem. Supp. 1943 § 6600-1c.]

47.08.121 Transportation equipment fund declared revolving fund of proprietary nature—Use. The "highway equipment fund" as established by RCW 47.08.120 is declared to be a revolving fund of a proprietary nature and moneys that are or will be deposited in this fund are hereby authorized for expenditures for the purposes provided by law. [1961 c 13 § 47.08.121. Prior: 1959 c 326 § 3.]

47.08.130 Custody of federal funds—Disbursement. The state treasurer is hereby authorized and directed to receive and have custody of such funds and warrants drawn by the secretary of transportation or other authorized agent of the United States as are made available for payment by the secretary of the treasury of the United States under the provisions of the federal aid road act approved July 11, 1916, and all acts amendatory or supplementary thereto, disbursing the same under such terms and conditions as may be prescribed by the secretary of transportation or by the secretary of the treasury or other authorized agent of the United States. The state treasurer is further authorized and directed to pay from the motor vehicle fund for the use of the department such funds as may be necessary upon any project in anticipation of reimbursement by the government of the United States. [1984 c 7 § 99; 1961 c 13 § 47.08.130. Prior: 1937 c 53 § 45; RRS § 6400-45; 1931 c 129 § 1; 1929 c 146 § 1; 1927 c 214 § 1; 1925 c 4 § 1; 1923 c 41 § 1; 1921 c 89 § 1; 1919 c 56 § 1; RRS § 6850.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.10 RCW

HIGHWAY CONSTRUCTION BONDS

Sections

FIRST PRIORITY PROJECT—1951 ACT

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FIRST PRIORITY PROJECT—1951 ACT

47.10.010 First priority highway projects—Declaration of. Reconstruction of primary state highway No. 1 from Oregon to British Columbia, construction of four traffic lanes at Snoqualmie Pass, construction of an adequate highway bridge from Pasco to Kennewick and construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of lands for settlement in the Columbia Basin irrigation project, are declared to be highway projects of the first priority. The construction of such projects is required in the interest of the public safety and for the orderly development of the state. The reimbursement of the motor vehicle fund for money used to purchase Agate Pass Bridge bonds will also make possible other war emergency or high priority highway construction. The threat of war makes acceleration of construction a vital necessity at this time. [1961 c 13 § 47.10.010. Prior: 1951 c 121 § 1.]

47.10.020 Bond issue authorized—Use of motor vehicle fund. To provide funds for accelerating construction of these first priority projects, and to reimburse the motor vehicle fund for money expended for Agate Pass Bridge construction there shall be issued and sold limited obligation bonds of the state of Washington in the sum of sixty-six million seven hundred three thousand, six hundred and twenty-five dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of the first priority projects: PROVIDED, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands such funds may be used to finance these first priority projects until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.020. Prior: 1955 c 117 § 1; 1951 c 121 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.10.030 Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance com-

mittee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.010 through 47.10.140 shall be fully negotiable instruments. [1961 c 13 § 47.10.030. Prior: 1951 c 121 § 3.]

47.10.040 Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.010 through 47.10.140 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.010 through 47.10.140, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.010 through 47.10.140 when due. [1961 c 13 § 47.10.040. Prior: 1951 c 121 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020 were repealed by 1971 ex.s. c 175 § 33; for later enactment see chapter 82.38 RCW.

47.10.050 Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 shall be legal investment for any of the funds of the state, except the permanent school fund: PROVIDED, That bonds authorized herein to reimburse the motor vehicle fund for the cost of the Agate Pass Bridge construction shall be sold at the earliest date which the committee finds feasible. [1961 c 13 § 47.10.050. Prior: 1951 c 121 § 5.]

47.10.060 Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of such

first priority projects, reimbursement of the motor vehicle fund for money expended for construction of the Agate Pass Bridge in order to make such money available for war emergency highway projects or other high priority highway uses, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.060. Prior: 1951 c 121 § 6.]

47.10.070 Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: PROVIDED, That money required hereunder to pay interest on or to retire any bonds issued for Columbia Basin county arterial highways or farm to market roads shall be repaid by any such county or counties wherein such highways or roads are constructed in the manner set forth in RCW 47.10.110. [1984 c 7 § 100; 1961 c 13 § 47.10.070. Prior: 1951 c 121 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.080 Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.070, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.080. Prior: 1951 c 121 § 8.]

47.10.090 Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior

redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.090. Prior: 1951 c 121 § 11.]

47.10.100 Allocation of bonds. The bonds authorized herein are allocated to the first priority projects as follows:

(1) Forty-nine million two hundred fifty thousand dollars of the total issue for the acceleration of the reconstruction of primary state highway No. 1, said amount to be expended on said primary state highway No. 1 as follows: Thirty-three million five hundred thousand dollars between Everett, Seattle, Tacoma, Olympia, Chehalis, Centralia, Kelso, Vancouver, and the Oregon boundary line, and fifteen million seven hundred fifty thousand dollars between Everett and the Canadian boundary line;

(2) Six million five hundred thousand dollars of the total issue for the construction of the highway bridge from Pasco to Kennewick;

(3) Four million two hundred fifty thousand dollars of the total issue for the construction of a four lane highway at Snoqualmie Pass;

(4) Five million dollars of the total issue for the construction of Columbia Basin county arterial highways and farm to market roads in Grant, Franklin and Adams counties, for which the state must be reimbursed as provided in RCW 47.10.110; and

(5) One million seven hundred three thousand six hundred twenty-five dollars of the total issue for reimbursement of the motor vehicle fund for money spent for Washington toll bridge authority bonds purchased in connection with the construction of the Agate Pass Bridge, said sum of one million seven hundred three thousand six hundred twenty-five dollars to be used when it becomes available in the motor vehicle fund, under allotments to be made by the director of highways, for war emergency or other high priority highway projects: PROVIDED, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1961 c 13 § 47.10.100. Prior: 1951 c 121 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.110 Columbia Basin highway projects—Reimbursement by counties. The secretary shall report separately to the state finance committee all sums expended from funds resulting from the sale of bonds for Columbia Basin county arterial highways and farm to market roads in Grant, Franklin, and Adams counties under the provisions of RCW 47.10.010 through 47.10.140. Those counties shall repay to the state all the cost of any Columbia Basin highway or road facilities actually constructed under the provisions of RCW 47.10.010 through 47.10.140 within each of such counties as follows: The state finance committee, at least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the

percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds chargeable to expenditures incurred under the provisions of RCW 47.10.010 through 47.10.140 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from the excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.010 through 47.10.140 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 101; 1961 c 13 § 47.10.110. Prior: 1951 c 121 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.120 Columbia Basin highway projects—Limit as to amounts currently retained. The sums retained from motor vehicle funds arising from the excise taxes on motor vehicle fuel, of any such counties shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such Columbia Basin highway facilities is paid. [1961 c 13 § 47.10.120. Prior: 1951 c 121 § 10.]

47.10.130 Agate Pass Bridge to become toll free—Cancellation of Agate Pass bonds. When the state finance committee has made arrangements for the sale of sufficient bonds to reimburse the motor vehicle fund in the sum of one million seven hundred three thousand six hundred twenty-five dollars as aforesaid, the committee shall notify the Washington toll bridge authority and the authority is thereafter directed to transfer the Agate Pass Bridge to the highway department for operation as a toll free part of the state highway system. The bonds of the authority issued to construct the Agate Pass Bridge shall then be canceled. [1961 c 13 § 47.10.130. Prior: 1951 c 121 § 13.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "Washington state toll bridge authority" and "authority" mean department of transportation; see RCW 47.04.015.

47.10.140 Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending March 31, 1953 the sum of sixty-six million seven hundred three thousand six hundred and twenty-five dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.010 through 47.10.140, but no money shall be available under this appropriation from said fund unless a like amount of the bonds provided for herein are sold and the money derived deposited to the credit of such fund. [1961 c 13 § 47.10.140. Prior: 1951 c 121 § 15.]

(2008 Ed.)

ADDITIONAL BONDS—1953 ACT

47.10.150 Declaration of necessity for additional funds. Increased construction costs for highway and bridge construction since the enactment of a highway bond issue by the 1951 legislature makes necessary additional money with which to complete the sections of primary state highway No. 1 planned from funds allocated under RCW 47.10.010 through 47.10.140 and it is vital to the economy of the state and the safety of the traffic that these sections shall be completed to relieve traffic congestions, to add capacity in event of war, and to presently insure greater safety to highway users; the rapid increase of traffic across Snoqualmie Pass necessitates continued improvement of primary state highway No. 2 to provide four-lane paving contiguous to Snoqualmie Pass as the funds will permit; the rapid increase of traffic and the facilitation of movement of military forces and equipment from the military centers of the state makes imperative the construction of a highway from primary state highway No. 2 beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by the way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton; said highway to follow approximately the route surveyed by the director of highways and covered in the report filed by him with the 1951 legislature commonly known as the "Echo Lake Route," as the funds provided for herein will permit; the construction of secondary state highways in to the Columbia Basin area is immediately necessary to provide needed state arterial highways for the irrigated lands of the Columbia Basin areas to market centers and thereby encourage the full development of the basin project. The construction of such projects is required in the interest of the public safety and for the orderly development of the state. The threat of war makes acceleration of construction a vital necessity at this time. [1961 c 13 § 47.10.150. Prior: 1953 c 154 § 1.]

Reviser's note: Powers, duties, and functions of director of highways transferred to department of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.160 Additional bonds—Issuance and sale authorized—Use of motor vehicle fund. To provide funds for accelerating construction of these priority projects there shall be issued and sold limited obligation bonds of the state of Washington in the sum of eighteen million dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of the first priority projects: PROVIDED, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands such funds may be used to finance these first priority projects until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.160. Prior: 1955 c 117 § 2; 1953 c 154 § 2.]

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Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.10.170 Additional bonds—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.150 through 47.10.270 shall be fully negotiable instruments. [1961 c 13 § 47.10.170. Prior: 1953 c 154 § 3.]

47.10.180 Additional bonds—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.150 through 47.10.270 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.150 through 47.10.270 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.150 through 47.10.270 when due. [1961 c 13 § 47.10.180. Prior: 1953 c 154 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.190 Additional bonds—Sale of bonds. The bonds issued under RCW 47.10.150 through 47.10.270 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall be legal investment

for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.190. Prior: 1953 c 154 § 5.]

47.10.200 Additional bonds—Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of such priority projects, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.200. Prior: 1953 c 154 § 6.]

47.10.210 Additional bonds—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds. [1984 c 7 § 102; 1961 c 13 § 47.10.210. Prior: 1953 c 154 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.220 Additional bonds—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under RCW 47.10.150 through 47.10.270 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimate so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.220. Prior: 1953 c 154 § 8.]

47.10.230 Additional bonds—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax por-

tion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.230. Prior: 1953 c 154 § 9.]

47.10.240 Additional bonds—Allocation—Primary state highway No. 1. Seven million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating the completion of four-lane construction of primary state highway No. 1. [1961 c 13 § 47.10.240. Prior: 1953 c 154 § 10.]

47.10.250 Additional bonds—Allocation—Primary state highway No. 2, Snoqualmie Pass. Five million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating four-lane construction of primary state highway No. 2 contiguous to Snoqualmie Pass. [1961 c 13 § 47.10.250. Prior: 1953 c 154 § 11.]

47.10.260 Additional bonds—Allocation—Columbia Basin highways. Three million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated for accelerating the construction of secondary state highways in the Columbia Basin area. [1961 c 13 § 47.10.260. Prior: 1953 c 154 § 12.]

47.10.270 Additional bonds—Allocation—Echo Lake route. Three million dollars of the total issue of the bonds authorized by RCW 47.10.150 through 47.10.270 are allocated insofar as said funds will permit to the construction of a highway from primary state highway No. 2 beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by the way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton. [1961 c 13 § 47.10.270. Prior: 1953 c 154 § 13.]

ADDITIONAL BONDS—1955 ACT

47.10.280 Construction in Grant, Franklin, Adams counties authorized—Declaration of priority. Construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of lands for settlement in the Columbia Basin irrigation project, is declared to be a project of the first priority. The construction of said project is required in the interest of the public safety and for the orderly development of the state. [1961 c 13 § 47.10.280. Prior: 1955 c 311 § 1.]

47.10.290 Construction in Grant, Franklin, Adams counties authorized—Issuance and sale of bonds. To provide funds for construction of this first priority project, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of four million three hundred thousand dollars.

The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the director of highways, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly

progress of construction of this first priority project. [1961 c 13 § 47.10.290. Prior: 1955 c 311 § 2.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.300 Construction in Grant, Franklin, Adams counties authorized—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signatures may be printed facsimile. Any bonds may be registered in the name of the holder by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.280 through 47.10.400 shall be fully negotiable instruments. [1961 c 13 § 47.10.300. Prior: 1955 c 311 § 3.]

47.10.310 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.280 through 47.10.400 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW, and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400; and *chapter 82.40 RCW and RCW 82.40.020. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.280 through 47.10.400. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.280 through 47.10.400 when due. [1961 c 13 § 47.10.310. Prior: 1955 c 311 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.320 Construction in Grant, Franklin, Adams counties authorized—Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee. They may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If such bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale. It shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.320. Prior: 1955 c 311 § 5.]

47.10.330 Construction in Grant, Franklin, Adams counties authorized—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of this first priority project, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.330. Prior: 1955 c 311 § 6.]

47.10.340 Construction in Grant, Franklin, Adams counties authorized—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes. They shall never constitute a charge against any allocation of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: PROVIDED, That money required hereunder to pay interest on or to retire any bonds issued for Columbia Basin county arterial highways or farm to market roads shall be repaid by any such county or counties wherein such highways or roads are constructed in the manner set forth in RCW 47.10.360. [1984 c 7 § 103; 1961 c 13 § 47.10.340. Prior: 1955 c 311 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.350 Construction in Grant, Franklin, Adams counties authorized—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.340, the percentage of receipts in money of the motor vehicle fuels, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.350. Prior: 1955 c 311 § 8.]

47.10.360 Construction in Grant, Franklin, Adams counties authorized—Reimbursement by counties. The secretary shall report to the state finance committee all sums expended from funds resulting from the sale of bonds for

Columbia Basin county arterial highways and farm to market roads in Grant, Franklin, and Adams counties under the provisions of RCW 47.10.280 through 47.10.400. Those counties shall repay to the state all the cost of any Columbia Basin highway or road facilities actually constructed under the provisions of RCW 47.10.280 through 47.10.400 within each of those counties as follows: The state finance committee, at least one year prior to the date any such interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds chargeable to expenditures incurred under the provisions of RCW 47.10.280 through 47.10.400 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from such excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under RCW 47.10.280 through 47.10.400 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 104; 1961 c 13 § 47.10.360. Prior: 1955 c 311 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.370 Construction in Grant, Franklin, Adams counties authorized—Limit as to amounts currently retained from excise taxes. The sums retained from motor vehicle funds, arising from the excise taxes on motor vehicle fuel, of any such counties shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such Columbia Basin highway facilities is paid. [1961 c 13 § 47.10.370. Prior: 1955 c 311 § 10.]

47.10.380 Construction in Grant, Franklin, Adams counties authorized—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.380. Prior: 1955 c 311 § 11.]

47.10.390 Construction in Grant, Franklin, Adams counties authorized—Allocation of funds to each county. The bonds authorized herein are allocated to the counties as follows:

(1) For Adams county—six hundred thousand dollars.

(2) For Franklin county—one million five hundred thousand dollars.

(3) For Grant county—two million two hundred thousand dollars:

PROVIDED, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1961 c 13 § 47.10.390. Prior: 1955 c 311 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.400 Construction in Grant, Franklin, Adams counties authorized—Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1957 the sum of four million three hundred thousand dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.280 through 47.10.400, but no money shall be available under this appropriation from said fund unless a like amount of the bonds provided for herein are sold and the money derived deposited to the credit of such fund. [1961 c 13 § 47.10.400. Prior: 1955 c 311 § 13.]

ADDITIONAL BONDS—1957 ACT

47.10.410 Echo Lake route—Declaration of necessity. Increased costs for highway and bridge construction since the enactment of the highway bond issues authorized by the 1951, 1953 and 1955 legislatures makes necessary additional money with which to complete that portion of primary state highway No. 2, beginning approximately four miles west of North Bend thence southwesterly by the most feasible route by way of Auburn to a junction with primary state highway No. 1 in the vicinity of Milton, commonly known as the "Echo Lake Route." It is vital to the economy of the state and traffic safety that this project be constructed as soon as the funds provided herein will permit. [1961 c 13 § 47.10.410. Prior: 1957 c 206 § 1.]

47.10.420 Echo Lake route—Additional bond issue authorized—Use of motor vehicle fund. To provide additional funds for the construction of the "Echo Lake Route," in addition to bonds authorized to be sold by RCW 47.10.160 and as allocated by RCW 47.10.270, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of three million dollars. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall when notified by the Washington state highway commission, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this project: PROVIDED, That if funds are available in the motor vehicle fund in an amount greater than is necessary to pay current demands, moneys appropriated to

the state highway commission for highway purposes may be used to finance this project until such time as bonds are sold, as provided by law, at which time the motor vehicle fund shall be reimbursed. [1961 c 13 § 47.10.420. Prior: 1957 c 206 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Terms "Washington state highway commission" and "state highway commission" mean department of transportation; see RCW 47.04.015.

47.10.430 Echo Lake route—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption bearing such interest, and such terms and conditions as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.410 through 47.10.500 shall be fully negotiable instruments. [1961 c 13 § 47.10.430. Prior: 1957 c 206 § 3.]

47.10.440 Echo Lake route—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.410 through 47.10.500 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.410 through 47.10.500 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949, and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.410 through 47.10.500 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.410 through 47.10.500. [1961 c 13 § 47.10.440. Prior: 1957 c 206 § 4.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.450 Echo Lake route—Sale of bonds. The bonds issued under the terms of RCW 47.10.410 through 47.10.500 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to

any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.450. Prior: 1957 c 206 § 5.]

47.10.460 Echo Lake route—Proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project referred to in RCW 47.10.410, and payment of the expense incurred in the printing, issuance and sale of any such bonds. [1961 c 13 § 47.10.460. Prior: 1957 c 206 § 6.]

47.10.470 Echo Lake route—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds. [1984 c 7 § 105; 1961 c 13 § 47.10.470. Prior: 1957 c 206 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.480 Echo Lake route—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under RCW 47.10.410 through 47.10.500 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.480. Prior: 1957 c 206 § 8.]

47.10.490 Echo Lake route—Excess sums in bond retirement fund—Use. Whenever the percentage of the

motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1961 c 13 § 47.10.490. Prior: 1957 c 206 § 9.]

47.10.500 Echo Lake route—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1959 the sum of three million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.410 through 47.10.500, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the moneys derived therefrom are deposited to the credit of such fund. [1961 c 13 § 47.10.500. Prior: 1957 c 206 § 10.]

TACOMA-SEATTLE-EVERETT FACILITY—1957 ACT

47.10.700 Tacoma-Seattle-Everett facility—Declaration of necessity. Increased traffic and increased costs of highway and bridge construction make necessary additional moneys with which to complete the sections of primary state highway No. 1 through and between the cities of Tacoma, Seattle, and Everett and as an additional alternate route bypassing Seattle east of Lake Washington. It is vital to the economy of the state and the safety of traffic that these sections shall be completed to relieve traffic congestions, to insure greater safety to highway users, and to assure an adequate through highway to accommodate traffic from bridges across Lake Washington as soon as possible. [1961 c 13 § 47.10.700. Prior: 1957 c 189 § 1.]

47.10.702 Tacoma-Seattle-Everett facility—To be part of federal system as limited access—Federal standards and conditions to be met. This highway project shall be constructed as a part of the federal interstate highway system as a fully controlled limited access facility and shall meet the standards and specifications required by the state of Washington and the secretary of commerce of the United States in order to qualify for federal grants in aid as provided for in the federal-aid highway act of 1956. The state shall perform all conditions precedent to payment in advance of apportionment as provided by section 108(h) of the federal-aid highway act of 1956 so as to be entitled to federal aid funds for the project covered by RCW 47.10.700 through 47.10.724 when such funds are apportioned. [1961 c 13 § 47.10.702. Prior: 1957 c 189 § 2.]

47.10.704 Tacoma-Seattle-Everett facility—Powers and duties of highway commission—Route of project. In order to facilitate vehicular traffic through and between the cities of Tacoma, Seattle and Everett and to remove the present handicaps and hazards over and along primary state highway No. 1 as presently established, the state highway

commission is authorized to realign, redesign and reconstruct primary state highway No. 1 upon a newly located right-of-way or upon portions of existing right-of-way through and between the cities of Tacoma, Seattle and Everett and as an additional alternate route bypassing Seattle east of Lake Washington. The route of the proposed project is established as follows: Beginning in the vicinity of Ponders Corner, thence in a general northeasterly and northerly direction through the cities of Tacoma and Seattle to a point in the vicinity of the city of Everett and as an additional alternate route bypassing Seattle east of Lake Washington. [1961 c 13 § 47.10.704. Prior: 1957 c 189 § 3.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "state highway commission" means department of transportation; see RCW 47.04.015.

47.10.706 Tacoma-Seattle-Everett facility—Issuance and sale of bonds authorized. In order to finance the immediate construction of the project referred to in RCW 47.10.700 pending receipt of federal grants in aid and in accordance with the federal-aid highway act of 1956, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of forty-five million dollars or such amount thereof and at such times as determined to be necessary by the state highway commission. No bonds shall be issued under the provisions of RCW 47.10.700 through 47.10.724 until the congress of the United States shall approve the estimated cost of completing the federal interstate system to be submitted to it within ten days subsequent to January 2, 1958, as provided by section 108(d), federal-aid highway act of 1956. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1967 ex.s. c 7 § 1; 1961 c 13 § 47.10.706. Prior: 1957 c 189 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Terms "state highway commission" and "Washington state highway commission" mean department of transportation; see RCW 47.04.015.

47.10.708 Tacoma-Seattle-Everett facility—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state auditor under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as

the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1961 c 13 § 47.10.708. Prior: 1957 c 189 § 5.]

47.10.710 Tacoma-Seattle-Everett facility—Sale of bonds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 shall be legal investment for any of the funds of the state, except the permanent school fund. [1961 c 13 § 47.10.710. Prior: 1957 c 189 § 6.]

47.10.712 Tacoma-Seattle-Everett facility—Proceeds from bonds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project referred to in RCW 47.10.700, 47.10.702 and 47.10.704, and for payment of the expense incurred in the drafting, printing, issuance, and sale of any such bonds. [1961 c 13 § 47.10.712. Prior: 1957 c 189 § 7.]

47.10.714 Tacoma-Seattle-Everett facility—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.700 through 47.10.724 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and *chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.700 through 47.10.724, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.700 through 47.10.724. [1961 c 13 § 47.10.714. Prior: 1957 c 189 § 8.]

***Reviser's note:** Chapter 82.40 RCW and RCW 82.40.020, see note following RCW 47.10.040.

47.10.716 Tacoma-Seattle-Everett facility—Source of funds for payment of principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any

allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 106; 1961 c 13 § 47.10.716. Prior: 1957 c 189 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.718 Tacoma-Seattle-Everett facility—Additional security for payment of bonds—Pledge of federal funds. As additional security for payment of the principal amount of any or all of the bonds to be issued hereunder, the state finance committee, with the consent of the department, may pledge all or any portion of the federal aid funds received or from time to time to be received by the state from the United States under the provisions of the federal-aid highway act of 1956 for the construction of all or any part of the project referred to in RCW 47.10.700, 47.10.702, and 47.10.704. [1984 c 7 § 107; 1961 c 13 § 47.10.718. Prior: 1957 c 189 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.720 Tacoma-Seattle-Everett facility—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.716, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which, together with federal funds which may be pledged as provided in RCW 47.10.718, shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1961 c 13 § 47.10.720. Prior: 1957 c 189 § 11.]

47.10.722 Tacoma-Seattle-Everett facility—Excess sums in bond retirement fund—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels and the federal funds which may be pledged as provided in RCW 47.10.718, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle

fund at the next interest or bond payment period. [1961 c 13 § 47.10.722. Prior: 1957 c 189 § 12.]

47.10.724 Tacoma-Seattle-Everett facility—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1959 the sum of forty-five million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.700 through 47.10.724, but no money shall be available under this appropriation from said fund unless a like amount of bonds provided for herein are sold and the money derived therefrom deposited to the credit of such fund. [1967 ex.s. c 7 § 2; 1961 c 13 § 47.10.724. Prior: 1957 c 189 § 13.]

ADDITIONAL BONDS—1965 ACT

47.10.726 Construction in Grant, Franklin, Adams counties authorized—Declaration of public interest. Construction of county arterial highways and farm to market roads in Grant, Franklin and Adams counties to coincide with the opening of additional lands for settlement in the Columbia Basin irrigation project, is declared to be a project required in the interest of the public safety and for the orderly development of the state. [1965 c 121 § 1.]

47.10.727 Construction in Grant, Franklin, Adams counties authorized—Issuance and sale of limited obligation bonds. To provide funds for construction of this project, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of one million eight hundred and fifty thousand dollars.

The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee. The state finance committee shall, when notified by the director of highways, provide for the issuance of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary to the orderly progress of construction of this project. [1965 c 121 § 2.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.728 Construction in Grant, Franklin, Adams counties authorized—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signatures may be printed facsimile. The coupons attached to the bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued under authority of RCW 47.10.726 through

47.10.738 shall be fully negotiable instruments. [1965 c 121 § 3.]

47.10.729 Construction in Grant, Franklin, Adams counties authorized—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.726 through 47.10.738 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.726 through 47.10.738. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.726 through 47.10.738 when due. [1965 c 121 § 4.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.10.730 Construction in Grant, Franklin, Adams counties authorized—Sale of bonds—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee. They may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The bonds shall be sold at public sale. It shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 c 121 § 5.]

47.10.731 Construction in Grant, Franklin, Adams counties authorized—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of the project authorized by RCW 47.10.726 through 47.10.738, and payment of the expense incurred in the printing, issuance and sale of any such bonds, in which expense shall be included the sum of one eighth of one percent of the amount of the issue to cover the cost of servicing said issue, such sum to be deposited in the general fund. [1965 c 121 § 6.]

47.10.732 Construction in Grant, Franklin, Adams counties authorized—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of all excise taxes on motor vehicle fuels and which is, or may be, appropriated to the department for state highway purposes. They shall never constitute a charge against any allocation of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway

purposes proves insufficient to meet the requirements for bond retirement or the interest on any bonds: PROVIDED, That money required hereunder to pay interest on or to retire any bonds issued as authorized by RCW 47.10.726 through 47.10.738 shall be repaid by the county or counties wherein the highways or roads are constructed in the manner set forth in RCW 47.10.734. [1984 c 7 § 108; 1965 c 121 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.733 Construction in Grant, Franklin, Adams counties authorized—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of receipts in money of the motor vehicle *fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, which is hereby established, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 c 121 § 8.]

***Reviser's note:** The word "fuels" appearing in the session law version of the above section has been corrected to read "fund"; see comparable provisions in RCW 47.10.080, 47.10.220, 47.10.480, and 47.10.720.

47.10.734 Construction in Grant, Franklin, Adams counties authorized—Repayment to state by Grant, Franklin and Adams counties by retention of funds. The secretary shall report to the state finance committee all sums expended from funds resulting from the sale of bonds authorized by RCW 47.10.726 through 47.10.738. Grant, Franklin, and Adams counties shall repay to the state all the cost of highway or road facilities actually constructed under the provisions of RCW 47.10.726 through 47.10.738 within each of said counties as follows: The state finance committee, at least one year prior to the date any such interest is due and payable on such bonds or before the maturity date of any such bonds, shall ascertain the percentage of the motor vehicle funds arising from the excise taxes on motor vehicle fuels, which is to be transferred to such counties under the provisions of law which will be necessary to pay all of the interest upon or retire when due all of the portion of said bonds sold under the provisions of RCW 47.10.726 through 47.10.738 in each of said counties. The state finance committee shall notify the state treasurer of this estimate and the treasurer shall thereafter, when distributions are made from the motor vehicle fund to counties, retain such percentage of the total sums credited to such counties as aforesaid in the motor vehicle fund arising from such excise taxes on motor vehicle fuels until such fund is fully reimbursed for all expenditures under

RCW 47.10.726 through 47.10.738 in Grant, Adams, and Franklin counties. Any money so retained shall be available for state highway purposes. [1984 c 7 § 109; 1965 c 121 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.735 Construction in Grant, Franklin, Adams counties authorized—Repayment, limitation as to amount of funds retained—Deficits. The sums retained from motor vehicle funds, arising from the excise taxes on motor vehicle fuel, of any such counties as provided in RCW 47.10.734, together with the sums similarly retained under the provisions of RCW 47.10.010 through 47.10.140 and RCW 47.10.280 through 47.10.400 shall not exceed in any distribution period fifty percent of the total amount to be credited to such county. If there shall be a deficit in the amount available for reimbursement of the motor vehicle fund, due to this provision, then such deficit shall continue to be a charge against any sums due any such county from the motor vehicle fund from such excise taxes until the full cost of such highway facilities is paid. [1965 c 121 § 10.]

47.10.736 Construction in Grant, Franklin, Adams counties authorized—Sums in excess of retirement requirements—Use. Whenever the percentages of the motor vehicle fund arising from excise taxes on motor fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 c 121 § 11.]

47.10.737 Construction in Grant, Franklin, Adams counties authorized—Allocation of bonds to counties—Conditions upon issuance—Use of county engineering forces. The bonds authorized herein are allocated to the counties as follows:

- (1) For Adams county—one hundred thousand dollars.
- (2) For Franklin county—four hundred fifty thousand dollars.
- (3) For Grant county—one million three hundred thousand dollars:

PROVIDED, That no bonds shall be issued for Columbia Basin county arterial highway and road purposes unless expenditures are actually required for the settlement of lands ready for irrigation in the Columbia Basin project and all construction of arterial highways and roads in such counties shall be accomplished by the engineering forces of the various counties under the supervision of the director of highways. [1965 c 121 § 12.]

Reviser's note: Powers, duties, and functions of director of highways transferred to secretary of transportation; see RCW 47.01.031. Term "director of highways" means secretary of transportation; see RCW 47.04.015.

47.10.738 Construction in Grant, Franklin, Adams counties authorized—Appropriation from motor vehicle fund. There is appropriated from the motor vehicle fund for the biennium ending June 30, 1967 the sum of one million eight hundred fifty thousand dollars, or so much thereof as

may be necessary, to carry out the provisions of RCW 47.10.726 through 47.10.738. [1965 c 121 § 13.]

ADDITIONAL BONDS—CONSTRUCTION AND IMPROVEMENT—1967 ACT

47.10.751 Additional funds—Declaration of necessity. Increased costs of construction combined with an unprecedented increase in motor vehicle use in this state have created an urgent demand for additional highway construction funds. It is vital to the economy of this state and the safety of the public that additional funds be provided for the construction of state highways. [1967 ex.s. c 7 § 3.]

47.10.752 Additional funds—Issuance and sale of limited obligation bonds. In order to provide funds for the construction and improvement of state highways, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of thirty million dollars or such amount thereof and at such times as determined to be necessary by the state highway commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the state highway commission. [1967 ex.s. c 7 § 4.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "state highway commission" means department of transportation; see RCW 47.04.015.

47.10.753 Additional funds—Form and term of bonds. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1967 ex.s. c 7 § 5.]

47.10.754 Additional funds—Sale of bonds—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state

finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 7 § 6.]

47.10.755 Additional funds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of state highways and for payment of the expenses incurred in the printing, issuance, and sale of any such bonds. [1967 ex.s. c 7 § 7.]

47.10.756 Additional funds—Bonds not general obligations—Taxes pledged. Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.751 through 47.10.760 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.751 through 47.10.760, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.751 through 47.10.760. [1967 ex.s. c 7 § 8.]

*Reviser's note: Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.10.757 Additional funds—Source of funds for payment of bond principal and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of any other such funds to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available to the state for construction of state highways proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 110; 1967 ex.s. c 7 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.758 Additional funds—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.757, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as

such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, hereby created, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 7 § 10.]

47.10.759 Additional funds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels payable into the bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 7 § 11.]

47.10.760 Additional funds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1969, the sum of thirty million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.751 through 47.10.760. [1967 ex.s. c 7 § 12.]

RESERVE FUNDS FOR HIGHWAY, STREET, AND ROAD PURPOSES—1967 ACT

47.10.761 Reserve funds—Purposes. It is the purpose of RCW 47.10.761 through 47.10.771 to provide reserve funds to the department for the following purposes:

- (1) For construction, reconstruction, or repair of any state highway made necessary by slides, storm damage, or other unexpected or unusual causes;
- (2) For construction or improvement of any state highway when necessary to alleviate or prevent intolerable traffic congestion caused by extraordinary and unanticipated economic development within any area of the state;
- (3) To advance funds to any city or county to be used exclusively for the construction or improvement of any city street or county road when necessary to alleviate or prevent intolerable traffic congestion caused by extraordinary and unanticipated economic development within a particular area of the state. Before funds provided by the sale of bonds as authorized in RCW 47.10.761 through 47.10.770, are loaned to any city or county for the purposes specified herein, the department shall enter into an agreement with the city or county providing for repayment to the motor vehicle fund of such funds, together with the amount of bond interest thereon, from the city's or the county's share of the motor vehicle funds arising from excise taxes on motor vehicle fuels, over a period not to exceed twenty-five years; and

(4) To participate in projects on state highways or projects benefiting state highways that have been selected for funding by entities other than the Washington state department of transportation and require a financing contribution by the department of transportation. [1993 sp.s. c 11 § 1; 1984 c 7 § 111; 1967 ex.s. c 7 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.762 Issuance and sale of general obligation bonds. In order to provide reserve funds for the purposes specified in RCW 47.10.761, there shall be issued and sold general obligation bonds of the state of Washington in the sum of twenty-five million dollars or such amount thereof and at such times as may be determined to be necessary by the state transportation commission. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state transportation commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued and sold from time to time in such amounts as may be necessary for the purposes enumerated in RCW 47.10.761. [1993 sp.s. c 11 § 2; 1967 ex.s. c 7 § 14.]

47.10.763 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1967 ex.s. c 7 § 15.]

47.10.764 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.10.761 through 47.10.771 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 7 § 16.]

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47.10.765 Bonds—Bond proceeds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the purposes enumerated in RCW 47.10.761 and for payment of the expense incurred in the drafting, printing, issuance and sale of any such bonds. [1967 ex.s. c 7 § 17.]

47.10.766 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.10.761 through 47.10.771 shall distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.761 through 47.10.771 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.761 through 47.10.771, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.761 through 47.10.771. [1967 ex.s. c 7 § 18.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.10.767 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due, subject to the proviso of this section, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1984 c 7 § 112; 1967 ex.s. c 7 § 19.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.768 Bonds—Pledge of federal aid funds. As additional security for payment of the principal amount of any or all of the bonds to be issued hereunder, the state finance committee, with the consent of the department, may pledge all or any portion of the federal aid funds received or from time to time to be received by the state from the United States under the provisions of the federal-aid highway act of 1956, as amended, for the construction of Washington's portion of the national system of interstate and defense highways. [1984 c 7 § 113; 1967 ex.s. c 7 § 20.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.10.769 Bonds—Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.767, the percentage of the receipts in money of the motor vehicle fund,

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resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which, together with federal funds which may be pledged as provided in RCW 47.10.768, shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 7 § 21.]

47.10.770 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor fuels and the federal funds which may be pledged as provided in RCW 47.10.768, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 7 § 22.]

47.10.771 Bonds—Appropriation from motor vehicle fund. There is hereby appropriated from the motor vehicle fund to the state highway commission for the biennium ending June 30, 1969, the sum of twenty-five million dollars, or so much thereof as may be necessary to carry out the provisions of RCW 47.10.761 through 47.10.771. [1967 ex.s. c 7 § 23.]

STATE HIGHWAYS IN URBAN AREAS

47.10.775 Issuance and sale of limited obligation bonds, terms, conditions, retirement, use of proceeds, etc. See RCW 47.26.400 through 47.26.407.

COUNTY AND CITY ARTERIALS IN URBAN AREAS

47.10.777 Issuance and sale of limited obligation bonds, terms, conditions, retirement, use of proceeds, etc. See RCW 47.26.420 through 47.26.460.

INTERSTATE 90 COMPLETION—1979 ACT

47.10.790 Issuance and sale of general obligation bonds—State route 90 improvements. (1) In order to provide funds for the location, design, right-of-way, and construction of selected interstate highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission, a total of one hundred mil-

lion dollars of general obligation bonds of the state of Washington to pay the state's share of costs for completion of state route 90 (state route 5 to state route 405) and other related state highway projects eligible for regular federal interstate funding and until December 31, 1989, to temporarily pay the regular federal share of construction of completion projects on state route 90 (state route 5 to state route 405) and other related state highway projects eligible for regular interstate funding in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: PROVIDED, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.801 shall not exceed one hundred twenty million dollars: PROVIDED FURTHER, That the transportation commission shall adopt plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122.

(2) The transportation commission may at any time find and determine that any amount of the bonds authorized in subsection (1) of this section, and not then sold, are no longer required to be issued and sold for the purposes described in subsection (1) of this section.

(3) Any bonds authorized by subsection (1) of this section that the transportation commission determines are no longer required for the purpose of paying the cost of the designated interstate highway improvements described therein shall be issued and sold, upon the request of the Washington state transportation commission, to provide funds for the location, design, right-of-way, and construction of major transportation improvements throughout the state. [2005 c 319 § 126; 1985 c 406 § 1; 1982 c 19 § 3; 1981 c 316 § 10; 1979 ex.s. c 180 § 1.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Severability—1982 c 19: See note following RCW 47.10.801.

Severability—1981 c 316: See RCW 47.10.811.

47.10.791 Administration and amount of bond sales.

Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.790 in accordance with the provisions of chapter 39.42 RCW. The amount of such bonds issued and sold under the provisions of RCW 47.10.790 through 47.10.798 in any biennium may not exceed the amount of a specific appropriation therefor. Such bonds may be sold from time to time in such amounts as may be necessary for the orderly progress of the state highway improvements specified in RCW 47.10.790. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this sec-

tion shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 6; 1979 ex.s. c 180 § 2.]

47.10.792 Bond proceeds—Deposit and use. The proceeds from the sale of the bonds authorized by RCW 47.10.790 shall be deposited in the motor vehicle fund and such proceeds shall be available only for the purposes enumerated in RCW 47.10.790, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 7; 1979 ex.s. c 180 § 3.]

47.10.793 Statement of general obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.10.790 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.790 through 47.10.798 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.790 through 47.10.798, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.790 through 47.10.798. [1995 c 274 § 6; 1979 ex.s. c 180 § 4.]

47.10.794 Designation of funds to repay bonds and interest. Any funds required to repay the bonds authorized by RCW 47.10.790 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1979 ex.s. c 180 § 5.]

47.10.795 Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.10.794, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund heretofore created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith, and such committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1979 ex.s. c 180 § 6.]

47.10.796 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds pursuant to applicable bond covenants or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund. [1979 ex.s. c 180 § 7.]

47.10.797 Bonds legal investment for state funds. The bonds authorized in RCW 47.10.790 through 47.10.798 constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1979 ex.s. c 180 § 8.]

47.10.798 Bonds equal charge against fuel tax revenues. Except as otherwise provided by statute, general obligation bonds issued under authority of legislation enacted during the 45th session of the legislature and thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1979 ex.s. c 180 § 9.]

47.10.799 Appropriation—Expenditure limited to bond sale proceeds. There is hereby appropriated from the motor vehicle fund to the department of transportation for the biennium ending June 30, 1981, the sum of ten million dollars, or so much thereof as may be necessary, to carry out the provisions of RCW 47.10.790: PROVIDED, That the money available for expenditure under this appropriation may not exceed the amount of money derived from the sale of ten mil-

lion dollars of bonds authorized by RCW 47.10.790 and deposited to the credit of the motor vehicle fund. [1979 ex.s. c 180 § 10.]

47.10.800 Severability—1979 ex.s. c 180. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 180 § 12.]

INTERSTATE HIGHWAY, CATEGORY A,
CATEGORY C IMPROVEMENTS—1981 ACT

47.10.801 Issuance and sale of general obligation bonds. (1) In order to provide funds necessary for the location, design, right-of-way, and construction of selected interstate and other state highway improvements, there shall be issued and sold, subject to subsections (2), (3), and (4) of this section, upon the request of the Washington state transportation commission a total of four hundred sixty million dollars of general obligation bonds of the state of Washington for the following purposes and specified sums:

(a) Not to exceed two hundred twenty-five million dollars to pay the state's share of costs for federal-aid interstate highway improvements and until December 31, 1989, to temporarily pay the regular federal share of construction of federal-aid interstate highway improvements to complete state routes 82, 90, 182, and 705 in advance of federal-aid apportionments under the provisions of 23 U.S.C. Secs. 115 or 122: PROVIDED, That the total amount of bonds issued to temporarily pay the regular federal share of construction of federal-aid interstate highways in advance of federal-aid apportionments as authorized by this section and RCW 47.10.790 shall not exceed one hundred twenty million dollars: PROVIDED FURTHER, That the transportation commission shall adopt plans for the obligation of federal-aid apportionments received in federal fiscal year 1985 and subsequent years to pay the regular federal share of federal-aid interstate highway construction projects or to convert such apportionments under the provisions of 23 U.S.C. Secs. 115 or 122;

(b) Two hundred twenty-five million dollars for major transportation improvements throughout the state that are identified as category C improvements and for selected major non-interstate construction and reconstruction projects that are included as Category A Improvements;

(c) Ten million dollars for state highway improvements necessitated by planned economic development, as determined through the procedures set forth in RCW 43.160.074 and 47.01.280.

(2) The amount of bonds authorized in subsection (1)(a) of this section shall be reduced if the transportation commission determines that any of the bonds that have not been sold are no longer required.

(3) The amount of bonds authorized in subsection (1)(b) of this section shall be increased by an amount not to exceed, and concurrent with, any reduction of bonds authorized under subsection (1)(a) of this section in the manner prescribed in subsection (2) of this section.

(4) The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section and increase the amount of bonds authorized in subsec-

tion (1)(a) or (b) of this section, or both by an amount equal to the decrease in subsection (1)(c) of this section. The transportation commission may decrease the amount of bonds authorized in subsection (1)(c) of this section only if the legislature appropriates an equal amount of funds from the motor vehicle fund - basic account for the purposes enumerated in subsection (1)(c) of this section. [2005 c 319 § 127; 1999 c 94 § 13; 1994 c 173 § 1. Prior: 1985 c 433 § 7; 1985 c 406 § 2; 1982 c 19 § 1; 1981 c 316 § 1.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective date—1994 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 173 § 2.]

Nonseverability—1985 c 433: See note following RCW 43.160.074.

Severability—1982 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 19 § 5.]

47.10.802 Administration and amount of bond sales.

Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.801 in accordance with chapter 39.42 RCW. The amount of such bonds issued and sold under RCW 47.10.801 through 47.10.809 in any biennium may not exceed the amount of a specific appropriation therefor. Such bonds may be sold from time to time in such amounts as may be necessary for the orderly progress of the state highway improvements specified in RCW 47.10.801. The amount of bonds issued and sold under RCW 47.10.801(1)(a) in any biennium shall not, except as provided in that section, exceed the amount required to match federal-aid interstate funds available to the state of Washington. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [2005 c 319 § 128; 1986 c 290 § 1; 1983 1st ex.s. c 53 § 23; 1982 c 19 § 2; 1981 c 316 § 2.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Severability—1983 1st ex.s. c 53: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 53 § 36.]

Severability—1982 c 19: See note following RCW 47.10.801.

47.10.803 Bond proceeds—Deposit and use. The proceeds from the sale of the bonds authorized by RCW 47.10.801(1) shall be deposited in the motor vehicle fund. All such proceeds shall be available only for the purposes enumerated in RCW 47.10.801, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1999 c 94 § 14; 1986 c 290 § 2; 1985 c 433 § 8; 1981 c 316 § 3.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Nonseverability—1985 c 433: See note following RCW 43.160.074.

47.10.804 Statement of general obligation—Pledge of excise taxes. Bonds issued under RCW 47.10.801 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.10.801 through 47.10.809 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under RCW 47.10.801 through 47.10.809, and the legislature hereby agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under RCW 47.10.801 through 47.10.809. [1995 c 274 § 7; 1981 c 316 § 4.]

47.10.805 Designation of funds to repay bonds and interest. Any funds required to repay the bonds authorized by RCW 47.10.801 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1981 c 316 § 5.]

47.10.806 Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to RCW 47.10.805, the percentage of the receipts in money of

the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the highway bond retirement fund heretofore created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith, and the committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1981 c 316 § 6.]

47.10.807 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the highway bond retirement fund shall prove more than is required for the payment of interest on bonds when due, or current retirement bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1981 c 316 § 7.]

47.10.808 Bonds legal investment for state funds. The bonds authorized in RCW 47.10.801 through 47.10.809 constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1981 c 316 § 8.]

47.10.809 Bonds equal charge against fuel tax revenues. Bonds issued under authority of RCW 47.10.801 through 47.10.809 and any subsequent general obligation bonds of the state of Washington which may be authorized and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1981 c 316 § 9.]

47.10.811 Severability—1981 c 316. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 316 § 13.]

CATEGORY C IMPROVEMENTS—1993 ACT

47.10.812 Issuance and sale of general obligation bonds. In order to provide funds necessary for the location, design, right-of-way, and construction of state highway improvements that are identified as special category C improvements, there shall be issued and sold upon the request

of the Washington state secretary of transportation a total of six hundred million dollars of general obligation bonds of the state of Washington. [2007 c 519 § 1; 1999 sp.s. c 2 § 1; 1993 c 431 § 1.]

47.10.813 Administration and amount of sale. Upon the request of the secretary of transportation, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.812 through 47.10.817 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.812 through 47.10.817 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2007 c 519 § 2; 1993 c 431 § 2.]

47.10.814 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.812 through 47.10.817 shall be deposited in the special category C account in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.812, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1993 c 431 § 3.]

47.10.815 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.812 through 47.10.817 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.812 through 47.10.817 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.812 through 47.10.817, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.812 through 47.10.817. [1995 c 274 § 8; 1993 c 431 § 4.]

47.10.816 Designation of funds to repay bonds and interest. Both principal and interest on the bonds issued for the purposes of RCW 47.10.812 through 47.10.817 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June

30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the special category C account in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.812 through 47.10.817 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the special category C account in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the special category C account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the special category C account not required for bond retirement or interest on the bonds. [1993 c 431 § 5.]

47.10.817 Equal charge against fuel tax revenues. Bonds issued under the authority of RCW 47.10.812 through 47.10.816 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1993 c 431 § 6.]

47.10.818 Severability—1993 c 431. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 431 § 8.]

INTERSTATE, OTHER HIGHWAY IMPROVEMENTS— 1993 ACT

47.10.819 Issuance and sale of general obligation bonds. In order to provide funds necessary for the location, design, right-of-way, and construction of selected interstate and other highway improvements, there shall be issued and sold upon the request of the secretary of the department of transportation a total of one hundred million dollars of general obligation bonds of the state of Washington for the following purposes and specified sums:

(1) Not to exceed twenty-five million dollars to pay the state's and local governments' share of matching funds for the ten demonstration projects identified in the Intermodal Surface Transportation Efficiency Act of 1991.

(2) Not to exceed fifty million dollars to temporarily pay the regular federal share of construction in advance of federal-aid apportionments as authorized by this section.

(3) Not to exceed twenty-five million dollars for loans to local governments to provide the required matching funds to take advantage of available federal funds. These loans shall be on such terms and conditions as determined by the secretary of the department of transportation, but in no event may the loans be for a period of more than ten years. The interest rate on the loans authorized under this subsection shall be equal to the interest rate on the bonds sold for such purposes. [2006 c 334 § 37; 1993 c 432 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.10.820 Administration and amount of sale. Upon the request of the secretary of the department of transportation, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.819 through 47.10.824 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.819 through 47.10.824 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2006 c 334 § 38; 1993 c 432 § 2.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.10.821 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.819 through 47.10.824 shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.819, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1993 c 432 § 3.]

47.10.822 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.819 through 47.10.824 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.819 through 47.10.824 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.819 through 47.10.824, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW

47.10.819 through 47.10.824. [1995 c 274 § 9; 1993 c 432 § 4.]

47.10.823 Designation of funds to repay bonds and interest. Both principal and interest on the bonds issued for the purposes of RCW 47.10.819 through 47.10.824 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.819 through 47.10.824 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributed to the state, counties, cities, and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. [1993 c 432 § 5.]

47.10.824 Equal charge against fuel tax revenues. Bonds issued under the authority of RCW 47.10.819 through 47.10.823 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1993 c 432 § 6.]

47.10.825 Severability—1993 c 432. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 432 § 8.]

PUBLIC-PRIVATE TRANSPORTATION INITIATIVES—
1994 ACT

47.10.834 Issuance and sale of general obligation bonds. In order to provide funds necessary to implement the public-private transportation initiatives authorized by chapter

47.46 RCW, there shall be issued and sold upon the request of the secretary of the department of transportation a total of twenty-five million six hundred twenty-five thousand dollars of general obligation bonds of the state of Washington. [2006 c 334 § 35; 1995 2nd sp.s. c 15 § 2; 1994 c 183 § 2.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Severability—1995 2nd sp.s. c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 2nd sp.s. c 15 § 9.]

Effective date—1995 2nd sp.s. c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 16, 1995]." [1995 2nd sp.s. c 15 § 10.]

Finding—1994 c 183: "The legislature finds and declares:

Successful implementation of the public-private transportation initiatives program authorized in chapter 47.46 RCW may require the financial participation of the state in projects authorized in that chapter.

The participation may take the form of loans, loan guarantees, user charge guarantees, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, or such other cash contribution arrangements as may improve the ability of the private entities sponsoring the projects to obtain financing.

It is in the best interests of the people of the state that state funding of possible financial participation in the projects authorized under chapter 47.46 RCW be in the form of long-term bonds. In order to repay expenditures incurred in the 1993-1995 biennium, up to two million two hundred thousand dollars of these bonds may be expended on highway improvement projects, under chapter 47.05 RCW." [1995 2nd sp.s. c 15 § 1; 1994 c 183 § 1.]

47.10.835 Administration and amount of sale. Upon the request of the secretary of the department of transportation, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.834 through 47.10.841 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.834 through 47.10.841 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. In making such appropriation of the net proceeds of the sale of the bonds, the legislature shall specify what portion of the appropriation is provided for possible loans and what portion of the appropriation is provided for other forms of cash contributions to projects.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2006 c 334 § 36; 1994 c 183 § 3.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.10.836 Proceeds—Deposit and use. (1) The proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 that are in support of possible loans as specified under RCW 47.10.835 shall be deposited into the motor vehicle fund. The proceeds shall be available only for the purposes of making loans to entities authorized to undertake projects selected under chapter 47.46 RCW as enumerated in RCW 47.10.835, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, for the payment of bond anticipa-

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tion notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

(2) The proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 that are in support of all forms of cash contributions to projects selected under chapter 47.46 RCW, including incidental costs incurred by the department in direct support of activities required under chapter 47.46 RCW, except loans shall be deposited into the motor vehicle fund. The proceeds shall be available only for the purposes of making any contributions except loans to projects selected under chapter 47.46 RCW, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

(3) Up to two million two hundred thousand dollars of the proceeds from the sale of bonds authorized by RCW 47.10.834 through 47.10.841 may be expended on highway improvement projects under chapter 47.05 RCW and for the payment of bond issuance cost, including the cost of underwriting. Such proceeds shall be deposited into the motor vehicle fund. [1995 2nd sp.s. c 15 § 3; 1994 c 183 § 4.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.837 Designation of funds to repay bonds and interest. Principal and interest payments made on loans authorized by chapter 47.46 RCW shall be deposited into the motor vehicle fund and shall be available for the payment of principal and interest on bonds authorized by RCW 47.10.834 through 47.10.841 and for such other purposes as may be specified by law. [1995 2nd sp.s. c 15 § 4; 1994 c 183 § 5.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.838 Statement of general obligation—Pledge of excise taxes. (1) Bonds issued under the authority of RCW 47.10.834 through 47.10.841 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due.

(2) The principal and interest on the bonds issued for the purposes enumerated in RCW 47.10.836 shall be first payable in the manner provided in RCW 47.10.834 through 47.10.841 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of those excise taxes are pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.834 through 47.10.841, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.834 through 47.10.841. [1995 2nd sp.s. c 15 § 5; 1994 c 183 § 6.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.839 Repayment procedure—Bond retirement fund. (1) Both principal and interest on the bonds issued for

the purposes of RCW 47.10.834 through 47.10.841 are payable from the highway bond retirement fund.

(2) The state finance committee shall, on or before June 30th of each year certify to the state treasurer the amount required for principal and interest on the bonds issued for the purposes specified in RCW 47.10.836 in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit into the highway bond retirement fund such amounts, and at such times, as are required by the bond proceedings.

(3) Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.834 through 47.10.841 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels which is, or may be appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, or towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

(4) Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel and special fuel taxes that are distributable to the state, counties, cities, or towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. [1995 2nd sp.s. c 15 § 6; 1994 c 183 § 7.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.841 Equal charge against motor vehicle excise tax revenues. Bonds issued under the authority of RCW 47.10.834 through 47.10.839 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels taxes for the payment of principal and interest thereon are an equal charge against the revenues from the motor vehicle and special fuels excise taxes. [1995 2nd sp.s. c 15 § 7; 1994 c 183 § 9.]

Severability—Effective date—1995 2nd sp.s. c 15: See notes following RCW 47.10.834.

47.10.842 Severability—1994 c 183. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 183 § 11.]

STATE AND LOCAL HIGHWAY IMPROVEMENTS— 1998 ACT

47.10.843 Bond issue authorized. In order to provide funds necessary for the location, design, right-of-way, and construction of state and local highway improvements, there shall be issued and sold upon the request of the secretary of the department of transportation a maximum of one billion nine hundred million dollars of general obligation bonds of

the state of Washington. [2006 c 334 § 33; 1998 c 321 § 16 (Referendum Bill No. 49, approved November 3, 1998).]

Effective date—2006 c 334: See note following RCW 47.01.051.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.844 Administration and amount of sale. Upon the request of the secretary of the department of transportation, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.10.843 through 47.10.848 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.843 through 47.10.848 shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2006 c 334 § 34; 1998 c 321 § 17 (Referendum Bill No. 49, approved November 3, 1998).]

Effective date—2006 c 334: See note following RCW 47.01.051.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.845 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.843 through 47.10.848 shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.843, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1998 c 321 § 18 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.846 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.843 through 47.10.848 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in

RCW 47.10.843 through 47.10.848 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.843 through 47.10.848, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.843 through 47.10.848. [1998 c 321 § 19 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

47.10.847 Repayment procedure—Bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.10.843 through 47.10.848 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.843 through 47.10.848 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and which is, or may be, appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds. [1998 c 321 § 20 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

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47.10.848 Equal charge against motor vehicle and special fuels tax revenues. Bonds issued under the authority of RCW 47.10.843 through 47.10.847 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [1998 c 321 § 21 (Referendum Bill No. 49, approved November 3, 1998).]

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45: See note following RCW 82.14.045.

Referral to electorate—1998 c 321 §§ 1-21 and 44-46: See note following RCW 82.14.045.

2003 TRANSPORTATION PROJECTS— NICKEL ACCOUNT

47.10.861 Bond issue authorized. In order to provide funds necessary for the location, design, right-of-way, and construction of selected projects or improvements that are identified as transportation 2003 projects or improvements in the omnibus transportation budget, there shall be issued and sold upon the request of the secretary of the department of transportation a total of three billion two hundred million dollars of general obligation bonds of the state of Washington. [2007 c 519 § 3; 2006 c 334 § 31; 2003 c 147 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Effective date—2003 c 147: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 147 § 16.]

47.10.862 Administration and amount of sale. Upon the request of the secretary of the department of transportation, as appropriate, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in RCW 47.10.861 through 47.10.866 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.861 through 47.10.866 shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2006 c 334 § 32; 2003 c 147 § 2.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.863 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.861 shall be deposited in the transportation 2003 account (nickel account) in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.861, for the payment of bond anticipation notes, if any, and for the pay-

ment of bond issuance costs, including the costs of underwriting. [2003 c 147 § 3.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.864 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.861 through 47.10.866 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.861 through 47.10.866 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.861 through 47.10.866, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.861 through 47.10.866. [2003 c 147 § 4.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.865 Repayment procedure—Bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.10.861 through 47.10.866 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the transportation 2003 account (nickel account) in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.861 through 47.10.866 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the transportation 2003 account (nickel account) in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the transportation 2003 account (nickel account) proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the transportation 2003 account (nickel account) not required

for bond retirement or interest on the bonds. [2003 c 147 § 5.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.866 Equal charge against motor vehicle and special fuels tax revenues. Bonds issued under the authority of RCW 47.10.861 through 47.10.865 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [2003 c 147 § 6.]

Effective date—2003 c 147: See note following RCW 47.10.861.

MULTIMODAL TRANSPORTATION PROJECTS— 2003 ACT

47.10.867 Bond issue authorized—Appropriation of proceeds. For the purpose of providing funds for the planning, design, construction, reconstruction, and other necessary costs for transportation projects, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of three hundred forty-nine million five hundred thousand dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2003 c 147 § 7.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.868 Proceeds—Deposit and use. The proceeds of the sale of the bonds authorized in RCW 47.10.867 must be deposited in the multimodal transportation account and must be used exclusively for the purposes specified in RCW 47.10.867 and for the payment of expenses incurred in the issuance and sale of the bonds. [2003 c 147 § 8.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.869 Repayment procedure. (1) The nondebt-limit reimbursable bond retirement account must be used for the payment of the principal and interest on the bonds authorized in RCW 47.10.867.

(2)(a) The state finance committee must, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 47.10.867.

(b) On or before the date on which any interest or principal and interest is due, the state treasurer shall transfer from the multimodal transportation account for deposit into the nondebt-limit reimbursable bond retirement account the amount computed in (a) of this subsection for bonds issued for the purposes of RCW 47.10.867.

(3) If the multimodal transportation account has insufficient revenues to pay the principal and interest computed in subsection (2)(a) of this section, then the debt-limit reimbursable bond retirement account must be used for the payment of

the principal and interest on the bonds authorized in RCW 47.10.867 from any additional means provided by the legislature.

(4) If at any time the multimodal transportation account has insufficient revenues to repay the bonds, the legislature may provide additional means for the payment of the bonds. [2003 c 147 § 9.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.870 Statement of general obligation—Transfer and payment of funds. (1) Bonds issued under RCW 47.10.867 must state that they are a general obligation of the state of Washington, must pledge the full faith and credit of the state to the payment of the principal and interest, and must contain an unconditional promise to pay the principal and interest as it becomes due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2003 c 147 § 10.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.871 Additional repayment means. The legislature may provide additional means for raising moneys for the payment of the principal and interest on the bonds authorized in RCW 47.10.867, and RCW 47.10.869 and 47.10.870 are not deemed to provide an exclusive method for their payment. [2003 c 147 § 11.]

Effective date—2003 c 147: See note following RCW 47.10.861.

47.10.872 Legal investment. The bonds authorized in RCW 47.10.867 are a legal investment for all state funds or funds under state control and for all funds of any other public body. [2003 c 147 § 12.]

Effective date—2003 c 147: See note following RCW 47.10.861.

SELECTED PROJECTS AND IMPROVEMENTS— 2005 ACT

47.10.873 Bond issue authorized. In order to provide funds necessary for the location, design, right-of-way, and construction of selected projects or improvements that are identified as 2005 transportation partnership projects or improvements in the omnibus transportation budget chapter 313, Laws of 2005, there shall be issued and sold upon the request of the department of transportation a total of five billion three hundred million dollars of general obligation bonds of the state of Washington. [2007 c 519 § 4; 2005 c 315 § 1.]

Effective date—2005 c 315: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 315 § 8.]

47.10.874 Administration and amount of sale. Upon the request of the department of transportation, as appropriate, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in RCW 47.10.873 through 47.10.878 in accordance with chapter 39.42 RCW. Bonds authorized by RCW 47.10.873 through

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47.10.878 shall be sold in the manner, at time or times, in amounts, and at the price as the state finance committee shall determine. No bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. [2005 c 315 § 2.]

Effective date—2005 c 315: See note following RCW 47.10.873.

47.10.875 Proceeds—Deposit and use. The proceeds from the sale of bonds authorized by RCW 47.10.873 shall be deposited in the transportation partnership account in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in RCW 47.10.873, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [2005 c 315 § 3.]

Effective date—2005 c 315: See note following RCW 47.10.873.

47.10.876 Statement of general obligation—Pledge of excise taxes. Bonds issued under the authority of RCW 47.10.873 through 47.10.878 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in RCW 47.10.873 through 47.10.878 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.873 through 47.10.878, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.873 through 47.10.878. [2005 c 315 § 4.]

Effective date—2005 c 315: See note following RCW 47.10.873.

47.10.877 Repayment procedure—Bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.10.873 through 47.10.878 shall be payable from the highway bond retirement fund. The state finance committee may provide that a special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the transportation partnership account in the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by RCW 47.10.873 through 47.10.878 shall be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the transportation partnership account in the motor vehicle fund. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities, and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the transportation partnership account proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the transportation partnership account not required for bond retirement or interest on the bonds. [2007 c 519 § 5; 2005 c 315 § 5.]

Effective date—2005 c 315: See note following RCW 47.10.873.

47.10.878 Equal charge against motor vehicle and special fuels tax revenues. Bonds issued under the authority of RCW 47.10.873 through 47.10.877 and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes. [2005 c 315 § 6.]

Effective date—2005 c 315: See note following RCW 47.10.873.

Chapter 47.12 RCW

ACQUISITION AND DISPOSITION OF STATE HIGHWAY PROPERTY

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47.12.010 Acquisition of property authorized—Condemnation actions—Cost. Whenever it is necessary to secure any lands or interests in land for a right-of-way for any state highway, or for the drainage thereof or construction of a protection therefor or so as to afford unobstructed vision therefor toward any railroad crossing or another public highway crossing or any point of danger to public travel or to provide a visual or sound buffer between highways and adjacent properties or for the purpose of acquiring sand pits, gravel pits, borrow pits, stone quarries, or any other land for the extraction of materials for construction or maintenance or both, or for any site for the erection upon and use as a maintenance camp, of any state highway, or any site for other necessary structures or for structures for the health and accommodation of persons traveling or stopping upon the state highways of this state, or any site for the construction and maintenance of structures and facilities adjacent to, under, upon, within, or above the right-of-way of any state highway for exclusive or nonexclusive use by an urban public transportation system, or for any other highway purpose, together with right-of-way to reach such property and gain access thereto, the department of transportation is authorized to acquire such lands or interests in land in behalf of the state by gift, purchase, or condemnation. In case of condemnation to secure such lands or interests in land, the action shall be brought in the name of the state of Washington in the manner provided for the acquiring of property for the public uses of

the state, and in such action the selection of the lands or interests in land by the secretary of transportation shall, in the absence of bad faith, arbitrary, capricious, or fraudulent action, be conclusive upon the court and judge before which the action is brought that said lands or interests in land are necessary for public use for the purposes sought. The cost and expense of such lands or interests in land may be paid as a part of the cost of the state highway for which such right-of-way, drainage, unobstructed vision, sand pits, gravel pits, borrow pits, stone quarries, maintenance camp sites, and structure sites or other lands are acquired. [1977 ex.s. c 151 § 46; 1967 c 108 § 4; 1961 c 13 § 47.12.010. Prior: 1937 c 53 § 25, part; RRS § 6400-25, part.]

Urban public transportation system defined: RCW 47.04.082.

Right-of-way donations: Chapter 47.14 RCW.

47.12.011 Purchase options authorized. Whenever it becomes necessary or feasible to purchase rights-of-way for state highways, and the department deems it to be in the best interest of the general public, the department may secure options for purchase of property needed or proposed for any entire project or section thereof or proposed alignment for the location or relocation of any highway. [1984 c 7 § 114; 1961 c 13 § 47.12.011. Prior: 1955 c 49 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.015 "Reservation boundary" defined. For the purposes of this chapter "reservation boundary" means the boundary of the reservation as established by federal law or under the authority of the United States Secretary of the Interior. [2002 c 255 § 2.]

47.12.023 Acquisition of state lands or interests or rights therein—Procedures—Compensation—Reacquisition by department of natural resources. (1) Except as provided in RCW 47.12.026 and 47.12.029, whenever it is necessary to secure any lands or interests in lands for any highway purpose mentioned in RCW 47.12.010, or for the construction of any toll facility or ferry terminal or docking facility, the title to which is in the state of Washington and under the jurisdiction of the department of natural resources, the department of transportation may acquire jurisdiction over the lands or interests in lands, or acquire rights to remove materials from the lands in the manner set forth in this section.

(2) At any time after the final adoption of a right-of-way plan or other plan requiring the acquisition of lands or interests in lands for any purpose as authorized in subsection (1) of this section, the department of transportation may file with the department of natural resources a notice setting forth its intent to acquire jurisdiction of the lands or interests in lands under the jurisdiction of the department of natural resources required for right-of-way or other highway purposes related to the construction or improvement of such state highway, toll facility, or ferry terminal or docking facility.

(3) The department of transportation at the time of filing its notice of intent as provided in subsection (2) of this section shall file therewith a written statement showing the total amount of just compensation to be paid for the property in the event of settlement. The offer shall be based upon the depart-

ment of transportation approved appraisal of the fair market value of the property to be acquired. In no event may the offer of settlement be referred to or used during any arbitration proceeding or trial conducted for the purpose of determining the amount of just compensation.

(4) Just compensation and/or fair market value for the purposes of this section shall be determined in accordance with applicable federal and state constitutional, statutory, and case law relating to the condemnation of private and public property for public purposes.

(5) If the department of natural resources does not accept the offer of the department of transportation, the department of transportation may nonetheless pay to the department of natural resources the amount of its offer and obtain immediate possession and use of the property pending the determination of just compensation in the manner hereinafter provided.

(6) If the amount of just compensation is not agreed to, either the department of natural resources or the department of transportation may request in writing the appointment of an arbitrator for the purpose of determining the amount of compensation to be paid by the department of transportation for the acquisition of jurisdiction over the lands or interests in lands or rights therein. In that event the department of natural resources and the department of transportation may jointly agree on an arbitrator to determine the compensation, and his determination shall be final and conclusive upon both departments. The costs of the arbitrator shall be borne equally by the parties. If the department of natural resources and the department of transportation are unable to agree on the selection of an arbitrator within thirty days after a request therefor is made, either the department of transportation or the department of natural resources may file a petition with the superior court for Thurston county for the purpose of determining the amount of just compensation to be paid. The matter shall be tried by the court pursuant to the procedures set forth in RCW 8.04.080.

(7) Whenever the department of transportation has acquired immediate possession and use of property by payment of the amount of its offer to the department of natural resources, and the arbitration award or judgment of the court for the acquisition exceeds the payment for immediate possession and use, the department of transportation shall forthwith pay the amount of such excess to the department of natural resources with interest thereon from the date it obtained immediate possession. If the arbitration or court award is less than the amount previously paid by the department of transportation for immediate possession and use, the department of natural resources shall forthwith pay the amount of the difference to the department of transportation.

(8) Upon the payment of just compensation, as agreed to by the department of transportation and the department of natural resources, or as determined by arbitration or by judgment of the court, and other costs or fees as provided by statute, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring jurisdiction over the lands or interests in lands, or rights to remove material from the lands, to the department of transportation.

(9) Except as provided in RCW 47.12.026, whenever the department of transportation ceases to use any lands or interests in lands acquired in the manner set forth in this section

for the purposes mentioned herein, the department of natural resources may reacquire jurisdiction over the lands or interests in land by paying the fair market value thereof to the department of transportation. If the two departments are unable to agree on the fair market value of the lands or interests in lands, the market value shall be determined and the interests therein shall be transferred in accordance with the provisions and procedures set forth in subsections (4) through (8) of this section. [1984 c 7 § 115; 1977 ex.s. c 103 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.026 Acquisition of state lands or interests or rights therein—Easements—Removal of materials—Relocation of railroad tracks. (1) The department of transportation may acquire an easement for highway or toll facilities right-of-way or for ferry terminal or docking facilities, including the right to make necessary fills, on, over, or across the beds of navigable waters which are under the jurisdiction of the department of natural resources, in accordance with the provisions of RCW 47.12.023, except that no charge may be made to the department of transportation for such an easement.

(2) The department of transportation may obtain an easement for highway or toll facilities purposes or for ferry terminal or docking facilities on, over, or across harbor areas in accordance with RCW 47.12.023 but only when the areas are approved by the harbor line commission as a public place for public landings, wharves, or other public conveniences of commerce or navigation. No charge may be made to the department of transportation for such an easement.

(3) Upon the selection by the department of transportation of an easement for highway or toll facilities right-of-way or for ferry terminal or docking facilities, as authorized in subsections (1) and (2) of this section, the department of natural resources shall cause to be executed and delivered to the department of transportation an instrument transferring the easement. Whenever the state no longer requires the easement for highway or toll facilities right-of-way or for ferry terminal or docking facilities, the easement shall automatically terminate and the department of transportation shall, upon request, cause to be executed an instrument relinquishing to the department of natural resources all of its interest in the lands.

(4) The department of transportation, pursuant to the procedures set forth in RCW 47.12.023, may remove sand and gravel and borrow materials and stone from the beds of navigable waters under the jurisdiction of the department of natural resources which lie below the line of ordinary high water upon the payment of fair market value per cubic yard for such materials to be determined in the manner set forth in RCW 47.12.023.

(5) The department of transportation may acquire full jurisdiction over lands under the jurisdiction of the department of natural resources including the beds of navigable waters that are required for the relocation of the operating tracks of any railroad that will be displaced by the acquisition of such railroad property for state highway purposes. The department of transportation may exchange lands so acquired in consideration or partial consideration for the land or property rights needed for highway purposes and may cause to be

executed a conveyance of the lands in the manner prescribed in RCW 47.12.150. In that event the department of transportation shall pay to the department of natural resources, as just compensation for the acquisition, the fair market value of the property, including the beds of any navigable waters, to be determined in accordance with procedures set forth in RCW 47.12.023. [1984 c 7 § 116; 1977 ex.s. c 103 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.029 Acquisition of state lands or interests or rights therein—Certain purposes prohibited. The department of transportation shall not acquire jurisdiction of any lands or interest in lands under the jurisdiction of the department of natural resources for any of the purposes set forth in RCW 47.12.150, 47.12.160, 47.12.180, 47.12.250, and 47.12.270. [1984 c 7 § 117; 1977 ex.s. c 103 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.040 Acquisition of property from a political subdivision. Whenever it is necessary to secure any lands for primary or secondary state highway right-of-way or other state highway purposes, the title to which is in any county of the state or in any political or municipal subdivision of the state, which land is not at the time being used as a public highway, the county legislative authority or the board of directors or governing body of any such political or municipal subdivision are authorized to directly lease, sell, or convey by gift the land or any interest therein to the state of Washington, without requiring competitive bids or notice to the public, and at such price as the legislative authority, directors, or governing body may deem for the best interests of the county or for the best interests of the political or municipal subdivision of the state. The county legislative authority or the directors or governing body of any political or municipal subdivision are empowered to execute a deed or other proper instrument to the land, passing title to the state of Washington, and the instrument need not require consideration other than the benefit which may be derived by the grantor on account of the use thereof. Whenever any state highway is established by legislative enactment and the state highway is upon the former route of a county road, the county legislative authority shall cause the title to the existing right-of-way or so much thereof as the department requires to be transferred to the state of Washington by proper instrument. [1984 c 7 § 118; 1961 c 13 § 47.12.040. Prior: 1943 c 266 § 1; 1937 c 53 § 26; Rem. Supp. 1943 § 6400-26.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.044 Proceedings to acquire property or rights for highway purposes—Precedence. Court proceedings necessary to acquire property or property rights for highway purposes pursuant to RCW 47.12.010 take precedence over all other causes not involving the public interest in all courts in cases where the state is unable to secure an order granting it immediate possession and use of the property or property rights pursuant to RCW 8.04.090 through 8.04.094. [1983 c 140 § 2.]

47.12.050 Work on remaining land as payment. Whenever it is considered in the securing of any lands for

state highway purpose, whether by condemnation or otherwise, that it is for the best interest of the state, for specific structural items of damage claimed, the court or judge may order or the person whose lands are sought may agree that a portion or all work or labor necessary to the land or remaining land by reason of the taking by way of damage, be performed by the state through the department as all or a part of the consideration or satisfaction of the judgment therefor, in which event the department may perform the work as a portion of the right-of-way cost of the state highway. [1984 c 7 § 119; 1961 c 13 § 47.12.050. Prior: 1937 c 53 § 27; RRS § 6400-27.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.055 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 9.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

47.12.063 Surplus real property program. (1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;
- (e) The former owner of the property from whom the state acquired title;
- (f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;
- (g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;
- (h) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050;
- (i) To any other owner of real property required for transportation purposes;
- (j) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eli-

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gible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; or

(k) A federally recognized Indian tribe within whose reservation boundary the property is located.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(4) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund. [2006 c 17 § 2; 2002 c 255 § 1; 1999 c 210 § 1; 1993 c 461 § 11; 1988 c 135 § 1; 1983 c 3 § 125; 1977 ex.s. c 78 § 1.]

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

Proceeds from the sale of surplus real property for construction of second Tacoma Narrows bridge deposited in Tacoma Narrows toll bridge account: RCW 47.56.165.

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

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 121; 1993 c 461 § 10.]

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

47.12.066 Sale or lease of personal property—Provision of services—Proceeds. (1) The department may sell at fair market value, or lease at rental value (economic rent), materials or other personal property to any United States agency or to any municipal corporation, political subdivision, or another agency of the state and may provide services to any United States agency or to any municipal corporation, political subdivision, or another agency of the state at actual cost, including a reasonable amount for indirect costs.

(2) The department may sell at fair market value materials or other personal property to any private utility company regulated by the utilities and transportation commission for the purpose of making emergency repairs to utility facilities or to protect such facilities from imminent damage upon a finding in writing by the secretary that an emergency exists.

(3) The proceeds of all sales and leases under this section shall be placed in the motor vehicle fund. [1984 c 7 § 120; 1977 ex.s. c 78 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.080 Sale or exchange of unused land. The secretary of transportation may transfer and convey to the United States, its agencies or instrumentalities, to any other state agency, to any county or city or port district of this state, or to any public utility company, any unused state-owned real property under the jurisdiction of the department of transportation when, in the judgment of the secretary of transportation and the attorney general, the transfer and conveyance is consistent with public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, and the attorney general concurs therein, the secretary shall execute and deliver unto the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as shall be necessary to fulfill the terms of the aforesaid agreement. All moneys paid to the state of Washington under any of the provisions hereof shall be deposited in the motor vehicle fund. [1984 c 7 § 121. Prior: 1977 ex.s. c 151 § 49; 1977 ex.s. c 78 § 5; 1975 1st ex.s. c 96 § 3; 1961 c 13 § 47.12.080; prior: 1945 c 127 § 1; Rem. Supp. 1945 § 6400-120.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.120 Lease of unused highway land or air space. The department may rent or lease any lands, improvements, or air space above or below any lands that are held for highway purposes but are not presently needed. The rental or lease:

(1) Must be upon such terms and conditions as the department may determine;

(2) Is subject to the provisions and requirements of zoning ordinances of political subdivisions of government;

(3) Includes lands used or to be used for both limited access and conventional highways that otherwise meet the requirements of this section; and

(4) In the case of bus shelters provided by a local transit authority that include commercial advertising, may charge the transit authority only for commercial space. [2003 c 198 § 2; 1977 ex.s. c 151 § 50; 1969 c 91 § 1; 1961 c 13 § 47.12.120. Prior: 1949 c 162 § 1; Rem. Supp. 1949 § 6400-122.]

47.12.125 Lease of unused highway land or air space—Disposition of proceeds. All moneys paid to the state of Washington under any of the provisions of RCW 47.12.120 shall be deposited in the department's advance right-of-way revolving fund, except moneys that are subject to federal aid reimbursement and moneys received from rental of capital facilities properties, which shall be deposited in the motor vehicle fund. [1999 c 94 § 15; 1991 c 291 § 3; 1961 c 13 § 47.12.125. Prior: 1949 c 162 § 2; Rem. Supp. 1949 § 6400-123.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

47.12.140 Severance and sale of timber and other personalty—Removal of nonmarketable materials.

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Whenever the department has acquired any lands for transportation purposes, except state granted lands, upon which are located any structures, timber, or other thing of value attached to the land that the department deems it best to sever from the land and sell as personal property, the same may be disposed of by one of the following means:

(1) The department may sell the personal property at public auction after due notice has been given in accordance with general rules adopted by the secretary. The department may set minimum prices that will be accepted for any item offered for sale at public auction as provided in this section and may prescribe terms or conditions of sale. If an item is offered for sale at the auction and no satisfactory bids are received or the amount bid is less than the minimum set by the department, the department may sell the item at private sale for the best price that it deems obtainable, but not less than the highest price bid at the public auction. The proceeds of all sales under this section must be placed in the motor vehicle fund.

(2) The department may issue permits to residents of this state to remove specified quantities of standing or downed trees and shrubs, rock, sand, gravel, or soils that have no market value in place and that the department desires to be removed from state-owned lands that are under the jurisdiction of the department. An applicant for a permit must certify that the materials so removed are to be used by the applicant and that they will not be disposed of to any other person. Removal of materials under the permit must be in accordance with rules adopted by the department. The fee for a permit is two dollars and fifty cents, which fee must be deposited in the motor vehicle fund. The department may adopt rules providing for special access to limited access facilities for the purpose of removal of materials under permits authorized in this section.

(3) The department may sell timber or logs to an abutting landowner for cash at full appraised value, but only after each other abutting owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting owner requests in writing the right to purchase the timber within fifteen days after receiving notice of the proposed sale, the timber must be sold in accordance with subsection (1) of this section.

(4) The department may sell timber or logs having an appraised value of one thousand dollars or less directly to interested parties for cash at the full appraised value without notice or advertising. If the timber is attached to state-owned land, the department shall issue a permit to the purchaser of the timber to allow for the removal of the materials from state land. The permit fee is two dollars and fifty cents. [1997 c 240 § 1; 1981 c 260 § 12. Prior: 1977 ex.s. c 151 § 52; 1977 ex.s. c 78 § 6; 1961 c 13 § 47.12.140; prior: 1953 c 42 § 1.]

47.12.150 Acquisition, exchange of property to relocate displaced facility. Whenever the department shall need for highway purposes land or property rights belonging to the United States government or any municipality or political subdivision of the state, or which shall be a part of the right-of-way of any public utility having authority to exercise powers of eminent domain, when the acquisition of such property by the state will result in the displacement of any existing right-of-way or facility, the department is authorized to

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acquire by condemnation or otherwise such lands and property rights as shall be needed to relocate such right-of-way or facilities so displaced and to exchange lands or property rights so acquired in consideration or partial consideration for the land or property rights needed for highway purposes. The secretary of transportation shall execute each conveyance, which shall be duly acknowledged, necessary to accomplish such exchange. [1977 ex.s. c 151 § 53; 1975 1st ex.s. c 96 § 5; 1961 c 13 § 47.12.150. Prior: 1953 c 55 § 1.]

47.12.160 Acquisition of land outside highway right-of-way to minimize damage. Whenever a part of a parcel of land is to be acquired for state highway purposes and the remainder lying outside of the right-of-way is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, and its value does not exceed the probable amount of the severance claims or damages, the department may acquire by gift, purchase, or condemnation the whole parcel and may sell that portion lying outside of the highway right-of-way or may exchange the same for other property needed for highway purposes. The provisions of this section do not apply if the taking of that portion of the land lying outside of the highway right-of-way would deprive any adjacent owner of an existing right of ingress and egress to his property. [1984 c 7 § 122; 1961 c 13 § 47.12.160. Prior: 1953 c 131 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.170 Sale, lease of unneeded toll facility, ferry system property—Franchises for utility, railway purposes. See RCW 47.56.253 through 47.56.257.

47.12.180 Additional financing methods for property and engineering costs—Formal declarations. It is declared to be the public policy of the state of Washington to provide for the acquisition of real property and engineering costs necessary for the improvement of the state highway system, in advance of actual construction, for the purposes of eliminating costly delays in construction, reducing hardship to owners of the property, and eliminating economic waste occasioned by the improvement of such property immediately prior to its acquisition for highway uses.

The legislature therefore finds and declares that purchase and condemnation of real property necessary for the state highway system and engineering costs, reasonably in advance of programmed construction, is a public use and purpose and a highway purpose.

The department is hereby authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvement of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240 or alternatively by the method provided in RCW 47.12.242 through 47.12.246. Neither method may be used to condemn property or property rights in advance of programmed construction until the department has complied with hearing procedures required for the location or relocation of the type of highway for which the property is to be condemned. [1984 c 7 § 123; 1969 ex.s. c 197 § 1; 1961 c 281 § 1.]

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Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 281: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 281 § 12.]

47.12.190 Additional financing methods for property and engineering costs—Purchase or condemnation. The department, in addition to its other powers and duties as provided by law, is authorized to purchase or condemn any real property or property rights therein which it deems will be necessary for the improvements of routes on the state highway system by the method provided in RCW 47.12.180 through 47.12.240. Condemnation actions brought hereunder shall be brought in the name of the state as provided for acquiring property for the public uses of the state, and in such actions selection of the property and property rights by the secretary of transportation is conclusive that they are necessary for the purposes sought, in the absence of bad faith, or arbitrary, capricious, or fraudulent action. [1977 ex.s. c 151 § 54; 1961 c 281 § 2.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.200 Additional financing methods for property and engineering costs—Agreements with state finance committee. The transportation commission may enter into agreements with the state finance committee for financing the acquisition, by purchase or condemnation, of real property together with engineering costs that the transportation commission deems will be necessary for the improvement of the state highway system. Such agreements may provide for the acquisition of an individual parcel or for the acquisition of any number of parcels within the limits of a contemplated highway project. [1977 ex.s. c 151 § 55; 1969 ex.s. c 197 § 2; 1961 c 281 § 3.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.210 Additional financing methods for property and engineering costs—Warrants on motor vehicle fund. Such an agreement shall provide that the state finance committee shall purchase, at par, warrants drawn upon the motor vehicle fund in payment for the property covered by the agreement and the engineering costs necessary for such advance purchase or condemnation. Such warrants shall be purchased by the state finance committee, upon the presentation by the holders thereof to the state treasurer, from any moneys available for investment in the state treasury as provided in RCW 43.84.080: PROVIDED, That in no event shall more than ten percent of the assets of any fund be used for the purpose of acquiring property as authorized herein, except in the case of current state funds in the state treasury, twenty percent of the balance therein available for investment may be invested as provided in RCW 47.12.180 through 47.12.240. [1981 c 3 § 38; 1969 ex.s. c 197 § 3; 1961 c 281 § 4.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1961 c 281: See note following RCW 47.12.180.

Authorization that certain funds may be invested in motor vehicle fund warrants: RCW 43.84.080.

47.12.220 Additional financing methods for property and engineering costs—Provisions in agreement. Each such agreement shall include, but shall not be limited to the following:

(1) A provision stating the term of the agreement which shall not extend more than seven years from the effective date of the agreement;

(2) A designation of the specific fund or funds to be used to carry out such agreement;

(3) A provision that the department of transportation may redeem warrants purchased by the state finance committee at any time prior to the letting of a highway improvement contract utilizing the property; and further, during the effective period of each such agreement the department of transportation shall redeem such warrants whenever such a highway improvement contract is let, or upon the expiration of such agreement, whichever date is earlier;

(4) A provision stating the rate of interest such warrants shall bear commencing at the time of purchase by the state finance committee;

(5) Any additional provisions agreed upon by the transportation commission and the state finance committee which are necessary to carry out the purposes of such agreement as indicated by RCW 47.12.180 through 47.12.240, as now or hereafter amended. [1977 ex.s. c 151 § 56; 1969 ex.s. c 197 § 4; 1961 c 281 § 5.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.230 Additional financing methods for property and engineering costs—Warrant form and procedure. Warrants issued for payment of property and engineering costs as provided herein shall be of a distinctive design and shall contain the words "for purchase by the state finance committee from . . . fund" (indicating the proper investing fund as provided by the agreement). Such warrants shall be approved by the secretary of the state finance committee prior to their issuance by the state treasurer. Upon presentation of such warrants to the state treasurer for payment, he shall pay the par value thereof from the fund for which the state finance committee agreed to purchase such warrants whether or not there are then funds in the motor vehicle fund. The state treasurer shall deposit such warrants in the treasury for the investing fund. [1969 ex.s. c 197 § 5; 1961 c 281 § 6.]

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.240 Additional financing methods for property and engineering costs—Payment procedure—Prior charge. The state treasurer shall transfer from the motor vehicle fund to the credit of the fund purchasing such warrants interest at the rate and at the times provided for in the agreement. The state treasurer shall pay the warrants at the time provided for in the agreement. The obligations coming due are a prior charge against any funds in the motor vehicle fund available to the department for construction of state highways. [1984 c 7 § 124; 1961 c 281 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 281: See note following RCW 47.12.180.

47.12.242 "Advance right-of-way acquisition" defined. The term "advance right-of-way acquisition" means

the acquisition of property and property rights, generally not more than ten years in advance of programmed highway construction projects, together with the engineering costs necessary for such advance right-of-way acquisition. Any property or property rights purchased must be in designated highway transportation corridors and be for projects approved by the commission as part of the state's six-year plan or included in the state's route development planning effort. [1991 c 291 § 1; 1969 ex.s. c 197 § 6.]

47.12.244 Advance right-of-way revolving fund. There is created the "advance right-of-way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in *chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right-of-way for future construction under the provisions of section 108 of Title 23, United States Code.

(4) During the 2007-09 fiscal biennium, the legislature may transfer from the advance right-of-way revolving fund to the motor vehicle account amounts as reflect the excess fund balance of the advance right-of-way revolving fund. [2007 c 518 § 707; 1991 c 291 § 2; 1984 c 7 § 125; 1969 ex.s. c 197 § 7.]

***Reviser's note:** Chapter 47.13 RCW was repealed by 1999 c 94 § 33, effective July 1, 1999.

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.246 Reimbursement to advance right-of-way revolving fund. (1) After any properties or property rights are acquired from funds in the advance right-of-way revolving fund, the department shall manage the properties in accordance with sound business practices. Funds received from interim management of the properties shall be deposited in the advance right-of-way revolving fund.

(2) When the department proceeds with the construction of a highway which will require the use of any of the property so acquired, the department shall reimburse the advance right-of-way revolving fund, from other funds available to it, the current appraised value of the property or property rights required for the project together with damages caused to the remainder by the acquisition after offsetting against all such compensation and damages the special benefits, if any, accruing to the remainder by reason of the state highway being constructed.

(3) When the department determines that any properties or property rights acquired from funds in the advance right-of-way revolving fund will not be required for a highway construction project the department may sell the property at fair market value in accordance with requirements of RCW

47.12.063. All proceeds of such sales shall be deposited in the advance right-of-way revolving fund.

(4) Deposits in the fund may be reexpended as provided in RCW 47.12.180, 47.12.200 through 47.12.230, and 47.12.242 through 47.12.248 without further or additional appropriations. [1991 c 291 § 4; 1984 c 7 § 126; 1969 ex.s. c 197 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.248 Structures acquired in advance of programmed construction—Maintenance. Whenever the department purchases or condemns any property under RCW 47.12.180 through 47.12.240 or 47.12.242 through 47.12.246, the department shall cause any structures so acquired and not removed within a reasonable time to be maintained in good appearance. [1984 c 7 § 127; 1969 ex.s. c 197 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.250 Acquisition of property for preservation, safety, buffer purposes. The department is authorized to acquire by purchase, lease, condemnation, gift, devise, bequest, grant, or exchange, title to or any interests or rights in real property adjacent to state highways for the preservation of natural beauty, historic sites or viewpoints or for safety rest areas or to provide a visual or sound buffer between highways and adjacent properties. However, the department shall not acquire, by condemnation, less than an owner's entire interest for providing a visual or sound buffer between highways and adjacent properties under RCW 47.12.010 and 47.12.250 if the owner objects to the taking of a lesser interest or right. [1984 c 7 § 128; 1967 c 108 § 5; 1965 ex.s. c 170 § 62.]

Severability—1984 c 7: See note following RCW 47.01.141.

Roadside areas—Safety rest areas: Chapter 47.38 RCW.

Scenic and Recreational Highway Act: Chapter 47.39 RCW.

47.12.260 Acquisition of real property subject to local improvement assessments—Payment. See RCW 79.44.190.

47.12.270 Acquisition of property for park and ride lots. The department may acquire real property or interests in real property by gift, purchase, lease, or condemnation and may construct and maintain thereon fringe and transportation corridor parking facilities to serve motorists transferring to or from urban public transportation vehicles or private car pool vehicles. The department may obtain and exercise options for the purchase of property to be used for purposes described in this section. The department shall not expend any funds for acquisition or construction costs of any parking facility to be operated as a part of a transit system by a metropolitan municipal corporation unless the facility has been approved by the department in advance of its acquisition or construction. [1984 c 7 § 129; 1973 2nd ex.s. c 18 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.283 Sale of real property authorized—Procedure—Disposition of proceeds. (1) Whenever the department of transportation determines that any real property

owned by the state of Washington and under the jurisdiction of the department is no longer required for highway purposes and that it is in the public interest to do so, the department may, in its discretion, sell the property under RCW 47.12.063 or under subsections (2) through (6) of this section.

(2) Whenever the department determines to sell real property under its jurisdiction at public auction, the department shall first give notice thereof by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks prior to the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) The department shall sell the property at the public auction, in accordance with the terms set forth in the notice, to the highest and best bidder providing the bid is equal to or higher than the appraised fair market value of the property.

(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property shall be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property pursuant to this subsection shall be in writing and may be rejected at any time prior to written acceptance by the department.

(5) Before the department shall approve any offer for the purchase of real property having an appraised value of more than ten thousand dollars, pursuant to subsection (4) of this section, the department shall first publish a notice of the proposed sale in a local newspaper of general circulation in the area where the property is located. The notice shall include a description of the property, the selling price, the terms of the sale, including the price and interest rate if sold by real estate contract, and the name and address of the department employee or the real estate broker handling the transaction. The notice shall further state that any person may, within ten days after the publication of the notice, deliver to the designated state employee or real estate broker a written offer to purchase the property for not less than ten percent more than the negotiated sale price, subject to the same terms and conditions. A subsequent offer shall not be considered unless it is accompanied by a deposit of twenty percent of the offer in the form of cash, money order, cashier's check, or certified check payable to the Washington state treasurer, to be forfeited to the state (for deposit in the motor vehicle fund) if the offeror fails to complete the sale if the offeror's offer is accepted. If a subsequent offer is received, the first offeror shall be informed by registered or certified mail sent to the address stated in his offer. The first offeror shall then have ten days, from the date of mailing the notice of the increased offer, in which to file with the designated state employee or real estate broker a higher offer than that of the subsequent offeror. After the expiration of the ten day period, the department shall approve in writing the highest and best offer which the department then has on file.

(6) All moneys received pursuant to this section, less any real estate broker's commissions paid pursuant to RCW 47.12.320, shall be deposited in the motor vehicle fund. [1979 ex.s. c 189 § 1.]

Effective date—1979 ex.s. c 189: "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 189 § 8.]

47.12.287 Exchange of real property authorized—Conveyance by deed. The department of transportation is hereby authorized to enter into an exchange agreement with the owner of real property required for highway purposes to convey to such owner real property, owned by the state and under the department's jurisdiction, as full or part consideration for property to be acquired for highway purposes. Such an exchange agreement may relate back and apply to any exchange of property previously agreed to and partially executed (pursuant to an earlier exchange agreement found to be void for want of a governor's deed as required by prior law), and shall be subject to such agreed terms and conditions as are authorized by RCW 47.12.063(3) as now existing or hereafter amended. Any conveyance from the state of Washington made pursuant to this section shall be by deed executed by the secretary of transportation, which shall be duly acknowledged. [1979 ex.s. c 189 § 2.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.12.290 Sale of real property—Execution, acknowledgement, and delivery of deed. When full payment for real property agreed to be sold as authorized by RCW 47.12.283 has been received, the secretary of transportation shall execute the deed which shall be duly acknowledged and deliver it to the grantee. [1979 ex.s. c 189 § 3; 1975 1st ex.s. c 96 § 6; 1973 1st ex.s. c 177 § 2.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.12.300 Sale of unneeded property—Department of transportation—Authorized—Rules. See RCW 47.56.254.

47.12.301 Sale of unneeded property—Department of transportation—Certification to governor—Execution, delivery of deed. See RCW 47.56.255.

47.12.302 Department of transportation—Sale of unneeded property. See RCW 47.60.130.

47.12.320 Sale of property—Listing with broker. The department may list any available properties with any licensed real estate broker at a commission rate otherwise charged in the geographic area for such services. [1984 c 7 § 130; 1973 1st ex.s. c 177 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.12.330 Advanced environmental mitigation—Authorized. For the purpose of environmental mitigation of transportation projects, the department may acquire or develop, or both acquire and develop, environmental mitigation sites in advance of the construction of programmed

projects. The term "advanced environmental mitigation" means mitigation of adverse impacts upon the environment from transportation projects before their design and construction. Advanced environmental mitigation consists of the acquisition of property; the acquisition of property, water, or air rights; the development of property for the purposes of improved environmental management; engineering costs necessary for such purchase and development; and the use of advanced environmental mitigation sites to fulfill project environmental permit requirements. Advanced environmental mitigation must be conducted in a manner that is consistent with the definition of mitigation found in the council of environmental quality regulations (40 C.F.R. Sec. 1508.20) and the governor's executive order on wetlands (EO 90-04). Advanced environmental mitigation is for projects approved by the transportation commission as part of the state's six-year plan or included in the state highway system plan. Advanced environmental mitigation must give consideration to activities related to fish passage, fish habitat, wetlands, and flood management. Advanced environmental mitigation may also be conducted in partnership with federal, state, or local government agencies, tribal governments, interest groups, or private parties. Partnership arrangements may include joint acquisition and development of mitigation sites, purchasing and selling mitigation bank credits among participants, and transfer of mitigation site title from one party to another. Specific conditions of partnership arrangements will be developed in written agreements for each applicable environmental mitigation site. [1998 c 181 § 2; 1997 c 140 § 2.]

Findings—1998 c 181: "The legislature finds that fish passage, fish habitat, wetlands, and flood management are critical issues in the effective management of watersheds in Washington. The legislature also finds that the state of Washington invests a considerable amount of resources on environmental mitigation activities related to fish passage, fish habitat, wetlands, and flood management. The department of transportation's advanced environmental mitigation revolving account established under RCW 47.12.340, is a key funding component in bringing environmental mitigation together with comprehensive watershed management." [1998 c 181 § 1.]

Intent—1997 c 140: "It is the intent of chapter 140, Laws of 1997 to provide environmental mitigation in advance of the construction of programmed projects where desirable and feasible, [which] will provide a more efficient and predictable environmental permit process, increased benefits to environmental resources, and a key tool in using the watershed approach for environmental impact mitigation. The legislative transportation committee, through its adoption of the December 1994 report "Environmental Cost Savings and Permit Coordination Study," encourages state agencies to use a watershed approach based on a water resource inventory area in an improved environmental mitigation and permitting process. Establishment of an advanced transportation environmental mitigation revolving account would help the state to improve permit processes and environmental protection when providing transportation services." [1997 c 140 § 1.]

47.12.340 Advanced environmental mitigation revolving account. The advanced environmental mitigation revolving account is created in the custody of the treasurer, into which the department shall deposit directly and may expend without appropriation:

(1) An initial appropriation included in the department of transportation's 1997-99 budget, and deposits from other identified sources;

(2) All moneys received by the department from internal and external sources for the purposes of conducting advanced environmental mitigation; and

(3) Interest gained from the management of the advanced environmental mitigation revolving account. [1997 c 140 § 3.]

Intent—1997 c 140: See note following RCW 47.12.330.

47.12.350 Advanced environmental mitigation—Site management—Reimbursement of account. (1) After advanced environmental mitigation is conducted from funds in the advanced environmental mitigation revolving account, the advanced environmental mitigation sites must be managed in accordance with any permits, agreements, or other legal documents under which the subject advanced environmental mitigation is conducted.

(2) When the department or any of its transportation partners proceeds with the construction of a transportation project that will use advanced environmental mitigation sites to meet the environmental mitigation needs of a project, the advanced environmental mitigation revolving account shall be reimbursed from those transportation project funds appropriated for the use of the advanced environmental mitigation sites. Reimbursements to the advanced environmental mitigation revolving account must be paid at a rate that captures:

(a) Projected land acquisition costs for environmental mitigation for the subject transportation project;

(b) Advanced environmental mitigation site development costs;

(c) Advanced environmental mitigation site operational costs (e.g., site monitoring);

(d) Administrative costs for the management of the advanced environmental revolving account.

These costs must be adjusted based on inflation, as appropriate.

When only a portion of an advanced environmental mitigation site is used, the reimbursement rate charged to the purchasing party will be prorated for the portion used. [1997 c 140 § 4.]

Intent—1997 c 140: See note following RCW 47.12.330.

47.12.370 Environmental mitigation—Exchange agreements. (1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in RCW 64.04.130, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

(2) Tribal governments shall only be eligible to participate in an exchange agreement if they:

(a) Provide the department with a valid waiver of their tribal sovereign immunity from suit. The waiver must allow the department to enforce the terms of the exchange agreement or quitclaim deed in state court; and

(b) Agree that the property shall not be placed into trust status.

(3) The conveyances must be by quitclaim deed, or other form of conveyance, executed by the secretary of transportation, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions

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and values of the site, and must provide for the automatic reversion to the department if the property is not used as a mitigation site or is not maintained in a manner that complies with applicable permits, laws, and regulations pertaining to the maintenance and operation of the mitigation site. [2003 c 187 § 1; 2002 c 188 § 1.]

Chapter 47.14 RCW

RIGHT-OF-WAY DONATIONS

Sections

47.14.010	Legislative finding, intent.
47.14.020	Definitions.
47.14.030	Credit against transportation benefit district assessment.
47.14.040	Advertising signs on donated parcel.
47.14.050	Department's duties.
47.14.900	Construction.
47.14.910	Severability—1987 c 267.

47.14.010 Legislative finding, intent. The legislature finds that in numerous areas throughout the state, rapid expansion of residential, commercial, industrial, and business activities is producing increased traffic levels. The legislature further finds that many property owners have exhibited a willingness to donate real property or property rights for transportation improvements to accommodate such increases in traffic. The legislature recognizes that the cost of right-of-way acquisition is often a significant, and even a prohibitive cost element in many transportation improvement projects.

The legislature seeks to encourage the voluntary donation of right-of-way to the state, counties, cities, and towns for transportation improvements recognizing that such donations can result in direct benefits to property owners, developers, and the community at large.

It is the intent of the legislature to further facilitate the department of transportation's authority under RCW 47.12.010, 47.24.030, and 47.52.050 to accept donations of right-of-way for state transportation purposes. The legislature further intends to facilitate the authority of a city, town, or county to accept donations of right-of-way for other transportation purposes.

The legislature therefore declares it to be in the best interest and welfare of the citizens of Washington for the state department of transportation, and for counties, cities, and towns to actively foster and encourage donations of right-of-way by willing donors in all areas where transportation improvements are to be made. In addition, and in lieu of monetary compensation for property needed for right-of-way purposes, the legislature seeks to provide incentives to potential donors such as are set forth in RCW 47.14.030 and 47.14.040. [1987 c 267 § 1.]

47.14.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Right-of-way" means the area of land designated for transportation purposes.

(2) "Airspace" means the space above and below the gradeline of all highways, roads, and streets, and the area alongside the traveled way and within approved right-of-way lines. [1987 c 267 § 2.]

47.14.030 Credit against transportation benefit district assessment. The governing body of a transportation benefit district may give credit for all or any portion of any real property donation against an assessment, charge, or other required financial contribution for transportation improvements within a transportation benefit district established under RCW 36.73.020 or 35.21.225. The credit granted shall be available against any assessment, charge or other required financial contribution for any transportation purpose which utilizes the donated property. [1987 c 267 § 3.]

47.14.040 Advertising signs on donated parcel. The department or the county, city, or town to which the right-of-way is donated shall, upon request, grant the donor an air-space lease or a permit for the purpose of erecting or maintaining, or both, one or more signs advertising a business of the donor that is conducted on premises adjacent to the donated parcel unless the sign or signs would be detrimental to the safety and operation of the highway, road, or street. This provision applies to all highways, roads, and streets other than limited access highways and streets, where it applies only until the donated parcel becomes part of a completed operating facility. Except as provided in this section, any such sign shall conform to the requirements of all other applicable federal, state, and local laws and ordinances. The lease agreement or permit shall take into consideration applicable county and city zoning ordinances and may provide for compensation for removal of the sign in accordance with applicable federal, state, and local laws and ordinances. The lease agreement or permit shall specify the conditions for signage. [1987 c 267 § 4.]

47.14.050 Department's duties. The department shall:

- (1) Give priority to the refinement and modification of right-of-way procedures and policies dealing with donation;
- (2) Reduce or simplify paperwork requirements resulting from right-of-way procurement;
- (3) Increase communication and education efforts as a means to solicit and encourage voluntary right-of-way donations;
- (4) Enhance communication and coordination with local governments through agreements of understanding that address state acceptance of right-of-way donations secured under zoning, use permits, subdivision, and associated police power authority of local government. [1998 c 245 § 96; 1987 c 267 § 5.]

47.14.900 Construction. Nothing in this chapter may be construed to contravene the requirements of chapter 8.26 RCW. [1987 c 267 § 6.]

47.14.910 Severability—1987 c 267. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 267 § 12.]

Chapter 47.17 RCW STATE HIGHWAY ROUTES

Sections

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47.17.416	State route No. 211.	47.17.806	State route No. 547.
47.17.417	State route No. 213.	47.17.807	State route No. 548.
47.17.419	State route No. 215.	47.17.808	State route No. 599.
47.17.425	State route No. 221.	47.17.815	State route No. 702.
47.17.430	State route No. 223.	47.17.818	State route No. 704.
47.17.435	State route No. 224.	47.17.819	State route No. 705.
47.17.436	State route No. 225.	47.17.820	State route No. 706—Road to Paradise.
47.17.440	State route No. 230.	47.17.821	State route No. 730.
47.17.445	State route No. 231.	47.17.823	State route No. 821.
47.17.455	State route No. 240.	47.17.824	State route No. 823.
47.17.460	State route No. 241.	47.17.825	State route No. 900.
47.17.465	State route No. 243.	47.17.835	State route No. 902.
47.17.475	State route No. 260.	47.17.840	State route No. 903.
47.17.480	State route No. 261.	47.17.845	State route No. 904.
47.17.481	State route No. 262.	47.17.850	State route No. 906.
47.17.482	State route No. 263.	47.17.855	State route No. 908.
47.17.485	State route No. 270.	47.17.917	State route No. 970.
47.17.490	State route No. 271.	47.17.919	State route No. 971.
47.17.495	State route No. 272.	47.17.960	Local bridges—Department responsibility.
47.17.500	State route No. 274.	47.17.990	Construction—Refunds to counties composed of islands.
47.17.502	State route No. 276.		
47.17.503	State route No. 278.		
47.17.505	State route No. 281.		
47.17.510	State route No. 282.		
47.17.515	State route No. 283.		
47.17.517	State route No. 285.		
47.17.520	State route No. 290.		
47.17.525	State route No. 291.		
47.17.530	State route No. 292.		
47.17.540	State route No. 300.		
47.17.545	State route No. 302.		
47.17.550	State route No. 303.		
47.17.556	State route No. 304.		
47.17.560	State route No. 305.		
47.17.566	State route No. 307.		
47.17.567	State route No. 308.		
47.17.569	State route No. 310.		
47.17.571	State route No. 339.		
47.17.575	State route No. 395.		
47.17.577	State route No. 397.		
47.17.580	State route No. 401.		
47.17.595	State route No. 405.		
47.17.605	State route No. 409.		
47.17.610	State route No. 410.		
47.17.615	State route No. 411.		
47.17.625	State route No. 432.		
47.17.630	State route No. 433.		
47.17.635	State route No. 500.		
47.17.640	State route No. 501—Erwin O. Rieger Memorial Highway.		
47.17.645	State route No. 502.		
47.17.650	State route No. 503.		
47.17.655	State route No. 504—Spirit Lake Memorial Highway.		
47.17.660	State route No. 505.		
47.17.665	State route No. 506.		
47.17.670	State route No. 507.		
47.17.675	State route No. 508.		
47.17.680	State route No. 509.		
47.17.685	State route No. 510.		
47.17.690	State route No. 512.		
47.17.695	State route No. 513.		
47.17.705	State route No. 515.		
47.17.710	State route No. 516.		
47.17.715	State route No. 518.		
47.17.717	State route No. 519.		
47.17.720	State route No. 520.		
47.17.725	State route No. 522.		
47.17.727	State route No. 523.		

Latitude in selecting route: RCW 47.28.010.

47.17.001 Criteria for changes to system. In considering whether to make additions, deletions, or other changes to the state highway system, the legislature shall be guided by the following criteria as contained in the Road Jurisdiction Committee Phase I report to the legislature dated January 1987:

(1) A rural highway route should be designated as a state highway if it meets any of the following criteria:

(a) Is designated as part of the national system of interstate and defense highways (popularly called the interstate system); or

(b) Is designated as part of the system of numbered United States routes; or

(c) Contains an international border crossing that is open twelve or more hours each day.

(2) A rural highway route may be designated as a state highway if it is part of an integrated system of roads and:

(a) Carries in excess of three hundred thousand tons annually and provides primary access to a rural port or intermodal freight terminal;

(b) Provides a major cross-connection between existing state highways;

(c) Connects places exhibiting one or more of the following characteristics:

(i) A population center of one thousand or greater;

(ii) An area or aggregation of areas having a population equivalency of one thousand or more, such as, but not limited to, recreation areas, military installations, and so forth;

(iii) A county seat;

(iv) A major commercial-industrial terminal in a rural area with a population equivalency of one thousand or greater; or

(d) Is designated as a scenic and recreational highway.

(3) An urban highway route that meets any of the following criteria should be designated as part of the state highway system:

(a) Is designated as part of the interstate system;

(b) Is designated as part of the system of numbered United States routes;

(c) Is an urban extension of a rural state highway into or through an urban area and is necessary to form an integrated system of state highways;

(d) Is a principal arterial that is a connecting link between two state highways and serves regionally oriented through traffic in urbanized areas with a population of fifty thousand or greater, or is a spur that serves regionally oriented traffic in urbanized areas.

(4) The following guidelines are intended to be used as a basis for interpreting and applying the criteria to specific routes:

(a) For any route wholly within one or more contiguous jurisdictions which would be proposed for transfer to the state highway system under these criteria, if local officials prefer, responsibility will remain at the local level.

(b) State highway routes maintain continuity of the system by being composed of routes that join other state routes at both ends or to arterial routes in the states of Oregon and Idaho and the Province of British Columbia.

(c) Public facilities may be considered to be served if they are within approximately two miles of a state highway.

(d) Exceptions may be made to include:

(i) Rural spurs as state highways if they meet the criteria relative to serving population centers of one thousand or greater population or activity centers with population equivalencies or an aggregated population of one thousand or greater;

(ii) Urban spurs as state highways that provide needed access to Washington state ferry terminals, state parks, major seaports, and trunk airports; and

(iii) Urban connecting links as state highways that function as needed bypass routing of regionally oriented through traffic and benefit truck routing, capacity alternative, business congestion, and geometric deficiencies.

(e) In urban and urbanized areas:

(i) Unless they are significant regional traffic generators, public facilities such as state hospitals, state correction centers, state universities, ferry terminals, and military bases do not constitute a criteria for establishment of a state highway; and

(ii) There may be no more than one parallel nonaccess controlled facility in the same corridor as a freeway or limited access facility as designated by the metropolitan planning organization.

(f) When there is a choice of two or more routes between population centers, the state route designation shall normally be based on the following considerations:

(i) The ability to handle higher traffic volumes;

(ii) The higher ability to accommodate further development or expansion along the existing alignment;

(iii) The most direct route and the lowest travel time;

(iv) The route that serves traffic with the most interstate, statewide, and interregional significance;

(v) The route that provides the optimal spacing between other state routes; and

(vi) The route that best serves the comprehensive plan for community development in those areas where such a plan has been developed and adopted.

(g) A route designated in chapter 47.39 RCW as a scenic and recreational highway may be designated as a state highway in addition to a parallel state highway route. [1993 c 430 § 1; 1990 c 233 § 1.]

47.17.005 State route No. 2. A state highway to be known as state route number 2 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence easterly by way of Monroe, Stevens Pass, and Leavenworth to a junction with state route number 97 in the vicinity of Peshastin; also

From a junction with state route number 97 in the vicinity of Peshastin, thence easterly by way of Wenatchee, to a junction with state route number 97 in the vicinity of Orondo, thence easterly by way of Waterville, Wilbur, and Davenport to a junction with state route number 90 in the vicinity west of Spokane; also

Beginning at a junction with state route number 90 at Spokane, thence northerly to a junction with state route number 395 in the vicinity north of Spokane; also

From a junction with state route number 395 in the vicinity north of Spokane, thence northerly to a junction with state route number 20 at Newport; also

From a junction with state route number 20 at Newport, thence easterly to the Washington-Idaho boundary line. [1997 c 155 § 1; 1987 c 199 § 1; 1970 ex.s. c 51 § 2.]

Purpose—1970 ex.s. c 51: "This act is intended to assign state route numbers to existing state highways duly established by prior legislative act in lieu of primary state highway numbers and secondary state highway numbers. Nothing contained herein is intended to add any new section of highway to the state highway system or delete any section of highway from the state highway system." [1970 ex.s. c 51 § 179.]

47.17.010 State route No. 3. A state highway to be known as state route number 3 is established as follows:

Beginning at a junction with state route number 101 at Shelton, thence northeasterly to a junction with state route number 302 at Allyn; also

From that junction with state route number 302 at Allyn, thence northeasterly to a junction with state route number 106 in the vicinity of Belfair; also

From that junction with state route number 106 in the vicinity of Belfair, thence northeasterly by the most feasible route to Bremerton, thence northerly and easterly by the most feasible route in the vicinity of Poulsbo to a junction with state route number 104 in the vicinity of Port Gamble. [1970 ex.s. c 51 § 3.]

47.17.015 State route No. 4. A state highway to be known as state route number 4 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of a location known as Johnson's Landing, in Pacific county, thence southeasterly by the most feasible route by way of Kelso to a junction with state route number 5. [1970 ex.s. c 51 § 4.]

47.17.020 State route No. 5—Washington green highway. A state highway to be known as state route number 5, and designated as a Washington green highway, is established as follows:

Beginning at the Washington-Oregon boundary line on the interstate bridge over the Columbia river at Vancouver, thence northerly by way of Kelso, Chehalis, Centralia, Olympia, Tacoma, Seattle, Everett and Mt. Vernon, thence northwesterly to the east of Lake Samish, thence northeasterly and northerly by way of Bellingham to the international boundary line in the vicinity of Blaine in Whatcom county. [2007 c 348 § 405; 1970 ex.s. c 51 § 5.]

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

47.17.025 State route No. 6. A state highway to be known as state route number 6 is established as follows:

Beginning at a junction with state route number 101 at Raymond, thence easterly by the most feasible route to a junction with state route number 5 at Chehalis. [1970 ex.s. c 51 § 6.]

47.17.030 State route No. 7. A state highway to be known as state route number 7 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Morton, thence northerly to a junction with state route number 706 at Elbe; also

From that junction with state route number 706 at Elbe, thence northerly to a junction with state route number 5 at Tacoma. [1970 ex.s. c 51 § 7.]

47.17.035 State route No. 8. A state highway to be known as state route number 8 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 west of Olympia. [1987 c 199 § 2; 1970 ex.s. c 51 § 8.]

47.17.040 State route No. 9. A state highway to be known as state route number 9 is established as follows:

Beginning at a junction with state route number 522 north of Woodinville, thence northerly by way of Snohomish, Arlington and Sedro Woolley to a junction with state route number 542, in the vicinity of Deming; also

Beginning at a junction with state route number 542, in the vicinity of Lawrence, thence northerly to the international boundary at Sumas. [1970 ex.s. c 51 § 9.]

47.17.045 State route No. 10. A state highway to be known as state route number 10 is established as follows:

Beginning at a junction with state route number 970 at Teanaway junction thence easterly to a junction with state route number 97 west of Ellensburg. [1987 c 199 § 3; 1975 c 63 § 14; 1971 ex.s. c 73 § 1; 1970 ex.s. c 51 § 10.]

47.17.050 State route No. 11. A state highway to be known as state route number 11 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Burlington, thence northerly by way of Blanchard

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to a junction with state route number 5 at Bellingham. [1987 c 199 § 4; 1970 ex.s. c 51 § 11.]

47.17.055 State route No. 12. A state highway to be known as state route number 12 is established as follows:

Beginning at a junction with state route number 101 at Aberdeen, thence easterly by way of Montesano and Elma to a junction with state route number 8 in the vicinity of Elma; also

From that junction with state route number 8 in the vicinity of Elma, thence southeasterly to a junction with state route number 5 in the vicinity north of Centralia; also

Beginning at a junction with state route number 5 in the vicinity south of Chehalis, thence easterly by way of Morton and White Pass to a junction with state route number 410 northwest of Yakima; also

From that junction with state route number 410 northwest of Yakima, thence southeasterly to a junction with state route number 82 at Yakima; also

Beginning at a junction with state route number 182 near Pasco, thence southeasterly by the most feasible route by way of Wallula to Walla Walla, thence northerly by way of Dayton to a junction with state route number 127 at Dodge; also

From that junction with state route number 127 in the vicinity of Dodge, thence easterly by the most feasible route by way of Pomeroy and Clarkston to the Washington-Idaho boundary line. [1985 c 177 § 1; 1983 c 180 § 1; 1970 ex.s. c 51 § 12.]

47.17.060 State route No. 14. A state highway to be known as state route number 14 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence easterly by way of Stevenson to a junction with state route number 97 in the vicinity of Maryhill; also

Beginning at a junction with state route number 97 in the vicinity of Maryhill, thence easterly along the north bank of the Columbia river to a junction with state route number 82 in the vicinity of Plymouth. [1985 c 177 § 2; 1970 ex.s. c 51 § 13.]

47.17.065 State route No. 16. A state highway to be known as state route number 16 is established as follows:

Beginning at a junction with state route number 5 at Tacoma, thence northwesterly by way of the Tacoma Narrows Bridge to a junction with state route number 3 in the vicinity of Gorst. [1987 c 199 § 5; 1973 1st ex.s. c 151 § 1; 1970 ex.s. c 51 § 14.]

47.17.070 State route No. 17. A state highway to be known as state route number 17 is established as follows:

Beginning at a junction with state route number 395 in the vicinity of Mesa, thence northwesterly by way of the vicinity of Moses Lake, and Soap Lake, to a junction with state route number 2 west of Coulee City; also

From a junction with state route number 2 in the vicinity west of Coulee City, thence northerly by way of the vicinity of Leahy, crossing the Columbia river in the vicinity of Bridgeport, thence northwesterly to a junction with state route number 97 east of Brewster. [1979 ex.s. c 33 § 1; 1970 ex.s. c 51 § 15.]

47.17.075 State route No. 18. A state highway to be known as state route number 18 is established as follows:

Beginning at a junction with state route number 99 in the vicinity of northeast Tacoma, thence northeasterly by way of Auburn to a junction with state route number 90 west of North Bend. [1987 c 199 § 6; 1970 ex.s. c 51 § 16.]

47.17.077 State route No. 19. A state highway to be known as state route number 19 is established as follows:

Beginning at a junction with state route number 104, thence northerly to a junction with state route number 20 near Old Fort Townsend state park. [1991 c 342 § 1.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.080 State route No. 20. A state highway to be known as state route number 20 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of Discovery Bay, thence northeasterly via the most feasible route to Port Townsend; also

From the state ferry terminal at Port Townsend via the state ferry system northeasterly to the state ferry terminal at Keystone; also

From the Keystone ferry dock on Whidbey Island, thence northeasterly by the most feasible route by way of Deception Pass, Burlington, Sedro Woolley, Concrete, Newhalem, Winthrop, Twisp, Okanogan, Tonasket, Republic, Kettle Falls, Colville, and Tiger; thence southerly and southeasterly to a junction with state route number 2 at Newport. [1994 c 209 § 1; 1973 1st ex.s. c 151 § 13; 1970 ex.s. c 51 § 17.]

47.17.081 State route No. 20 north. A state highway to be known as state route number 20 north is established as follows:

Beginning at a junction with state route number 20 in the vicinity southeast of Anacortes, thence northwesterly to the state ferry terminal at Anacortes; also

From the state ferry terminal at Anacortes via the state ferry system to the state ferry terminals at Lopez Island, Shaw Island, Orcas Island, and Friday Harbor. [1994 c 209 § 2; 1973 1st ex.s. c 151 § 17.]

47.17.085 State route No. 21. A state highway to be known as state route number 21 is established as follows:

Beginning at a junction with state route number 260 in Kahlotus, thence northerly by the most feasible route, crossing state route number 26, and continuing northerly to a junction with state route number 395 in the vicinity of Lind; also

Beginning at a junction with state route number 395 in the vicinity of Lind, thence northerly by the most feasible route by way of Odessa to a junction with state route number 2 in the vicinity west of Wilbur; also

Beginning at a junction with state route number 2 at Wilbur, thence northerly by the most feasible route to a junction with state route number 20 at Republic; also

Beginning at a junction with state route number 20 east of Republic, thence northeasterly by the most feasible route to the east of Curlew lake by way of Curlew to the international boundary line in the vicinity of Danville. [1983 c 79 § 1; 1975 c 63 § 1; 1970 ex.s. c 51 § 18.]

47.17.090 State route No. 22. A state highway to be known as state route number 22 is established as follows:

Beginning at a junction with state route number 82, thence southerly to a junction of state route number 97 in the vicinity of Toppenish; also

From a junction with state route number 97 at Toppenish, thence southeasterly by way of Mabton to a junction with state route number 82 at Prosser. [1987 c 199 § 7; 1970 ex.s. c 51 § 19.]

47.17.095 State route No. 23. A state highway to be known as state route number 23 is established as follows:

Beginning at a junction with state route number 195 in the vicinity north of Colfax, thence northwesterly to a junction with state route number 90 at Sprague; also

From that junction with state route number 90 at Sprague, thence northwesterly to a junction with state route number 28 at Harrington. [1987 c 199 § 8; 1970 ex.s. c 51 § 20.]

47.17.100 State route No. 24. A state highway to be known as state route number 24 is established as follows:

Beginning at a junction with state route number 82 at Yakima, thence easterly and northerly via Cold Creek and Vernita to a junction with state route number 26 in the vicinity of Othello. [1970 ex.s. c 51 § 21.]

47.17.105 State route No. 25. A state highway to be known as state route number 25 is established as follows:

Beginning at a junction with state route number 2 at Davenport, thence northerly by the most feasible route to a junction with state route number 395 in the vicinity of Kettle Falls, thence northeasterly by the most feasible route to international boundary line. [1970 ex.s. c 51 § 22.]

47.17.110 State route No. 26. A state highway to be known as state route number 26 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of the east end of the Vantage bridge, thence southerly, parallel to the east bank of the Columbia river for a distance of approximately two and one-half miles, thence southeasterly to the vicinity of Othello, thence easterly to a junction with state route number 395, thence easterly by way of the vicinity of Washtucna and Dusty to a junction with state route number 195 in the vicinity of Colfax. [1979 ex.s. c 33 § 2; 1970 ex.s. c 51 § 23.]

47.17.115 State route No. 27. A state highway to be known as state route number 27 is established as follows:

Beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly by way of Tekoa, Latah, Fairfield, and Rockford to a junction with state route number 290 in the vicinity of Millwood. [1991 c 342 § 2; 1979 ex.s. c 195 § 1; 1975 c 63 § 2; 1970 ex.s. c 51 § 24.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.120 State route No. 28. A state highway to be known as state route number 28 is established as follows:

Beginning at a junction with state route number 2 in the vicinity east of Wenatchee, thence southeasterly to a junction with state route number 281 at Quincy; also

From that junction with state route number 281 at Quincy, thence easterly by way of Ephrata and Odessa to a junction with state route number 2 at Davenport. [1970 ex.s. c 51 § 25.]

47.17.130 State route No. 31. A state highway to be known as state route number 31 is established as follows:

Beginning at a junction with state route number 20 at Tiger, thence northerly by way of Metaline Falls to the international boundary. [1973 1st ex.s. c 151 § 14; 1970 ex.s. c 51 § 27.]

47.17.132 State route No. 35. A state highway to be known as state route number 35 is established as follows:

Beginning at the Washington-Oregon boundary line thence northerly to a junction with state route number 14 in the vicinity of White Salmon. [2006 c 334 § 41; 1997 c 308 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.17.133 State route No. 41. A state highway to be known as state route number 41 is established as follows:

Beginning at a junction with state route number 2 in Newport, thence southerly along the Washington-Idaho boundary line to Fourth Street in Newport. [1997 c 155 § 2.]

47.17.135 State route No. 82—Washington green highway. A state highway to be known as state route number 82, and designated as a Washington green highway, is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Ellensburg, thence southerly and easterly by way of Yakima, Union Gap, Sunnyside, Prosser, Kiona, and Goose Gap west of Richland, thence southeasterly near Kennewick and southwesterly by way of the vicinity of Plymouth to a crossing of the Columbia river at the Washington-Oregon boundary line. [2007 c 348 § 406; 1979 ex.s. c 33 § 3; 1970 ex.s. c 51 § 28.]

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

47.17.140 State route No. 90—American Veterans Memorial Highway—Washington green highway. A state highway to be known as state route number 90, and designated as the American Veterans Memorial Highway as well as a Washington green highway, is established as follows:

Beginning at a junction with state route number 5, thence, via the west approach to the Lake Washington bridge in Seattle, in an easterly direction by way of Mercer Island, North Bend, Snoqualmie pass, Ellensburg, Vantage, Moses Lake, Ritzville, Sprague and Spokane to the Washington-Idaho boundary line. [2007 c 348 § 407; 1991 c 56 § 2; 1971 ex.s. c 73 § 2; 1970 ex.s. c 51 § 29.]

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

Purpose—1991 c 56: "In order to create a great memorial and tribute to American veterans, it is proposed that the Washington state portion of (2008 Ed.)

Interstate 90 be renamed in their honor, to become the westernmost portion of a memorial highway reaching across the United States." [1991 c 56 § 1.]

47.17.145 State route No. 92. A state highway to be known as state route number 92 is established as follows:

Beginning at a junction with state route number 9 north-east of Everett, thence northeasterly by the most feasible route to Granite Falls. [1970 ex.s. c 51 § 30.]

47.17.153 State route No. 96. A state highway to be known as state route number 96 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence easterly to a junction with state route number 9 in the vicinity of Ree's Corner. [1991 c 342 § 3.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.155 State route No. 97. A state highway to be known as state route number 97 is established as follows:

Beginning at the Washington-Oregon boundary on the interstate bridge across the Columbia river at Biggs Rapids, thence in a northerly direction to the junction with state route number 14 in the vicinity of Maryhill, thence in a northerly direction by way of Goldendale, thence northeasterly by way of Satus Pass to a junction with state route number 22 at Toppenish, thence northwesterly south of the Yakima river to a junction with state route number 82 at Union Gap; also

Beginning at a junction with state route number 90 in the vicinity of Ellensburg, thence northeasterly by way of Swauk Pass to a junction with state route number 2 in the vicinity of Peshastin; also

Beginning at a junction with state route number 2 in the vicinity north of Orondo, thence northerly by way of the vicinities of Chelan, Pateros, Brewster, Okanogan, and Oroville to the international boundary line. [1987 c 199 § 9; 1984 c 7 § 131; 1975 c 63 § 3; 1973 1st ex.s. c 151 § 2; 1970 ex.s. c 51 § 32.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.157 State route No. 97-alternate. A state highway to be known as state route number 97-alternate is established as follows:

Beginning at a junction with state route number 2 in the vicinity of Olds, thence northerly by way of Entiat to a junction with state route number 97 in the vicinity east of Chelan. [1987 c 199 § 10.]

47.17.160 State route No. 99. A state highway to be known as state route number 99 is established as follows:

Beginning at a junction with state route number 18 in the vicinity of Federal Way, thence northerly by way of Midway, to a junction with state route 518 in Tukwila; also

Beginning at a junction with state route number 599 in the vicinity of Tukwila, thence northerly by way of Seattle, Edmonds, and Lynnwood to a junction with state route number 5 in Everett: PROVIDED, That until state route number 509 is constructed and opened to traffic on an anticipated ultimate alignment from a junction with state route number 705 in Tacoma via the Port of Tacoma industrial area to a junction with state route number 18 in the vicinity of Federal Way that

portion of state route number 99 between state route number 5 at Fife and state route number 18 in the vicinity of Federal Way shall remain on the state highway system. [2004 c 205 § 1; 1979 ex.s. c 33 § 4; 1971 ex.s. c 73 § 3; 1970 ex.s. c 51 § 33.]

47.17.163 State route No. 100. A state highway to be known as state route number 100 is established as follows:

Beginning at a junction with state route number 101 in Ilwaco, thence westerly and southerly to Fort Canby state park; also

Beginning at a junction with state route number 100 in Ilwaco, thence southerly to Fort Canby state park. [1991 c 342 § 4.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.165 State route No. 101. A state highway to be known as state route number 101 is established as follows:

Beginning at the Oregon boundary on the interstate bridge at Point Ellis, thence northwesterly by way of Ilwaco to a junction with state route number 4 in the vicinity of a location known as Johnson's Landing in Pacific county; also

From that junction with state route number 4 in the vicinity of a location known as Johnson's Landing, in Pacific county, thence northerly by way of South Bend to a junction with state route number 6 at Raymond; also

From that junction with state route number 6 at Raymond, thence northerly by way of Cosmopolis to a junction with state route number 12 at Aberdeen; also

From that junction with state route number 12 at Aberdeen, thence westerly to Hoquiam, thence northwesterly by way of Lake Quinalt to Forks, thence easterly by way of Port Angeles to the vicinity of Discovery Bay, thence southerly by way of Shelton to a junction with state route number 5 in the vicinity west of Olympia; also

Beginning at a junction with state route number 101 in the vicinity east of Ilwaco, thence northerly to a junction with state route number 101 in the vicinity northeast of Ilwaco. [1987 c 199 § 11; 1970 ex.s. c 51 § 34.]

47.17.168 State route No. 102. A state highway to be known as state route number 102 is established as follows:

Beginning at the Washington Corrections Center, thence northeasterly to a junction of state route number 101 north of Shelton.

Before award of any construction contract for improvements to state route number 102 under either program A or program C, the department of transportation shall secure a portion of the construction cost from Mason county. [1984 c 197 § 1.]

47.17.170 State route No. 103. A state highway to be known as state route number 103 is established as follows:

Beginning at a junction with state route number 101 at Seaview, thence northerly by way of Long Beach to Leadbetter Point state park. [1991 c 342 § 5; 1970 ex.s. c 51 § 35.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.175 State route No. 104. A state highway to be known as state route number 104 is established as follows:

Beginning at a junction with state route number 101 in the vicinity south of Discovery Bay, thence southeasterly to the vicinity of Shine on Hood Canal, thence crossing Hood Canal to a junction with state route number 3 in the vicinity of Port Gamble; also

From that junction with state route number 3 in the vicinity of Port Gamble, thence to Port Gamble, thence southerly and easterly to the state ferry terminal at Kingston; also

From the state ferry terminal at Kingston via the state ferry system easterly to the state ferry terminal at Edmonds; also

From the state ferry terminal at Edmonds, thence south-easterly to a junction with state route number 99 in the vicinity of the Snohomish-King county line; also

Beginning at a junction with state route number 99 in the vicinity of the Snohomish-King county line, thence south-easterly to a junction with state route number 522 in the vicinity of Lake Forest Park. [1994 c 209 § 3; 1970 ex.s. c 51 § 36.]

47.17.180 State route No. 105. A state highway to be known as state route number 105 is established as follows:

Beginning at a junction with state route number 101 at Raymond, thence westerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen. [1987 c 199 § 12; 1970 ex.s. c 51 § 37.]

47.17.185 State route No. 106. A state highway to be known as state route number 106 is established as follows:

Beginning at a junction with state route number 101 near the mouth of the Skokomish river, thence northeasterly along the southeast shore of Hood Canal to a junction with state route number 3 in the vicinity of Belfair. [1970 ex.s. c 51 § 38.]

47.17.190 State route No. 107. A state highway to be known as state route number 107 is established as follows:

Beginning at a junction with state route number 101 north of Artic, thence northeasterly to a junction with state route number 12 at Montesano. [1970 ex.s. c 51 § 39.]

47.17.195 State route No. 108. A state highway to be known as state route number 108 is established as follows:

Beginning at a junction with state route number 8 in the vicinity west of McCleary, thence northeasterly to a junction with state route number 101 south of Shelton. [1973 1st ex.s. c 151 § 3; 1970 ex.s. c 51 § 40.]

47.17.200 State route No. 109. A state highway to be known as state route number 109 is established as follows:

Beginning at a junction with state route number 101 in Hoquiam, thence northwesterly by way of Ocean City, Copalis, Pacific Beach, and Moclips to a junction with state route number 101 in the vicinity of Queets; also a bypass beginning at a junction with state route number 101 in the vicinity of the north city limits of Hoquiam, thence southerly to a junction

with state route number 109 in the vicinity of the west city limits of Hoquiam. [1983 c 180 § 2; 1970 ex.s. c 51 § 41.]

Quinault Tribal Highway: RCW 47.20.710.

47.17.212 State route No. 110. A state highway to be known as state route number 110 is established as follows:

Beginning at a junction with state route number 101 in the vicinity north of Forks, thence westerly to the Olympic national park boundary in the vicinity of La Push; also

Beginning at a junction with state route number 110 near the Quillayute river, thence westerly to the Olympic national park boundary in the vicinity of Moro. [1991 c 342 § 6.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.215 State route No. 112. A state highway to be known as state route number 112 is established as follows:

Beginning at the easterly boundary of the Makah Indian Reservation, thence easterly by way of Clallam Bay and Pysht to a junction with state route number 101 in or near Port Angeles. [1971 ex.s. c 73 § 5; 1970 ex.s. c 51 § 44.]

47.17.216 State route No. 113. A state highway to be known as state route number 113 is established as follows:

Beginning at a junction with state route number 101 in the vicinity of Sappho, thence northerly to a junction with state route number 112 in the vicinity of the Pysht River. [1991 c 342 § 7.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.217 State route No. 115. A state highway to be known as state route number 115 is established as follows:

Beginning at Ocean Shores thence in an easterly and northerly direction by the most feasible route to a junction with state route number 109 in the vicinity south of Ocean City. [1973 c 60 § 1.]

47.17.219 State route No. 116. A state highway to be known as state route number 116 is established as follows:

Beginning at a junction with state route number 19 in the vicinity of Irondale, thence easterly and northerly to Fort Flagger state park. [1991 c 342 § 8.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.221 State route No. 117. A state highway to be known as state route number 117 is established as follows:

Beginning at a junction with state route number 101 in Port Angeles, thence northerly to the port of Port Angeles at Marine Drive. [1991 c 342 § 9.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.223 State route No. 119. A state highway to be known as state route number 119 is established as follows:

Beginning at a junction with state route number 101 near Hoodspert, thence northwesterly to the Mount Rose development intersection. [1991 c 342 § 10.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.225 State route No. 121. A state highway to be known as state route number 121 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Maytown, thence easterly, northerly, and westerly by way of Millersylvania state park to a junction with state route number 5 south of Tumwater. [1991 c 342 § 11; 1970 ex.s. c 51 § 46.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.227 State route No. 122. A state highway to be known as state route number 122 is established as follows:

Beginning at a junction with state route number 12 near Mayfield dam, thence northeasterly and southerly by way of Mayfield to a junction with state route number 12 in Mossyrock. [1991 c 342 § 12.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.230 State route No. 123. A state highway to be known as state route number 123 is established as follows:

Beginning at a junction with state route number 12 in the vicinity west of White Pass, thence northerly to a junction with state route number 410 in the vicinity west of Chinook Pass. [1970 ex.s. c 51 § 47.]

47.17.235 State route No. 124. A state highway to be known as state route number 124 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Burbank, thence northeasterly by the most feasible route to a point in the vicinity of Eureka, thence easterly by the most feasible route to a junction with state route number 125 in the vicinity of Prescott, thence easterly to a junction with state route number 12 in the vicinity northeast of Waitsburg.

That portion of state route number 124 lying between the junction with state route number 12 and the county road to Ice Harbor Dam to be known as "Ice Harbor Drive". [1973 1st ex.s. c 151 § 4; 1970 ex.s. c 51 § 48.]

47.17.240 State route No. 125. A state highway to be known as state route number 125 is established as follows:

Beginning at the Washington-Oregon boundary line south of Walla Walla, thence northerly to a junction with state route number 12 at Walla Walla; also

From a junction with state route number 12 at Walla Walla, thence northerly to a junction with state route number 124 at Prescott. [1979 ex.s. c 33 § 5; 1970 ex.s. c 51 § 49.]

47.17.250 State route No. 127. A state highway to be known as state route number 127 is established as follows:

Beginning at a junction with state route number 12 in the vicinity of Dodge, thence northerly to a junction with state route number 26 in the vicinity of Dusty. [1979 ex.s. c 33 § 6; 1970 ex.s. c 51 § 51.]

47.17.255 State route No. 128. A state highway to be known as state route number 128 is established as follows:

Beginning at a junction with state route number 12 in Clarkston, thence northeasterly and easterly by way of the Red Wolf crossing to the Idaho state line. [1991 c 342 § 13; 1990 c 108 § 1; 1970 ex.s. c 51 § 52.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.260 State route No. 129. A state highway to be known as state route number 129 is established as follows:

Beginning at the Washington-Oregon boundary line in Asotin county, thence northerly by the most feasible route by way of Asotin to a junction with state route number 12 at Clarkston. [1970 ex.s. c 51 § 53.]

47.17.262 State route No. 131. A state highway to be known as state route number 131 is established as follows:

Beginning at the Gifford Pinchot national forest boundary south of Randle, thence northerly to a junction with state route number 12 in Randle. [1991 c 342 § 14.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.275 State route No. 141. A state highway to be known as state route number 141 is established as follows:

Beginning at a wye junction with state route number 14, the west branch in the vicinity east of Underwood and the east branch in the vicinity of White Salmon, thence northerly to the boundary of the Gifford Pinchot National Forest. [1970 ex.s. c 51 § 56.]

47.17.280 State route No. 142. A state highway to be known as state route number 142 is established as follows:

Beginning at a junction with state route number 14 in the vicinity of Lyle, thence northeasterly by way of Klickitat to a junction with state route number 97 in the vicinity of Goldendale. [1970 ex.s. c 51 § 57.]

47.17.285 State route No. 150. A state highway to be known as state route number 150 is established as follows:

Beginning at Manson, thence southeasterly to the north of Lake Chelan to a junction with state route number 97-alternate at Chelan.

Also beginning at a junction with state route number 97-alternate at Chelan southerly to a junction with state route number 97 in the vicinity of Chelan Station. [1987 c 199 § 13; 1970 ex.s. c 51 § 58.]

47.17.295 State route No. 153. A state highway to be known as state route number 153 is established as follows:

Beginning at a junction with state route number 97 in the vicinity of Pateros, thence northerly and westerly by the most feasible route to a junction with state route number 20 in the vicinity south of Twisp. [1970 ex.s. c 51 § 60.]

47.17.300 State route No. 155. A state highway to be known as state route number 155 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northeasterly to the boundary of the federal reservation at the Grand Coulee dam; also

Beginning at the boundary of the federal reservation at the Grand Coulee dam, thence northwesterly by the most feasible route by way of Nespelem and Disautel to a junction with state route number 97 at Omak; also

Beginning at a junction with state route number 155 at Omak, thence northwesterly crossing the Okanogan river to a junction with state route number 215 at Omak. [1975 c 63 § 4; 1970 ex.s. c 51 § 61.]

47.17.305 State route No. 160. A state highway to be known as state route number 160 is established as follows:

Beginning at a junction with state route number 16 in the vicinity south of Port Orchard, thence easterly on Sedgwick Road to the Washington state ferry dock at Point Southworth; also

From the state ferry terminal at Point Southworth via the state ferry system easterly to the state ferry terminal at Vashon Heights; also

From the state ferry terminal at Vashon Heights easterly via the state ferry system to the state ferry terminal at Fautleroy. [1994 c 209 § 4; 1993 c 430 § 2; 1970 ex.s. c 51 § 62; (1991 c 342 § 15 repealed by 1992 c 166 § 31).]

47.17.310 State route No. 161. A state highway to be known as state route number 161 is established as follows:

Beginning at a junction with state route number 7 in the vicinity of La Grande, thence northeasterly via Eatonville to Puyallup, thence northerly to a junction with state route number 18.

That portion of state route 161 within King county shall be designated Enchanted Parkway. [1987 c 520 § 1; 1971 ex.s. c 73 § 6; 1970 ex.s. c 51 § 63.]

47.17.315 State route No. 162. A state highway to be known as state route number 162 is established as follows:

Beginning at a junction with state route number 410 at Sumner, thence southerly to Orting, thence northeasterly to a junction with state route number 165 in the vicinity south of Buckley. [1975 c 63 § 5; 1971 ex.s. c 73 § 7; 1970 ex.s. c 51 § 64.]

47.17.317 State route No. 163. A state highway to be known as state route number 163 is established as follows:

Beginning at a junction with state route number 16 in Tacoma, thence northerly to the Point Defiance ferry terminal; also

From the state ferry terminal at Point Defiance via the state ferry system northerly to the state ferry terminal at Tahl-equah. [1994 c 209 § 5; 1991 c 342 § 16.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.320 State route No. 164. A state highway to be known as state route number 164 is established as follows:

Beginning at a junction with state route number 18 in the vicinity of Auburn, thence southeasterly to a junction with state route number 410 at Enumclaw. [1987 c 199 § 14; 1970 ex.s. c 51 § 65.]

47.17.325 State route No. 165. A state highway to be known as state route number 165 is established as follows:

Beginning at the northwest entrance to Mt. Rainier National Park, thence northerly to a junction with state route number 410 at Buckley. [1970 ex.s. c 51 § 66.]

47.17.328 State route No. 166. A state highway to be known as state route number 166 is established as follows:

Beginning at a junction with state route number 16 in the vicinity west of Port Orchard, thence northeasterly to the eastern Port Orchard city limits. [1993 c 430 § 3.]

47.17.330 State route No. 167. A state highway to be known as state route number 167 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Tacoma, thence easterly by way of the vicinity of Puyallup and Sumner, thence northerly by way of the vicinity of Auburn and Kent to a junction with state route number 900 in the vicinity of Renton. [1991 c 342 § 17; 1979 ex.s. c 33 § 8; 1970 ex.s. c 51 § 67.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.335 State route No. 168. A state highway to be known as state route number 168 is established as follows:

Beginning at a junction with state route number 410 in the vicinity of the junction of the Greenwater and White rivers, thence easterly to a junction with state route number 410 in the vicinity north of Cliffdell. [1970 ex.s. c 51 § 68.]

47.17.340 State route No. 169. A state highway to be known as state route number 169 is established as follows:

Beginning at a junction with state route number 164 at Enumclaw, thence northwesterly by way of Summit to a junction with state route number 900 in the vicinity of Renton. [1971 ex.s. c 73 § 8; 1970 ex.s. c 51 § 69.]

47.17.345 State route No. 170. A state highway to be known as state route number 170 is established as follows:

Beginning at a junction with state route number 17 west of Warden, thence easterly to Warden. [1970 ex.s. c 51 § 70.]

47.17.350 State route No. 171. A state highway to be known as state route number 171 is established as follows:

Beginning at a junction with state route number 90 west of Moses Lake, thence northeasterly by way of Moses Lake to a junction with state route number 28 in the vicinity west of Odessa. Until such time as state route number 171 is actually constructed on the location adopted by the department, no existing county roads may be maintained or improved by the department as a temporary route of state route number 171. [1984 c 7 § 132; 1970 ex.s. c 51 § 71.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.355 State route No. 172. A state highway to be known as state route number 172 is established as follows:

Beginning at a junction with state route number 2 in the vicinity of Waterville, thence northerly and easterly by the most feasible route by way of Mansfield to a junction with state route number 17 in the vicinity of Leahy. [1970 ex.s. c 51 § 72.]

47.17.360 State route No. 173. A state highway to be known as state route number 173 is established as follows:

Beginning at a junction with state route number 17 at Bridgeport thence northwesterly on the south side of the Columbia river to a junction with state route number 97 in the vicinity of Brewster. [1970 ex.s. c 51 § 73.]

47.17.365 State route No. 174. A state highway to be known as state route number 174 is established as follows:

(2008 Ed.)

Beginning at a junction with state route number 17 east of Bridgeport, thence easterly to the boundary of the federal reservation at Grand Coulee dam; also

Beginning at a junction with state route number 155 at Grand Coulee, thence southeasterly to a junction with state route number 21 in the vicinity north of Wilbur; also

A spur beginning at a junction with state route number 174 in the vicinity of the boundary of the federal reservation at the Grand Coulee dam and extending to Crown Point. [1987 c 199 § 15; 1970 ex.s. c 51 § 74.]

47.17.370 State route No. 181. A state highway to be known as state route number 181 is established as follows:

Beginning at a junction with state route number 516 in the vicinity of Kent, thence northerly to a junction with state route number 405 in the vicinity of Tukwila. [1991 c 342 § 18; 1979 ex.s. c 192 § 4; 1971 ex.s. c 73 § 9; 1970 ex.s. c 51 § 75.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Effective dates—1979 ex.s. c 192: "Section 6 of this 1979 act shall take effect July 1, 1980. Sections 1 through 5 of this 1979 act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 192 § 7.]

47.17.372 State route No. 182. A state highway to be known as state route number 182 is established as follows:

Beginning at a junction with state route number 82 in the vicinity of Goose Gap, thence easterly via Richland to a junction with state route number 395 in the vicinity of Pasco. [1979 ex.s. c 33 § 9; 1971 ex.s. c 73 § 10.]

47.17.375 State route No. 193. A state highway to be known as state route number 193 is established as follows:

Beginning at a junction with state route number 128 in the vicinity of the Red Wolf crossing, thence westerly to the port of Wilma. [1991 c 342 § 19; 1990 c 108 § 2; 1984 c 7 § 133; 1970 ex.s. c 51 § 76.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.377 State route No. 194. A state highway to be known as state route number 194 is established as follows:

Beginning at the port of Almota, thence northerly and easterly to a junction with state route number 195 in the vicinity of Pullman. [1991 c 342 § 20.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.380 State route No. 195. A state highway to be known as state route number 195 is established as follows:

Beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Pullman, Colfax, and Rosalia to a junction with state route number 90 at Spokane. [1979 ex.s. c 33 § 10; 1970 ex.s. c 51 § 77.]

47.17.382 State route No. 197. A state highway to be known as state route number 197 is established as follows:

Beginning at the Washington-Oregon boundary on the interstate bridge across the Columbia river in the vicinity of

The Dalles, thence northerly to a junction with state route number 14. [1979 ex.s. c 33 § 11; 1973 1st ex.s. c 151 § 6.]

47.17.385 State route No. 202. A state highway to be known as state route number 202 is established as follows:

Beginning at a junction with state route number 522 near Bothell, thence southeasterly to a junction with state route number 90 in the vicinity of North Bend. [1987 c 199 § 16; 1970 ex.s. c 51 § 78.]

47.17.390 State route No. 203. A state highway to be known as state route number 203 is established as follows:

Beginning at a junction with state route number 202 at Fall City, thence northerly by the most feasible route by way of Duvall to a junction with state route number 2 at Monroe. [1970 ex.s. c 51 § 79.]

47.17.395 State route No. 204. A state highway to be known as state route number 204 is established as follows:

Beginning at a junction with state route number 2 in the vicinity east of Everett, thence northeasterly to a junction with state route number 9. [1987 c 199 § 17; 1970 ex.s. c 51 § 80.]

47.17.400 State route No. 205. A state highway to be known as state route number 205 is established as follows:

Beginning at the Washington-Oregon boundary line in the vicinity east of Vancouver, thence northwesterly to a junction with state route number 5 in the vicinity of Salmon Creek, north of Vancouver. [1970 ex.s. c 51 § 81.]

47.17.405 State route No. 206. A state highway to be known as state route number 206 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Mead, thence northeasterly to the entrance to Mt. Spokane State Park. [1987 c 199 § 18; 1970 ex.s. c 51 § 82.]

47.17.410 State route No. 207. A state highway to be known as state route number 207 is established as follows:

Beginning at a junction with state route number 2 in the vicinity north of Winton, thence northerly to Lake Wenatchee state park. [1991 c 342 § 21; 1970 ex.s. c 51 § 83.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.416 State route No. 211. A state highway to be known as state route number 211 is established as follows:

Beginning at a junction with state route number 2 southwest of Newport, thence northerly by the most feasible route by way of Sacheen Lake to a junction with state route number 20 at Usk. [1975 c 63 § 10.]

47.17.417 State route No. 213. A state highway to be known as state route number 213 is established as follows:

Beginning at a junction with state route number 97 in the vicinity of Malott, thence northeasterly to a junction with state route number 20 southwest of Okanogan. Until such time as this route is actually constructed on the location adopted by the department, no county roads may be main-

tained or improved by the department as a temporary route. [1984 c 7 § 134; 1973 1st ex.s. c 151 § 18.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.419 State route No. 215. A state highway to be known as state route number 215 is established as follows:

Beginning at a junction with state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak. [1973 1st ex.s. c 151 § 19.]

47.17.425 State route No. 221. A state highway to be known as state route number 221 is established as follows:

Beginning at a junction with state route number 14 in the vicinity of Patterson, thence northerly to a junction with state route number 22 in the vicinity of Prosser. [1970 ex.s. c 51 § 86.]

47.17.430 State route No. 223. A state highway to be known as state route number 223 is established as follows:

Beginning at a junction with state route number 22 in the vicinity southeast of Toppenish, thence easterly to a junction with state route number 12 in the vicinity of Granger. The establishment of state route number 223 as defined in this section shall be effective July 1, 1965. [1970 ex.s. c 51 § 87.]

47.17.435 State route No. 224. A state highway to be known as state route number 224 is established as follows:

Beginning at a junction with state route number 82 at Kiona, thence northeasterly to a junction with state route number 240 at Richland. [1987 c 199 § 19; 1970 ex.s. c 51 § 88.]

47.17.436 State route No. 225. A state highway to be known as state route number 225 is established as follows:

Beginning at a junction with state route number 224 in Kiona, thence northeasterly by way of Benton City to a junction with state route number 240 near Horn Rapids dam. [1991 c 342 § 22.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.440 State route No. 230. A state highway to be known as state route number 230 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Ritzville, thence easterly by the most feasible route to a junction with state route number 23 in the vicinity of Ewan. [1970 ex.s. c 51 § 89.]

47.17.445 State route No. 231. A state highway to be known as state route number 231 is established as follows:

Beginning at a junction with state route number 23 in the vicinity northwest of Sprague, thence northerly by way of Edwall to a junction with state route number 2 in the vicinity west of Reardan; also

Beginning at a junction with state route number 2 in the vicinity of Reardan, thence northerly by way of Long Lake across the Spokane river, thence northeasterly by way of Springdale to a junction with state route number 395 in the vicinity of Chewelah. [1970 ex.s. c 51 § 90.]

47.17.455 State route No. 240. A state highway to be known as state route number 240 is established as follows:

Beginning at a junction with state route number 24 in the vicinity east of Cold Creek, thence southeasterly by the most feasible route across the Atomic Energy Commission Reservation to a junction with state route number 224 at Richland; also

From that junction with state route number 224 at Richland, thence southerly to a junction with state route number 182 at Richland; also

From a junction with state route number 182 at Richland southeasterly to a junction with state route number 395 at Kennewick. The secretary may enter into negotiations with appropriate federal agencies to secure right-of-way for the highway over and across the Atomic Energy Commission Reservation. [1985 c 177 § 3; 1984 c 7 § 135; 1970 ex.s. c 51 § 92.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.460 State route No. 241. A state highway to be known as state route number 241 is established as follows:

Beginning at a junction with state route number 22 in Mabton, thence northerly and northeasterly by way of Sunny-side to a junction with state route number 24. [1991 c 342 § 23; 1987 c 199 § 20; 1970 ex.s. c 51 § 93.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.465 State route No. 243. A state highway to be known as state route number 243 is established as follows:

Beginning at a junction with state route number 24 north of its crossing of the Columbia river, thence westerly and northerly by way of Arrowsmith and Beverly to a junction with state route number 26 south of the Columbia river bridge at Vantage. [1970 ex.s. c 51 § 94.]

47.17.475 State route No. 260. A state highway to be known as state route number 260 is established as follows:

Beginning at a junction with state route number 17 west of Connell, thence easterly to a junction with state route number 395 in the vicinity of Connell, thence northeasterly by way of Kahlotus to a junction with state route number 26 at Washtucna. [1970 ex.s. c 51 § 96.]

47.17.480 State route No. 261. A state highway to be known as state route number 261 is established as follows:

Beginning at a junction with state route number 12 at Delaney, thence northwesterly to a junction with state route number 260 in the vicinity of McAdam; also

Beginning at a junction with state route number 26 at Washtucna, thence northerly to a junction with state route number 90 at Ritzville. [1987 c 199 § 21; 1971 ex.s. c 73 § 12; 1970 ex.s. c 51 § 97.]

47.17.481 State route No. 262. A state highway to be known as state route number 262 is established as follows:

Beginning at a junction with state route number 26 east of Royal City, thence northerly and easterly to a junction with state route number 17 west of Warden. [1991 c 342 § 24.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.482 State route No. 263. A state highway to be known as state route number 263 is established as follows:

Beginning at the port of Windust, thence easterly and northerly to a junction with state route number 260 in Kahlotus. [1991 c 342 § 25.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.485 State route No. 270. A state highway to be known as state route number 270 is established as follows:

Beginning at a junction with state route number 195 at Pullman, thence easterly by the most feasible route to a point on the Washington-Idaho boundary line. [1970 ex.s. c 51 § 98.]

47.17.490 State route No. 271. A state highway to be known as state route number 271 is established as follows:

Beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia. [1970 ex.s. c 51 § 99.]

47.17.495 State route No. 272. A state highway to be known as state route number 272 is established as follows:

Beginning at a junction with state route number 195 at Colfax, thence easterly to a junction with state route number 27 at Palouse; also

Beginning at a junction with state route number 27 at Palouse, thence northeasterly by the most feasible route to a point on the Washington-Idaho boundary line. [1970 ex.s. c 51 § 100.]

47.17.500 State route No. 274. A state highway to be known as state route number 274 is established as follows:

Beginning at a junction with state route number 27 at Tekoa, thence easterly to the Washington-Idaho boundary line. [1970 ex.s. c 51 § 101.]

47.17.502 State route No. 276. A state highway to be known as state route number 276 is established as follows:

Beginning at a junction with state route number 195 west of Pullman, thence easterly and southeasterly to a junction with state route number 270 east of Pullman. [1973 1st ex.s. c 151 § 7.]

47.17.503 State route No. 278. A state highway to be known as state route number 278 is established as follows:

Beginning at a junction with state route number 27 in Rockford, thence easterly and southerly to the Washington-Idaho boundary. [1991 c 342 § 26.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.505 State route No. 281. A state highway to be known as state route number 281 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of George, thence northerly to a junction with state route number 28 at Quincy; also

Beginning at a junction with state route number 281 at a point north of the above described junction on state route number 90, thence in a southeasterly direction to a junction with state route number 90 in the vicinity east of George,

some 1.6 miles more or less, resulting in a wye connection between state route number 281 and state route number 90. [1971 ex.s. c 73 § 13; 1970 ex.s. c 51 § 102.]

47.17.510 State route No. 282. A state highway to be known as state route number 282 is established as follows:

Beginning at a junction with state route number 28 in the vicinity of Ephrata, thence southeasterly to a junction with state route number 17 in the vicinity of Rocky Ford creek. [1970 ex.s. c 51 § 103.]

47.17.515 State route No. 283. A state highway to be known as state route number 283 is established as follows:

Beginning at a junction with state route number 281 in the vicinity of Burke Junction, thence northeasterly by the most feasible route to a junction with state route number 28 in the vicinity west of Ephrata. [1970 ex.s. c 51 § 104.]

47.17.517 State route No. 285. A state highway to be known as state route number 285 is established as follows:

Beginning at a junction with state route number 28 in East Wenatchee, thence westerly across the Columbia river and northwesterly to a junction with state route number 2 in Wenatchee. [1991 c 342 § 27; 1977 ex.s. c 224 § 1.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.520 State route No. 290. A state highway to be known as state route number 290 is established as follows:

Beginning at a junction with state route number 90 in Spokane, thence northeasterly by way of Millwood, Trentwood, and Newman Lake to the termination of Idaho state highway number 53 at the Washington-Idaho boundary line. [2005 c 14 § 1; 1977 ex.s. c 6 § 1; 1970 ex.s. c 51 § 105.]

47.17.525 State route No. 291. A state highway to be known as state route number 291 is established as follows:

Beginning at a junction with state route number 2 in Spokane, thence northwesterly along the north bank of the Spokane river to the vicinity of Tumtum; and thence southwestwardly along the north shore of Long Lake to a junction with state route number 231 in the vicinity of the Little Falls Dam. [1983 c 180 § 4; 1970 ex.s. c 51 § 106.]

47.17.530 State route No. 292. A state highway to be known as state route number 292 is established as follows:

Beginning at a junction with state route number 231 at Springdale, thence easterly to a junction with state route number 395 in the vicinity of Loon Lake. [1970 ex.s. c 51 § 107.]

47.17.540 State route No. 300. A state highway to be known as state route number 300 is established as follows:

Beginning at the western boundary of the Belfair State Park, thence generally easterly to a junction with state route number 3 at Belfair. [1970 ex.s. c 51 § 109.]

47.17.545 State route No. 302. A state highway to be known as state route number 302 is established as follows:

Beginning at a junction with state route number 3 in the vicinity of Allyn, thence easterly to a junction with state route

number 16 in the vicinity of Purdy. [1987 c 199 § 22; 1970 ex.s. c 51 § 110.]

47.17.550 State route No. 303. A state highway to be known as state route number 303 is established as follows:

Beginning at a junction with state route number 304 at Bremerton, thence by way of the Warren Avenue bridge across the Port Washington Narrows northerly to a junction with state route number 3 in the vicinity north of Silverdale. [1991 c 342 § 28; 1971 ex.s. c 73 § 14; 1970 ex.s. c 51 § 111.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.556 State route No. 304. A state highway to be known as state route number 304 is established as follows:

Beginning at a junction with state route number 3 in Bremerton, thence easterly to the ferry terminal in Bremerton; also

From the state ferry terminal at Bremerton via the state ferry system easterly to the junction with state route number 519 at the state ferry terminal in Seattle. [1994 c 209 § 6; 1993 c 430 § 4.]

47.17.560 State route No. 305. A state highway to be known as state route number 305 is established as follows:

Beginning at the junction with state route number 519 at the state ferry terminal in Seattle, thence via the state ferry system northwesterly to the state ferry terminal at Bainbridge Island; also

From the state ferry terminal at Bainbridge Island, thence northerly by the most feasible route to the north end of Bainbridge Island, across Agate Pass, thence northwesterly by the most feasible route to a junction with state route number 3 in the vicinity north of Poulsbo. [1994 c 209 § 7; 1970 ex.s. c 51 § 113.]

47.17.566 State route No. 307. A state highway to be known as state route number 307 is established as follows:

Beginning at a junction with state route number 305 at Poulsbo, thence northeasterly to a junction with state route number 104 near Miller Lake. [1991 c 342 § 29.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.567 State route No. 308. A state highway to be known as state route number 308 is established as follows:

Beginning at a junction with state route number 3, thence easterly to Keyport. [1987 c 199 § 23; 1971 ex.s. c 73 § 15.]

47.17.569 State route No. 310. A state highway to be known as state route number 310 is established as follows:

Beginning at a junction with state route number 3 near Oyster Bay, thence easterly to a junction with state route number 304 in Bremerton. [1991 c 342 § 30.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.571 State route No. 339. A state highway to be known as state route number 339 is established as follows:

Beginning at the junction of state route number 160 at the state ferry terminal at Vashon Heights, thence via the state ferry system northeasterly to the junction with state

route number 519 at the state ferry terminal in Seattle. [1994 c 209 § 9.]

47.17.575 State route No. 395. A state highway to be known as state route number 395 is established as follows:

Beginning at a junction with state route number 82 at Kennewick, northerly to a junction with state route number 182 at Pasco; also

From a junction with state route number 182 at Pasco, thence northeasterly by way of the vicinity of Mesa and Connell to a junction with state route number 90 at Ritzville; also

From a junction with state route number 2 in the vicinity north of Spokane, thence northerly by way of the vicinity of Colville and Kettle Falls to the international boundary line in the vicinity of Laurier. [1985 c 177 § 4; 1979 ex.s. c 33 § 13; 1970 ex.s. c 51 § 116.]

47.17.577 State route No. 397. A state highway to be known as state route number 397 is established as follows:

Beginning at Piert Road in the vicinity southeast of Finely, thence northwesterly and northerly across the Columbia River, thence easterly and northerly to a junction with state route number 395 in Pasco. [1993 c 430 § 5; 1991 c 342 § 31.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.580 State route No. 401. A state highway to be known as state route number 401 is established as follows:

Beginning at Point Ellice on state route number 101, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle. [1970 ex.s. c 51 § 117.]

47.17.595 State route No. 405. A state highway to be known as state route number 405 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Seattle, thence northeasterly to Renton, thence northerly east of Lake Washington to a junction with state route number 5 north of Seattle. [1970 ex.s. c 51 § 120.]

47.17.605 State route No. 409. A state highway to be known as state route number 409 is established as follows:

Beginning at the South Ferry landing, as now located, or as it may be relocated, on the south side of Puget Island, thence generally northerly by the most feasible route to the Puget Island bridge, thence crossing said bridge to a junction with state route number 4 at the north approach of said bridge at the town of Cathlamet: PROVIDED, That the state of Washington shall not assume or pay any bond or bonds outstanding against said bridge, or interest on said bonds, but said bond or bonds, and interest thereon, shall remain the sole obligation of the obligors named on said bonds. [1970 ex.s. c 51 § 122.]

47.17.610 State route No. 410. A state highway to be known as state route number 410 is established as follows:

Beginning at a junction with state route number 167 at Sumner, thence easterly by way of Buckley, Enumclaw, and Chinook Pass, to a junction with state route number 12 northwest of Yakima: PROVIDED, That until such time as state

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route number 167 is constructed and opened to traffic on an anticipated ultimate alignment from a junction with state route number 5 near Tacoma easterly to Sumner on the north side of the Puyallup river, the public highway between state route number 5 in Tacoma and state route number 161 in Sumner, on the south side of the Puyallup river, shall remain on the state highway system. [1987 c 199 § 24; 1973 1st ex.s. c 151 § 8; 1970 ex.s. c 51 § 123.]

47.17.615 State route No. 411. A state highway to be known as state route number 411 is established as follows:

Beginning at a junction with state route number 432 in Longview, thence northerly to a junction with state route number 5 at Castle Rock. [1991 c 342 § 32; 1970 ex.s. c 51 § 124.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.625 State route No. 432. A state highway to be known as state route number 432 is established as follows:

Beginning at a junction with state route number 4 in the vicinity west of Longview, thence southeasterly to a junction with state route number 5 south of Kelso. [1991 c 342 § 33; 1970 ex.s. c 51 § 126.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.630 State route No. 433. A state highway to be known as state route number 433 is established as follows:

Beginning at the Washington-Oregon boundary on the interstate bridge at Longview, thence northerly to a junction with state route number 432 in Longview. [1991 c 342 § 34; 1987 c 199 § 25; 1970 ex.s. c 51 § 127.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.635 State route No. 500. A state highway to be known as state route number 500 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northeasterly to Orchards, thence southeasterly to a junction with state route number 14 at Camas. [1970 ex.s. c 51 § 128.]

47.17.640 State route No. 501—Erwin O. Rieger Memorial Highway. A state highway to be known as state route number 501 is established as follows:

Beginning at a junction with state route number 5 at Vancouver, thence northerly by way of Lower River Road and an extension thereof to Ridgefield, thence easterly to a junction with state route number 5 in the vicinity south of La Center. That portion of state route number 501 from the northerly junction of N.W. Lower River Road to the Ridgefield city limits is designated "the Erwin O. Rieger Memorial Highway." The department may enter into an agreement with the Port of Vancouver, Clark county, or the United States Army Engineers, or any combination thereof, to obtain material dredged from the Columbia river and have it stockpiled at no expense to the state. [1991 c 78 § 1; 1984 c 7 § 136; 1970 ex.s. c 51 § 129.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.645 State route No. 502. A state highway to be known as state route number 502 is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Vancouver, thence easterly to a junction with state route number 503 at Battleground. [1970 ex.s. c 51 § 130.]

47.17.650 State route No. 503. A state highway to be known as state route number 503 is established as follows:

Beginning at a junction with state route number 500 at Orchards, thence northerly to a junction with state route number 502 at Battle Ground, thence northerly to Amboy, thence northeasterly by way of Cougar to the Cowlitz-Skamania county line; also

Beginning at a junction with state route number 503 in the vicinity of Yale, thence westerly to a junction with state route number 5 in the vicinity of Woodland. [1991 c 342 § 35; 1975 c 63 § 6; 1970 ex.s. c 51 § 131.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.655 State route No. 504—Spirit Lake Memorial Highway. A state highway to be known as state route number 504, hereby designated the Spirit Lake Memorial Highway, dedicated to the memory of those who lost their lives in the 1980 eruption of Mt. St. Helens, is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Castle Rock, thence easterly along the north shore of Silver Lake by way of Silverlake and Toutle, past a junction with state route number 505, thence by way of Kid Valley and St. Helens to the former Spirit Lake. [1982 c 82 § 1; 1970 ex.s. c 51 § 132.]

47.17.660 State route No. 505. A state highway to be known as state route number 505 is established as follows:

Beginning in Winlock, thence via Toledo, easterly and southerly to a junction with state route number 504 in the vicinity north of Toutle. [1991 c 342 § 36; 1970 ex.s. c 51 § 133.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.665 State route No. 506. A state highway to be known as state route number 506 is established as follows:

Beginning at Ryderwood, thence by way of Vader northeasterly to a junction with state route number 5 west of Toledo. [1970 ex.s. c 51 § 134.]

47.17.670 State route No. 507. A state highway to be known as state route number 507 is established as follows:

Beginning at a junction with state route number 5 in Centralia, thence northerly by the most feasible route by way of Bucoda to Tenino, thence northeasterly by way of Rainier, Yelm and McKenna to a junction with state route number 7 in the vicinity south of Tacoma. [1970 ex.s. c 51 § 135.]

47.17.675 State route No. 508. A state highway to be known as state route number 508 is established as follows:

Beginning at a junction with state route number 5 south of Chehalis, thence easterly by way of Onalaska to a junction with state route number 7 at Morton. [1970 ex.s. c 51 § 136.]

47.17.680 State route No. 509. A state highway to be known as state route number 509 is established as follows:

Beginning at a junction with state route number 705 at Tacoma, thence northeasterly to a junction with state route number 99 in the vicinity of Redondo; also

From a junction with state route number 516 at Des Moines, thence northerly to a junction with state route number 99 in Seattle. [1991 c 342 § 37; 1979 ex.s. c 33 § 14; 1970 ex.s. c 51 § 137.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.685 State route No. 510. A state highway to be known as state route number 510 is established as follows:

Beginning at a junction with state route number 5, thence southeasterly via St. Clair to a junction with state route number 507 at Yelm. [1970 ex.s. c 51 § 138.]

47.17.690 State route No. 512. A state highway to be known as state route number 512 is established as follows:

Beginning at a junction with state route number 5 south of Tacoma, thence easterly to a junction with state route number 7 south of Tacoma, thence easterly to a junction with state route number 167 in the vicinity of Puyallup. [1970 ex.s. c 51 § 139.]

47.17.695 State route No. 513. A state highway to be known as state route number 513 is established as follows:

Beginning at a junction with state route number 520 in Seattle, thence northerly and easterly to the vicinity of Sand Point. [1991 c 342 § 38; 1971 ex.s. c 73 § 16; 1970 ex.s. c 51 § 140.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.705 State route No. 515. A state highway to be known as state route number 515 is established as follows:

Beginning at a junction with state route number 516 in the vicinity east of Kent, thence northerly to a junction with state route number 900 in Renton. [1970 ex.s. c 51 § 142.]

47.17.710 State route No. 516. A state highway to be known as state route number 516 is established as follows:

Beginning at a junction with state route number 509 in the vicinity south of Des Moines, thence southeasterly to a junction with state route number 5; also

From that junction with state route number 5, thence easterly to a junction with state route number 167 in Kent, thence easterly to a junction with state route number 169 south of Maple Valley. [1970 ex.s. c 51 § 143.]

47.17.715 State route No. 518. A state highway to be known as state route number 518 is established as follows:

Beginning at a junction with state route number 509 near Sunnydale, thence easterly to a junction with state route number 5 in the vicinity of Seattle. [1970 ex.s. c 51 § 144.]

47.17.717 State route No. 519. A state highway to be known as state route number 519 is established as follows:

Beginning at a junction with state route number 90 in Seattle, thence westerly, and northerly to the Washington state ferry terminal. [1991 c 342 § 39.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.720 State route No. 520. A state highway to be known as state route number 520 is established as follows:

Beginning at a junction with state route number 5 in Seattle, thence easterly via the Evergreen Point bridge to a junction with state route number 202 in the vicinity of Redmond. [1970 ex.s. c 51 § 145.]

47.17.725 State route No. 522. A state highway to be known as state route number 522 is established as follows:

Beginning at Seattle in King county, thence easterly by the most feasible route to the north of Lake Washington by way of Bothell to a junction with state route number 202 near Bothell; also

From that junction with state route number 202 near Bothell, thence northeasterly by the most feasible route to a junction with state route number 2 in the vicinity of Monroe. [1970 ex.s. c 51 § 146.]

47.17.727 State route No. 523. A state highway to be known as state route number 523 is established as follows:

Beginning at a junction with state route number 99 and Northeast 145th Street in Seattle, thence easterly to a junction with state route number 522. [1991 c 342 § 40.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.730 State route No. 524. A state highway to be known as state route number 524 is established as follows:

Beginning at a junction with state route number 104 at Edmonds, thence northeasterly to a junction with state route number 5 in the vicinity of Lynnwood, thence easterly to a junction with state route number 522 near Maltby. [1991 c 342 § 41; 1984 c 7 § 137; 1970 ex.s. c 51 § 147.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.735 State route No. 525. A state highway to be known as state route number 525 is established as follows:

Beginning at a junction with state route number 5 in the vicinity south of Everett, thence northwesterly to the state ferry terminal at Mukilteo; also

From the junction with state route number 526 at Mukilteo, thence southerly to a junction with state route number 525; also

From the state ferry terminal at Mukilteo via the state ferry system northerly to the state ferry terminal at Clinton; also

From the state ferry terminal at Clinton, thence northwesterly to a junction with state route number 20 in the vicinity east of Keystone. [2001 c 130 § 1; 1994 c 209 § 8; 1973 1st ex.s. c 151 § 15; 1970 ex.s. c 51 § 148.]

47.17.740 State route No. 526. A state highway to be known as state route number 526 is established as follows:

Beginning at a junction with state route number 525 at Mukilteo, thence easterly to a junction with state route number 5 in the vicinity of its junction with state route number 527. [1970 ex.s. c 51 § 149.]

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47.17.745 State route No. 527. A state highway to be known as state route number 527 is established as follows:

Beginning at a junction with state route number 522 in the vicinity of Bothell, thence northerly to a junction with state route number 5 in the vicinity south of Everett. [1970 ex.s. c 51 § 150.]

47.17.750 State route No. 528. A state highway to be known as state route number 528 is established as follows:

Beginning at a junction with state route number 5 near Marysville, thence easterly to a junction with state route number 9. Until such time as state route number 528 from Marysville to a junction with state route number 9 is actually constructed on the location adopted by the department, no existing city streets or county roads may be maintained or improved by the department as a temporary route of state route number 528. [1984 c 7 § 138; 1971 ex.s. c 73 § 18; 1970 ex.s. c 51 § 151.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.752 State route No. 529. A state highway to be known as state route number 529 is established as follows:

Beginning at a junction with state route number 5 in Everett, thence westerly and northerly through Everett to a junction with state route number 528 in Marysville. [1991 c 342 § 42; 1971 ex.s. c 73 § 19.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.755 State route No. 530. A state highway to be known as state route number 530 is established as follows:

Beginning at a junction with state route number 5 in the vicinity west of Arlington, thence easterly and northerly by way of Darrington to a junction with state route number 20 in the vicinity of Rockport. [1991 c 342 § 43; 1983 c 131 § 1; 1971 ex.s. c 73 § 20; 1970 ex.s. c 51 § 152.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.757 State route No. 531. A state highway to be known as state route number 531 is established as follows:

Beginning at Wenberg state park, thence northerly and easterly to a junction with state route number 9 in the vicinity north of Marysville. [1991 c 342 § 44.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.760 State route No. 532. A state highway to be known as state route number 532 is established as follows:

Beginning at a point on Camano Island known as McEacherns Corner, thence easterly over a bridge and by way of Stanwood to a junction with state route number 530 in the vicinity of Stanwood, thence easterly to a junction with state route number 5 in the vicinity east of Stanwood. [1970 ex.s. c 51 § 153.]

47.17.765 State route No. 534. A state highway to be known as state route number 534 is established as follows:

Beginning at a junction with state route number 5 at Conway, thence southeasterly to a junction with state route number 9 at McMurray. [1970 ex.s. c 51 § 154.]

47.17.770 State route No. 536. A state highway to be known as state route number 536 is established as follows:

Beginning at a junction with state route number 20 at Fredonia, thence easterly to a junction with state route number 5 at Mt. Vernon. [1973 1st ex.s. c 151 § 16; 1970 ex.s. c 51 § 155.]

47.17.780 State route No. 538. A state highway to be known as state route number 538 is established as follows:

Beginning at a junction with state route number 5 at Mt. Vernon, thence easterly to a junction with state route number 9. [1970 ex.s. c 51 § 157.]

47.17.785 State route No. 539. A state highway to be known as state route number 539 is established as follows:

Beginning at a junction with state route number 5 at Bellingham, thence northerly to the international boundary in the vicinity east of Delta. [1970 ex.s. c 51 § 158.]

47.17.795 State route No. 542. A state highway to be known as state route number 542 is established as follows:

Beginning at a junction with state route number 5 at Bellingham, thence easterly to a point in the vicinity of Austin Pass in Whatcom county. [1970 ex.s. c 51 § 160.]

47.17.797 State route No. 543. A state highway to be known as state route number 543 is established as follows:

Beginning at a junction with state route number 5 in the vicinity of Blaine, thence northerly to the international boundary. [1971 ex.s. c 73 § 22.]

47.17.800 State route No. 544. A state highway to be known as state route number 544 is established as follows:

Beginning at a junction with state route number 539 in the vicinity of Wisner lake, thence northeasterly by way of Everson to a junction with state route number 9 in the vicinity of Nooksack. [1970 ex.s. c 51 § 161.]

47.17.805 State route No. 546. A state highway to be known as state route number 546 is established as follows:

Beginning at a junction with state route number 539 approximately 2.7 miles south of the international boundary, thence easterly by way of Van Buren to a junction with state route number 9. [1970 ex.s. c 51 § 162.]

47.17.806 State route No. 547. A state highway to be known as state route number 547 is established as follows:

Beginning at the junction of state route number 542 in the vicinity of Kendall, thence northwesterly to a junction with state route number 9 at Sumas. [1984 c 197 § 2.]

47.17.807 State route No. 548. A state highway to be known as state route number 548 is established as follows:

Beginning at a junction with state route number 5 in the vicinity north of Ferndale, thence westerly and northerly to a junction with state route number 5 in Blaine. [1991 c 342 § 45.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.808 State route No. 599. A state highway to be known as state route number 599 is established as follows:

Beginning in the vicinity south of Seattle at a junction with state route number 5, thence in a northwesterly direction west of the Duwamish river to a junction with state route number 99 in the vicinity of South 118 street south of Seattle. [1971 ex.s. c 73 § 23.]

47.17.815 State route No. 702. A state highway to be known as state route number 702 is established as follows:

Beginning at a junction with state route number 507 at McKenna, thence easterly to a junction with state route number 7. [1970 ex.s. c 51 § 164.]

47.17.818 State route No. 704. A state highway to be known as state route number 704 is established as follows: Beginning at a junction with state route number 5 in south Pierce county, thence easterly across Fort Lewis to a junction with state route number 7. [2002 c 56 § 304.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

47.17.819 State route No. 705. A state highway to be known as state route number 705 is established as follows:

Beginning at a junction with state route number 5 in Tacoma, thence northerly to a junction with Schuster Parkway in the Tacoma central business district. [1979 ex.s. c 33 § 15.]

47.17.820 State route No. 706—Road to Paradise. A state highway to be known as state route number 706, designated the Road to Paradise, is established as follows:

Beginning at a junction with state route number 7 at Elbe, thence easterly to a southwest entrance to Mt. Rainier National Park. [1990 c 97 § 1; 1970 ex.s. c 51 § 165.]

47.17.821 State route No. 730. A state highway to be known as state route number 730 is established as follows:

Beginning at the Washington-Oregon boundary line, thence northeasterly to a junction with state route number 12 south of Wallula. [1985 c 177 § 5.]

47.17.823 State route No. 821. A state highway to be known as state route number 821 is established as follows:

Beginning at a junction with state route number 82 in the vicinity north of Yakima, thence northerly to a junction with state route number 82 south of Ellensburg. [1973 1st ex.s. c 151 § 9.]

47.17.824 State route No. 823. A state highway to be known as state route number 823 is established as follows:

Beginning at the junction of state route number 82 in the vicinity of Selah northerly by way of Selah and easterly to a junction with state route number 821 in the vicinity of the firing center interchange.

Before award of any construction contract for improvements to state route number 823 under either program A or program C, the department of transportation shall secure a portion of the construction cost from the city of Selah or Yakima county, or both. [1991 c 342 § 46; 1984 c 197 § 3.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.825 State route No. 900. A state highway to be known as state route number 900 is established as follows:

Beginning at a junction with state route number 5 in Seattle near the Duwamish River, thence southerly by way of Renton to a junction with state route number 90 in the vicinity of Issaquah. [1991 c 342 § 47; 1979 ex.s. c 33 § 16; 1970 ex.s. c 51 § 166.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.835 State route No. 902. A state highway to be known as state route number 902 is established as follows:

Beginning at a junction with state route number 90, thence northwesterly, northerly, northeasterly, and easterly, via the town of Medical Lake, to a junction with state route number 90 at a point approximately three miles northeast of Four Lakes. [1991 c 342 § 49; 1970 ex.s. c 51 § 168.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.840 State route No. 903. A state highway to be known as state route number 903 is established as follows:

Beginning at a junction with state route number 970 in the vicinity of Cle Elum, thence northwesterly by way of Cle Elum and Roslyn to the National Forest boundary in the vicinity of Lake Cle Elum. [1975 c 63 § 7; 1970 ex.s. c 51 § 169.]

47.17.845 State route No. 904. A state highway to be known as state route number 904 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Tyler, thence northeasterly via Cheney to a junction with state route number 90 in the vicinity of Four Lakes. [1971 ex.s. c 73 § 25; 1970 ex.s. c 51 § 170.]

47.17.850 State route No. 906. A state highway to be known as state route number 906 is established as follows:

Beginning at a junction with state route number 90 at the West Summit interchange of Snoqualmie Pass, thence along the alignment of the state route number 90 as it existed on May 11, 1967, in a southeasterly direction to a junction with state route number 90 at the Hyak interchange. [2005 c 319 § 129; 1984 c 7 § 139; 1977 ex.s. c 235 § 16; 1971 ex.s. c 73 § 26; 1970 ex.s. c 51 § 171.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.17.855 State route No. 908. A state highway to be known as state route number 908 is established as follows:

Beginning at a junction with state route number 405 in Kirkland, thence easterly to a junction with state route number 202 in the vicinity of Redmond. [1991 c 342 § 50; 1971 ex.s. c 73 § 27.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.917 State route No. 970. A state highway to be known as state route number 970 is established as follows:

Beginning at a junction with state route number 90 in the vicinity of Cle Elum, thence northeasterly by way of Tean-

away to a junction with state route number 97 in the vicinity of Virden. [1975 c 63 § 12.]

47.17.919 State route No. 971. A state highway to be known as state route number 971 is established as follows:

Beginning at a junction with state route number 97-alternate in the vicinity of Winesap, thence northerly to Lake Chelan state park, thence southeasterly to a junction with state route number 97-alternate west of Chelan. [1991 c 342 § 51.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.960 Local bridges—Department responsibility. Although not part of the state highway system, the bridges designated in this section shall remain the continuing responsibility of the Washington state department of transportation. Continuing responsibility includes all structural maintenance, repair, and replacement of the substructure, superstructure, and roadway deck. Local agencies are responsible for snow and ice control, sweeping, striping, lane marking, and channelization.

Facility	State of Washington Inventory of Bridges and Structures (SWIBS) Number
S. Fork Skykomish River Bridge	WN-002000487032
Manette Bridge	WN-303250032700
Grays River Bridge (Rosburg)	WN-403000064300
Elochoman Bridge	WN-407000023300

[1991 c 342 § 55.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.17.990 Construction—Refunds to counties composed of islands. Nothing in this chapter precludes the refund of all vehicle license fees and motor vehicle fuel tax directly or indirectly paid by the residents of those counties composed entirely of islands and that have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, as authorized under RCW 46.68.080. [1994 c 209 § 10.]

**Chapter 47.20 RCW
MISCELLANEOUS PROJECTS**

Sections	
47.20.570	Manette bridge authorized.
47.20.580	Washington State University highway authorized.
47.20.590	University of Washington approach authorized.
47.20.600	Washington State University highway, University of Washington approach—Acquisition of property.
47.20.605	Washington State University highway, University of Washington approach—Public use.
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47.20.620	Washington State University highway, University of Washington approach—Measure of damage to buildings.
47.20.630	Washington State University highway, University of Washington approach—Sale of buildings, personalty, acquired in acquisition of land.
47.20.635	University of Washington approach—Ordinance requisite—Construction and maintenance.
47.20.640	Reestablishment and redesignation of intersections when highway relocated.
47.20.645	Interstate 90 corridor—Legislative finding.

- 47.20.647 Interstate 90 corridor—Withdrawal of local governments from project—Effect on use of state funds.
- 47.20.653 Interstate 90 corridor—Court proceedings, priority.
- 47.20.700 State route No. 504 (Spirit Lake Memorial Highway)—Extension and parking facilities.
- 47.20.710 Quinault Tribal Highway—Agreement authorized—Route.
- 47.20.715 Quinault Tribal Highway—Maintenance, operation, improvements—Intersections, access.
- 47.20.720 Quinault Tribal Highway—Certain portion as limited access.
- 47.20.725 Quinault Tribal Highway—Acquisition of remaining right-of-way.
- 47.20.730 Quinault Tribal Highway—Department as agent.
- 47.20.735 Quinault Tribal Highway—Authority to seek federal funding.
- 47.20.780 Design-build—Competitive bidding.
- 47.20.785 Design-build—Qualified projects.
- 47.20.900 Severability—1975 1st ex.s. c 272.

47.20.570 Manette bridge authorized. The department is authorized and directed to construct a bridge across Port Washington Narrows connecting state route number 304 at or near Bremerton with state route number 303 on the Manette Peninsula; to make surveys and plans; and to condemn or otherwise acquire such lands as are necessary or proper for approaches to the bridge or for the relocation of any portion of the highway to locate the bridge at the most feasible place. The bridge shall become and be maintained as a part of the state highway system. [1984 c 7 § 140; 1970 ex.s. c 51 § 173; 1961 c 13 § 47.20.570. Prior: 1947 c 4 p 6 § 2; Rem. Supp. 1947 § 6584a-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.580 Washington State University highway authorized. The department is hereby authorized and directed to locate, construct, pave, and maintain a suitable highway on the most feasible route beginning in the vicinity of the stadium of the Washington State University and extending in a northwesterly direction to a connection with state route number 27, near the north boundary of the city of Pullman. [1984 c 7 § 141; 1970 ex.s. c 51 § 174; 1961 c 13 § 47.20.580. Prior: 1945 c 27 § 1; Rem. Supp. 1945 § 6402-40.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.590 University of Washington approach authorized. The department is hereby authorized and directed to select and locate a suitable and fitting street and highway approach to the University of Washington campus in the city of Seattle, from Roosevelt Way to Fifteenth Avenue northeast, including an underpass beneath the surface of Roosevelt Way, and necessary approaches to the underpass. [1984 c 7 § 142; 1961 c 13 § 47.20.590. Prior: 1945 c 27 § 2; Rem. Supp. 1945 § 6402-41.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.600 Washington State University highway, University of Washington approach—Acquisition of property. The department is hereby authorized and directed in the name of the state of Washington to acquire by purchase, gift, or condemnation, any and all private real estate, rights, and interests necessary to locate, construct, and maintain the Washington State University highway and the University of Washington approach provided for herein. [1984 c 7 § 143; 1961 c 13 § 47.20.600. Prior: 1945 c 27 § 3; Rem. Supp. 1945 § 6402-42.]

[Title 47 RCW—page 92]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.605 Washington State University highway, University of Washington approach—Public use. The use of the private real estate, rights, and interests, selected by the department as necessary for the approach, underpass, and highway is declared to be a public use. [1984 c 7 § 144; 1961 c 13 § 47.20.605. Prior: 1945 c 27 § 4; Rem. Supp. 1945 § 6402-43. Formerly RCW 47.20.600, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.610 Washington State University highway, University of Washington approach—Condemnation. In case of condemnation to secure any real estate, rights, or interests authorized under this chapter, the court actions shall be brought in the name of the state of Washington in the respective counties in which the real estate is located and in the manner provided by law for acquiring property for public uses for the state. In such actions the selection of the real estate, rights, and interests by the department is, in the absence of bad faith, arbitrary, capricious, or fraudulent action, conclusive upon the court and judge before which the action is brought that the real estate, rights, and interests are necessary for public use for the purposes sought. [1984 c 7 § 145; 1961 c 13 § 47.20.610. Prior: 1945 c 27 § 5; Rem. Supp. 1945 § 6402-44.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.620 Washington State University highway, University of Washington approach—Measure of damage to buildings. If, in any condemnation proceeding authorized herein, it appears that there is any building wholly or partially upon any of the real estate to be taken, the jury, or the court, if the jury be waived, shall add to the value of the land taken the amount of damages to the building. If the entire building is taken, or if the building is damaged so that it cannot be readjusted to the real estate not taken, then the measure of damages shall be the fair cash value of the building. If part of a building is taken or damaged and the building can be readjusted or replaced on the real estate remaining, then the measure of damages shall be the cost of readjusting or moving the building, or part thereof left, together with the depreciation in the market value of said building by reason of said readjustment or moving. [1961 c 13 § 47.20.620. Prior: 1945 c 27 § 6; Rem. Supp. 1945 § 6402-45.]

47.20.630 Washington State University highway, University of Washington approach—Sale of buildings, personalty, acquired in acquisition of land. The department shall have power to sell at public or private sale any building, equipment, or fixtures acquired in the acquisition of the real estate for such price as it shall fix and to execute to the purchaser upon payment of the purchase price a bill of sale in the name of the state. Proceeds of the sale shall be placed in the motor vehicle fund of the state treasury. The department shall have power to permit occupation of buildings on real estate so acquired for such specified limited time as it deems will lapse before construction of the approach, underpass, and highway can be undertaken; and in behalf of the state it may be shown in any condemnation proceeding

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the period during which such occupancy will be permitted for the purpose of mitigating damages. [1984 c 7 § 146; 1961 c 13 § 47.20.630. Prior: 1945 c 27 § 7; Rem. Supp. 1945 § 6402-46.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.635 University of Washington approach—Ordinance requisite—Construction and maintenance. No action may be taken by the department for the acquisition of real estate, rights, and interests for the approach and underpass to the University of Washington unless and until the city of Seattle, through its legislative authority, enacts an ordinance providing that the city of Seattle will, within three months after the necessary real estate, rights, and interests have been secured by the state as provided in this chapter, begin the work of grading, paving, and such other work as is necessary to complete and render available for use of the public, the approach and underpass and approaches to the underpass; and further providing that the city of Seattle shall thereafter keep and maintain the approach and underpass and approach to the underpass in a good state of repair and suitable for public travel and use, which construction and maintenance work the city of Seattle is hereby authorized and empowered to do and perform. [1984 c 7 § 147; 1961 c 13 § 47.20.635. Prior: 1945 c 27 § 8; Rem. Supp. 1945 § 6402-47.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.640 Reestablishment and redesignation of intersections when highway relocated. In any case where a state highway is relocated in such manner that it ceases to intersect another state highway, the department is authorized to extend and designate either of the state highways to reestablish an appropriate intersection. [1984 c 7 § 148; 1967 ex.s. c 145 § 44; 1961 c 13 § 47.20.640. Prior: 1953 c 82 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.645 Interstate 90 corridor—Legislative finding. The legislature finds that the department initiated route studies for the location of that segment of the national system of interstate and defense highways (interstate system) between south Bellevue and state route No. 5 in Seattle in 1957 culminating in a corridor public hearing and adoption of a corridor in 1963; that thereafter the department, utilizing a multidisciplinary design team and soliciting the broadest public participation, developed a series of designs culminating in a public design hearing in 1970, a public limited access hearing in 1971, and adoption of a design and limited access plan for the facility in 1971; that commencing in 1970 the proposed facility has been the subject of numerous lawsuits and administrative proceedings that have prevented advancement of the project to construction; that since further development of the project was enjoined by federal courts in 1971 the cost of constructing the project has increased by more than one hundred million dollars; that the traffic congestion and traffic hazards existing in the existing highway corridor between south Bellevue, Mercer Island, and the city of Seattle are no longer tolerable; that after more than seventeen years of studies the public interest now requires that final decisions regarding the appropriate system for meeting the

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transportation requirements between south Bellevue and the city of Seattle be made promptly and in accordance with a prescribed schedule.

It is therefore the sense of the legislature that further protracted delay in establishing the transportation system to be constructed between south Bellevue and state route No. 5 in the city of Seattle is contrary to the interest of the people of this state and can no longer be tolerated as acceptable public administration. Accordingly the schedule for finally determining the character of transportation modes between south Bellevue and state route No. 5 in the city of Seattle as set forth in RCW 47.20.645 through 47.20.653 and 47.20.900 is adopted as the public policy of this state. [1984 c 7 § 149; 1975 1st ex.s. c 272 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.20.647 Interstate 90 corridor—Withdrawal of local governments from project—Effect on use of state funds. (1) The Puget Sound council of governments (until July 1, 1975, known as the Puget Sound governmental conference) now engaged in a study of the withdrawal from the interstate system of that segment of state route No. 90 between the south Bellevue interchange and the Connecticut street interchange on state route No. 5 and the substitution of public mass transit projects in lieu thereof as authorized by section 103(e)(4) of Title 23, United States Code, is directed to complete all phases of the study by November 1, 1975.

(2) No later than January 15, 1976, the city councils of Seattle, Mercer Island and Bellevue and the county council of King County shall each by resolution either approve or disapprove a request to withdraw from the interstate system the segment of state route No. 90 between south Bellevue interchange and the Connecticut street interchange on state route No. 5. Nothing in this subsection shall be construed as requiring the city or county councils to adopt by January 15, 1976 any proposal for substitute mass transit projects.

(3) If at least three of the four city and county councils request withdrawal from the interstate system of the designated segment of state route No. 90 by January 15, 1976, and such request is thereafter concurred in by the governor and the Puget Sound council of governments, such determination shall be final as it relates to the state of Washington and except as may be required to terminate the project in an orderly manner, no moneys shall thereafter be expended from the motor vehicle fund for further development of the designated section of highway as an interstate highway without further express authorization of the legislature.

(4) If fewer than three of the four city and county councils request withdrawal from the interstate system of the designated segment of state route No. 90 by January 15, 1976, or if the governor does not concur in the withdrawal request, then no tax revenues collected by the state of Washington shall thereafter be expended for the construction of substitute public mass transit projects in the Seattle metropolitan area pursuant to section 103(e)(4) of Title 23, United States Code, without further express authorization of the legislature. [1975 1st ex.s. c 272 § 2.]

47.20.653 Interstate 90 corridor—Court proceedings, priority. State court proceedings instituted to chal-

lenge the validity of any steps taken in pursuance of the construction of the segment of the interstate system between south Bellevue and state route No. 5 in Seattle, or the construction of substitute public mass transit projects in lieu thereof, shall take precedence over all other causes not involving the public interest in all courts of this state to the end construction of such facilities may be expedited to the fullest. The legislature of the state of Washington respectfully requests of the federal judiciary that challenges instituted in the federal courts relating to the validity of steps leading to the construction of the designated interstate highway or substitute public mass transit projects in lieu thereof be expedited to the fullest. [1975 1st ex.s. c 272 § 5.]

47.20.700 State route No. 504 (Spirit Lake Memorial Highway)—Extension and parking facilities. The department of transportation may provide for the construction of an extension of state route number 504 from the vicinity of Maple Flats to the vicinity of the United States Corps of Engineers debris dam on the north fork of the Toutle river on an alignment to be approved by the department of transportation. The department may enter into an agreement with the principal owner of the necessary right-of-way providing as follows:

(1) The owner of the right-of-way shall construct the highway extension and public parking facilities as specified by the department of transportation.

(2) The owner of the right-of-way shall convey to the state, right-of-way for the highway extension a minimum of one hundred fifty feet in width (except right-of-way presently under the control of the department of natural resources), together with areas for public parking facilities as designated by the department of transportation.

(3) The department of transportation shall reimburse the present owner of the right-of-way for the actual cost of construction of the highway extension and the public parking facilities.

(4) The construction of the highway extension and public parking facilities shall be completed within one year after March 27, 1982.

The department of transportation may acquire that part of the right-of-way necessary for the highway extension that is now under the control of the department of natural resources in the manner provided in RCW 47.12.023 through 47.12.029.

All expenditures by the department of transportation pursuant to this section shall be from appropriations for the construction of category A projects. [1982 c 82 § 2.]

47.20.710 Quinault Tribal Highway—Agreement authorized—Route. The department of transportation is authorized to enter into a cooperative agreement with the governing authority for the Indian peoples of the Quinault Indian Reservation and appropriate agencies of the United States for the location, design, right-of-way acquisition, construction, and maintenance of a highway beginning at the south boundary of the Quinault Indian reservation on state route number 109, thence northerly along the present right-of-way of state route number 109 to the township line, thence inland and northerly across the Raft river to an intersection

with state route number 101 south of Queets. The highway shall be known as the "Tribal Highway" and may also be designated by the department as state route number 109. It is anticipated that this highway construction will be funded from federal sources other than normal federal aid highway allocations. [1985 c 228 § 1.]

State route number 109: RCW 47.17.200.

47.20.715 Quinault Tribal Highway—Maintenance, operation, improvements—Intersections, access. As a part of the agreement, the department may assume responsibility for the operation and maintenance and future improvement of the highway. The agreement may also reserve to the governing authority for the Indian peoples of the Quinault Indian Reservation authority to construct public road intersections or grade separation crossings of the highway. Existing rights of access from adjoining property to existing state route number 109 from the south reservation boundary to the township line shall not be affected by RCW 47.20.710 through 47.20.735 or the agreement authorized by RCW 47.20.710. [1985 c 228 § 2.]

47.20.720 Quinault Tribal Highway—Certain portion as limited access. The department is authorized to determine the location of the highway from the township line to a junction with state route number 101 after consultations with the governing authority for the Indian peoples of the Quinault Indian Reservation and the bureau of Indian affairs. The department may then proceed with the establishment of this section of the highway as a limited access facility in the manner prescribed in RCW 47.52.131 through 47.52.137 and 47.52.195 (and the administrative rules adopted by the department to implement those sections), subject, however, to the following conditions: (1) The access report required by RCW 47.52.131 shall be approved by the governing authority for the Indian peoples of the Quinault Indian Reservation before public hearings; and (2) the final limited access plan adopted pursuant to RCW 47.52.137 at the conclusion of the public hearing, or after any appeal from it has been decided, shall be approved by the governing authority for the Indian peoples of the Quinault Indian Reservation and the bureau of Indian affairs before right-of-way is acquired for this section of highway. [1985 c 228 § 3.]

47.20.725 Quinault Tribal Highway—Acquisition of remaining right-of-way. The department is authorized to acquire the remaining right-of-way for the Tribal Highway by purchase or by condemnation under state or federal eminent domain statutes. The secretary of transportation pursuant to the agreement is authorized to convey by deed to the governing authority for the Indian peoples of the Quinault Indian Reservation the right-of-way to the entire highway when fully acquired in return for a conveyance by the governing authority for the Indian peoples of the Quinault Indian Reservation to the state of Washington of a perpetual easement for public travel on the through lanes and shoulders of the highway when constructed. The agreement may also authorize the governing authority for the Indian peoples of the Quinault Indian Reservation to convey to the United States an easement to construct, maintain, and repair the

highway improvements if such an easement is required by regulations of the bureau of Indian affairs. [1985 c 228 § 4.]

47.20.730 Quinault Tribal Highway—Department as agent. Except as otherwise provided by RCW 47.20.710 through 47.20.735 or by the agreement authorized by RCW 47.20.710, the department may proceed with the location, design, acquisition of right-of-way, construction, and maintenance of the highway as an agent of the governing authority for the Indian peoples of the Quinault Indian Reservation in accordance with applicable state or federal law. [1985 c 228 § 5.]

47.20.735 Quinault Tribal Highway—Authority to seek federal funding. The department is authorized to join with the governing authority for the Indian peoples of the Quinault Indian Reservation to seek federal funding for the construction of the Tribal Highway. [1985 c 228 § 6.]

47.20.780 Design-build—Competitive bidding. The department of transportation shall develop a process for awarding competitively bid highway construction contracts for projects over ten million dollars that may be constructed using a design-build procedure. As used in this section and RCW 47.20.785, "design-build procedure" means a method of contracting under which the department of transportation contracts with another party for the party to both design and build the structures, facilities, and other items specified in the contract.

The process developed by the department must, at a minimum, include the scope of services required under the design-build procedure, contractor prequalification requirements, criteria for evaluating technical information and project costs, contractor selection criteria, and issue resolution procedures. [2007 c 152 § 1; 2001 c 226 § 2.]

Findings—Purpose—2001 c 226: "The legislature finds and declares that a contracting procedure that facilitates construction of transportation facilities in a more timely manner may occasionally be necessary to ensure that construction can proceed simultaneously with the design of the facility. The legislature further finds that the design-build process and other alternative project delivery concepts achieve the goals of time savings and avoidance of costly change orders.

The legislature finds and declares that a 2001 audit, conducted by Talbot, Korvola & Warwick, examining the Washington state ferries' capital program resulted in a recommendation for improvements and changes in auto ferry procurement processes. The auditors recommended that auto ferries be procured through use of a modified request for proposals process whereby the prevailing shipbuilder and Washington state ferries engage in a design and build partnership. This process promotes ownership of the design by the shipbuilder while using the department of transportation's expertise in ferry design and operations. Alternative processes like design-build partnerships can promote innovation and create competitive incentives that increase the likelihood of finishing projects on time and within the budget.

The purpose of this act is to authorize the department's use of a modified request for proposals process for procurement of auto ferries, and to prescribe appropriate requirements and criteria to ensure that contracting procedures for this procurement process serve the public interest." [2001 c 226 § 1.]

47.20.785 Design-build—Qualified projects. (1) The department of transportation may use the design-build procedure for public works projects over ten million dollars where:

(a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) The projects selected provide opportunity for greater innovation and efficiencies between the designer and the builder; or

(c) Significant savings in project delivery time would be realized.

(2) To test the applicability of the design-build procedure on smaller projects and specialty projects, the department may conduct up to five pilot projects on projects that cost between two and ten million dollars. The department shall evaluate these pilot projects with respect to cost, time to complete, efficiencies gained, if any, and other pertinent information to facilitate analysis regarding the further use of the design-build process on projects of this size. [2006 c 37 § 1; 2001 c 226 § 3.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.20.900 Severability—1975 1st ex.s. c 272. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 272 § 6.]

Chapter 47.22 RCW

COMBINATION HIGHWAY ROUTES

Sections

47.22.010 East Pacific highway.
47.22.020 Lewis and Clark Highway.

47.22.010 East Pacific highway. There is hereby established the east Pacific highway which shall be composed of the following existing highway routes: Beginning on state route number 5 at or near Centralia; thence by way of state route number 5 to its junction with state route number 12 or by way of state route number 507 between Centralia and Tenino; thence on state route number 507 to Roy junction with state route number 7; thence on state route number 7 to a junction with state route number 512; thence on state route number 512 to Puyallup; thence on state route numbers 410 and 167 to Sumner, Auburn, Kent and Renton; thence on state route number 405 to Kirkland; thence on state route number 405 north to a junction with state route number 522; thence on state route number 522 to a junction with state route number 9 northeast of Woodinville; and thence on state route number 9 to Snohomish, Arlington, Sedro Woolley, and to a junction with state route number 542 at Deming; thence westerly on state route 542 to a junction with state route number 9 at Lawrence; thence on state route number 9 via Sumas, to the Canadian international boundary. [1970 ex.s. c 51 § 175; 1961 c 13 § 47.22.010. Prior: 1951 c 273 § 1.]

47.22.020 Lewis and Clark Highway. There is established the Lewis and Clark Highway, which shall be composed of the following existing routes: State route 193 from the junction of state route 12 at Clarkston to Wawawai River Road; state route 12 from Clarkston to Waitsburg; state route 124 from Waitsburg to Pasco (west); state route 12 from Pasco to Waitsburg via Wallula and Walla Walla (east); state routes 395 and 82 from state route 12, through the Tri-Cities

region, to the junction at state route 14; state route 14 from the junction of state routes 395 and 82 to Maryhill; state routes 14 and 5 from Maryhill to state route 432 through Longview to state route 4; state route 4 from Longview to the junction with state route 101 near the vicinity of Johnson's landing; state route 401 from Naselle junction to Megler; state route 101 from Megler through Ilwaco and Seaview to the junction with state route 4; state route spur/alternate state route 101; state route loop 100; state route spur 100; and state route 103. [1999 c 57 § 1; 1970 ex.s. c 51 § 176; 1967 ex.s. c 145 § 13; 1961 c 13 § 47.22.020. Prior: 1955 c 178 § 1.]

Chapter 47.24 RCW

CITY STREETS AS PART OF STATE HIGHWAYS

Sections

47.24.010	Designation—Construction, maintenance—Return to city or town.
47.24.020	Jurisdiction, control.
47.24.030	Acquisition of rights-of-way—Condemnation proceedings.
47.24.040	Street fund—Expenditures on streets forming part of state highway.
47.24.050	Aid on streets by state or county—Payment.

City streets

parkways, boulevards, generally: Title 35 RCW.
sidewalks, etc.: Chapters 35.68 through 35.79 RCW.

Design standards committee for city streets: Chapter 35.78 RCW.

Off-street parking

cities: Chapter 35.86 RCW.

towns: RCW 35.27.550 through 35.27.590.

Platted streets as public highways: RCW 58.08.035, 58.08.050.

Speed limits in cities: RCW 46.61.415, 46.61.430, 46.61.440.

Viaducts, bridges, elevated roadways, tunnels, etc., in cities: Chapter 35.85 RCW.

47.24.010 Designation—Construction, maintenance—Return to city or town. The department of transportation shall determine what streets, together with bridges thereon and wharves necessary for use for ferriage of motor vehicle traffic in connection with such streets, if any, in any incorporated cities and towns shall form a part of the route of state highways and between the first and fifteenth days of July of any year the department shall identify by brief description, the streets, together with the bridges thereon and wharves, if any, in such city or town which are designated as forming a part of the route of any state highway; and all such streets, including curbs and gutters and street intersections and such bridges and wharves, shall thereafter be a part of the state highway system and as such shall be constructed and maintained by the department from any state funds available therefor: PROVIDED, That the responsibility for the construction and maintenance of any such street together with its appurtenances may be returned to a city or a town upon certification by the department to the clerk of any city or town that such street, or portion thereof, is no longer required as a part of the state highway system: PROVIDED FURTHER, That any such certification that a street, or portion thereof, is no longer required as a part of the state highway system shall be made between the first and fifteenth of July following the determination by the department that such street or portion thereof is no longer required as a part of the state highway system, but this shall not prevent the department and any city

or town from entering into an agreement that a city or town will accept responsibility for such a street or portion thereof at some time other than between the first and fifteenth of July of any year. [2006 c 334 § 42; 1998 c 245 § 97; 1979 ex.s. c 86 § 2; 1977 ex.s. c 151 § 57; 1973 c 95 § 3; 1961 c 13 § 47.24.010. Prior: 1959 c 160 § 1; 1957 c 83 § 2; 1955 c 179 § 2; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Severability—1979 ex.s. c 86: See note following RCW 13.24.040.

47.24.020 Jurisdiction, control. The jurisdiction, control, and duty of the state and city or town with respect to such streets is as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used for highway purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the right to construct such additional underground facilities as may be necessary in such streets. However, pavement trenching and restoration performed as part of installation of such facilities must meet or exceed requirements established by the department;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction. Pavement trenching and restoration performed under a privilege granted by the city under this subsection must meet or exceed requirements established by the department;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of twenty-five thousand or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right-of-way to protect the roadway itself. When the population of a city or town first exceeds twenty-five thousand according to the determination of population by the office of financial man-

agement, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws and rules, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility must require the grantee or permittee to restore, repair, and replace any portion of the street damaged or injured by it to conditions that meet or exceed requirements established by the department;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of twenty-five thousand or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by them, indicating the location, nature of installation, or type thereof, or a proposed amendment to

such an existing plan or installation, and the department shall consult with the cities or towns concerning the plan before installing such signals, signs, or devices. Cities and towns having a population in excess of twenty-five thousand according to the latest determination of population by the office of financial management shall install, maintain, operate, and control such signals, signs, and devices at their own expense, subject to approval of the department for the installation and type only. When the population of a city or town first exceeds twenty-five thousand according to the determination of population by the office of financial management, the city or town shall have three years from the date of the determination to plan for additional staffing, budgetary, and equipment requirements before being required to assume the responsibilities under this subsection. For the purpose of this subsection, striping, lane marking, and channelization are considered traffic control devices;

(14) All revenue from parking meters placed on such streets belongs to the city or town;

(15) Rights-of-way for such streets shall be acquired by either the city or town or by the state as shall be mutually agreed upon. Costs of acquiring rights-of-way may be at the sole expense of the state or at the expense of the city or town or at the expense of the state and the city or town as may be mutually agreed upon. Title to all such rights-of-way so acquired shall vest in the city or town: PROVIDED, That no vacation, sale, rental, or any other nontransportation use of any unused portion of any such street may be made by the city or town without the prior written approval of the department; and all revenue derived from sale, vacation, rental, or any nontransportation use of such rights-of-way shall be shared by the city or town and the state in the same proportion as the purchase costs were shared;

(16) If any city or town fails to perform any of its obligations as set forth in this section or in any cooperative agreement entered into with the department for the maintenance of a city or town street forming part of the route of a state highway, the department may notify the mayor of the city or town to perform the necessary maintenance within thirty days. If the city or town within the thirty days fails to perform the maintenance or fails to authorize the department to perform the maintenance as provided by RCW 47.24.050, the department may perform the maintenance, the cost of which is to be deducted from any sums in the motor vehicle fund credited or to be credited to the city or town. [2007 c 84 § 1; 2001 c 201 § 8; 1993 c 126 § 1; 1991 c 342 § 52; 1987 c 68 § 1; 1984 c 7 § 150; 1977 ex.s. c 78 § 7; 1967 c 115 § 1; 1963 c 150 § 1; 1961 c 13 § 47.24.020. Prior: 1957 c 83 § 3; 1955 c 179 § 3; 1953 c 193 § 1; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Severability—1984 c 7: See note following RCW 47.01.141.

47.24.030 Acquisition of rights-of-way—Condemnation proceedings. The department is authorized to acquire rights-of-way, by purchase, gift, or condemnation for any such streets, highways, bridges, and wharves. Any such condemnation proceedings shall be exercised in the manner provided by law for condemnation proceedings to acquire lands

required for state highways. [1984 c 7 § 151; 1961 c 13 § 47.24.030. Prior: 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450-61, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

Right-of-way donations: Chapter 47.14 RCW.

47.24.040 Street fund—Expenditures on streets forming part of state highway. All funds accruing to the credit of incorporated cities and towns in the motor vehicle fund shall be paid monthly to such incorporated cities and towns and shall, by the respective cities and towns, be placed in a fund to be designated as "city street fund" and disbursed as authorized and directed by the legislative authority of the city or town, as agents of the state, for salaries and wages, material, supplies, equipment, purchase or condemnation of right-of-way, engineering or any other proper highway or street purpose in connection with the construction, alteration, repair, improvement or maintenance of any city street or bridge, or viaduct or underpassage along, upon or across such streets. Such expenditure may be made either independently or in conjunction with any federal, state or any county funds. [1961 c 13 § 47.24.040. Prior: 1949 c 220 § 4; 1947 c 96 § 1; 1943 c 82 § 9; 1939 c 181 § 8; 1937 c 187 § 60; Rem. Supp. 1949 § 6450-60.]

47.24.050 Aid on streets by state or county—Payment. If a city or town, whether or not any of its streets are designated as forming a part of a state highway, is unable to construct, repair, or maintain its streets for good cause, or if it is in need of engineering assistance to construct, repair, or maintain any of its streets, it may authorize the department to perform such construction, repair, or maintenance, or it may secure necessary engineering assistance from the department, to the extent of the funds credited or to be credited in the motor vehicle fund for payment to the city or town. Any sums due from a city or town for such purposes shall be paid on vouchers approved and submitted by the department from moneys credited to the city or town in the motor vehicle fund, and the amount of the payments shall be deducted from funds which would otherwise be paid to the city or town from the motor vehicle fund. The department may in certain special cases, in its discretion, enter into an agreement with the governing officials of the city or town for the performance of such work or services, the terms of which shall provide for reimbursement of the motor vehicle fund for the benefit of the state's share of the fund by the city or town of the cost thereof from any funds of the city or town on hand and legally available for the work or services. The city or town may, by resolution, authorize the legislative authority of the county in which it is located, to perform any such construction, repair, or maintenance, and the work shall be paid for by the city or town at the actual cost thereof as provided for payment for work performed on city streets, and any payment received therefor by a county shall be deposited in the county road fund to be expended under the same provisions as are imposed upon the funds used to perform the construction, repair, or maintenance. [1984 c 7 § 152; 1961 c 13 § 47.24.050. Prior: 1951 c 54 § 1; 1949 c 220 § 6; 1943 c 82 § 11; 1937 c 187 § 63; Rem. Supp. 1949 § 6450-63.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.26 RCW DEVELOPMENT IN URBAN AREAS— URBAN ARTERIALS

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Bicycle transportation management program: RCW 47.04.190.

Public-private transportation initiatives—1994 act: RCW 47.10.834 through 47.10.839.

47.26.010 Declaration of intent. Due to unprecedented industrial development and population increases, the state of Washington is confronted with emergency needs for improvement of state highways, county roads, and city streets in urban areas. It is the intent of the legislature to provide sufficient new highway revenues to alleviate and prevent intolerable traffic congestion in urban areas without the disruption of the long range statewide highway program essential to the economic well-being of the people of this state. [1967 ex.s. c 83 § 1.]

Reviser's note: Throughout chapter 47.26 RCW the term "this 1967 amendatory act" has been translated to "this chapter." For codification of "this 1967 amendatory act" [1967 ex.s. c 83], see Codification Tables, Volume 0.

47.26.020 Motor vehicle fuel tax—Tax imposed—Rate—Distribution of proceeds. See RCW 82.36.020.

47.26.022 Motor vehicle fuel tax—Tax required of nondistributors—Duties—Procedure—Distribution of proceeds—Penalties. See RCW 82.36.100.

47.26.028 Special fuel tax—Tax imposed—Rate. See RCW 82.38.030.

47.26.030 Special fuel tax—Disposition of funds. See RCW 82.38.290.

47.26.040 "Urban area" defined. The term "urban area" as used in this chapter means every area of this state designated as an urban area by the department in cooperation with the board and regional transportation planning organiza-

tions. [1994 c 179 § 7; 1984 c 7 § 153; 1977 ex.s. c 317 § 12; 1975 1st ex.s. c 253 § 1; 1967 ex.s. c 83 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.044 "Board" defined. The term "board" as used in this chapter means the transportation improvement board. [1994 c 179 § 6.]

47.26.050 Regional grouping for purpose of apportioning urban state highway funds. For the purpose of apportioning urban state highway funds, the urban areas of the state are grouped within five regions of the state as follows:

(1) Puget Sound region shall include those urban areas within the counties of King, Pierce and Snohomish.

(2) Northwest region shall include those urban areas within the counties of Clallam, Jefferson, Island, Kitsap, San Juan, Skagit and Whatcom.

(3) Northeast region shall include those urban areas within the counties of Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens and Whitman.

(4) Southeast region shall include those urban areas within the counties of Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla and Yakima.

(5) Southwest region shall include those urban areas within the counties of Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston and Wahkiakum. [1967 ex.s. c 83 § 11.]

47.26.080 Urban arterial trust account—Withholding of funds for noncompliance. There is hereby created in the motor vehicle fund the urban arterial trust account. The intent of the urban arterial trust account program is to improve the arterial street system of the state by improving mobility and safety while supporting an environment essential to the quality of life of the citizens of the state of Washington. The small city program, as provided for in RCW 47.26.115, is implemented within the urban arterial trust account.

The board shall not allocate funds, nor make payments of the funds under RCW 47.26.260, to any county, city, or town identified by the governor under RCW 36.70A.340. [2007 c 148 § 2; 1999 c 94 § 16; 1994 c 179 § 8; 1991 sp.s. c 32 § 32; 1988 c 167 § 13; 1981 c 315 § 2; 1979 c 5 § 1; 1977 ex.s. c 317 § 22; 1967 ex.s. c 83 § 14.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 315 § 14.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.084 Transportation improvement account—Certification of funding. The transportation improvement account is hereby created in the motor vehicle fund. The intent of the program is to improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our statewide transportation system needs.

Within one year after board approval of an application for funding, a county, city, or transportation benefit district shall provide written certification to the board of the pledged local and/or private funding. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board. [1999 c 94 § 17; 1994 c 179 § 10; 1988 c 167 § 2.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.086 Transportation improvement account projects—Intent—Limitations. Transportation improvement account projects selected for funding programs after fiscal year 1995 are governed by the requirements of this section.

The board shall allocate funds from the account by June 30th of each year for the ensuing fiscal year to urban counties, cities with a population of five thousand and over, and to transportation benefit districts. Projects may include, but are not limited to, multi-agency projects and arterial improvement projects in fast-growing areas. The board shall endeavor to provide geographical diversity in selecting improvement projects to be funded from the account.

The intent of the program is to improve mobility of people and goods in Washington state by supporting economic development and environmentally responsive solutions to our statewide transportation system needs.

To be eligible to receive these funds, a project must be consistent with the Growth Management Act, the Clean Air Act including conformity, and the Commute Trip Reduction Law and consideration must have been given to the project's relationship, both actual and potential, with the statewide rail passenger program and rapid mass transit. Projects must be consistent with any adopted high capacity transportation plan, must consider existing or reasonably foreseeable congestion levels attributable to economic development or growth and all modes of transportation and safety, and must be partially funded by local government or private contributions, or a combination of such contributions. Priority consideration shall be given to those projects with the greatest percentage of local or private contribution, or both.

Within one year after board approval of an application for funding, the lead agency shall provide written certification to the board of the pledged local and private funding for the phase of the project approved. Funds allocated to an applicant that does not certify its funding within one year after approval may be reallocated by the board. [1994 c 179 § 11.]

47.26.090 "Arterial" defined. The term "arterial" as used in this chapter means any state highway, county road, or city street, in an urban area, that is functionally classified as a

principal arterial, minor arterial, or collector street by the department in cooperation with the board, regional transportation planning organizations, cities, and counties. The board shall develop criteria and procedures for designating arterials in the incorporated cities and towns lying outside urban areas. [1994 c 179 § 12; 1988 c 167 § 14. Prior: 1967 ex.s. c 83 § 15.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.100 "City" defined. The term "city" as used in *this chapter shall include incorporated towns. [1967 ex.s. c 83 § 16.]

***Reviser's note:** The term "this chapter" has been substituted for "this 1967 amendatory act." See note following RCW 47.26.010 for codification of "this 1967 amendatory act" [1967 ex.s. c 83].

47.26.110 "Urban arterial" defined. The term "urban arterial" as used in *this chapter means an arterial within an urban area. [1967 ex.s. c 83 § 17.]

***Reviser's note:** The term "this chapter" has been substituted for "this 1967 amendatory act." See note following RCW 47.26.010 for codification of "this 1967 amendatory act." [1967 ex.s. c 83.]

47.26.115 Small city program. The intent of the small city program is to preserve and improve the roadway system consistent with local needs of incorporated cities and towns with a population of less than five thousand. The board shall adopt rules and procedures to govern the allocation of funds distributed to the small city program. [1999 c 94 § 18; 1994 c 179 § 9.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

47.26.121 Transportation improvement board—Membership—Chair—Expenses. (1) There is hereby created a transportation improvement board of twenty-one members, six of whom shall be county members and six of whom shall be city members. The remaining members shall be: (a) One representative appointed by the governor who shall be a state employee with responsibility for transportation policy, planning, or funding; (b) two representatives from the department of transportation; (c) two representatives of public transit systems; (d) a private sector representative; (e) a member representing the ports; (f) a member representing nonmotorized transportation; and (g) a member representing special needs transportation.

(2) Of the county members of the board, one shall be a county engineer or public works director; one shall be the executive director of the county road administration board; one shall be a county planning director or planning manager; one shall be a county executive, councilmember, or commissioner from a county with a population of one hundred twenty-five thousand or more; one shall be a county executive, councilmember, or commissioner of a county who serves on the board of a public transit system; and one shall be a county executive, councilmember, or commissioner from a county with a population of less than one hundred twenty-five thousand. All county members of the board, except the executive director of the county road administration board, shall be appointed. Not more than one county

member of the board shall be from any one county. No more than two of the three county-elected officials may represent counties located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(3) Of the city members of the board one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city with a population of twenty thousand or more; one shall be a chief city engineer, public works director, or other city employee with responsibility for public works activities, of a city of less than twenty thousand population; one shall be a city planning director or planning manager; one shall be a mayor, commissioner, or city councilmember of a city with a population of twenty thousand or more; one shall be a mayor, commissioner, or city councilmember of a city who serves on the board of a public transit system; and one shall be a mayor, commissioner, or councilmember of a city of less than twenty thousand population. All of the city members shall be appointed. Not more than one city member of the board shall be from any one city. No more than two of the three city-elected officials may represent cities located in either the eastern or western part of the state as divided north and south by the summit of the Cascade mountains.

(4) Of the transit members, at least one shall be a general manager, executive director, or transit director of a public transit system in an urban area with a population over two hundred thousand and at least one representative from a rural or small urban transit system in an area with a population less than two hundred thousand.

(5) The private sector member shall be a citizen with business, management, and transportation related experience and shall be active in a business community-based transportation organization.

(6) The port member shall be a commissioner or senior staff person of a public port.

(7) The nonmotorized transportation member shall be a citizen with a demonstrated interest and involvement with a nonmotorized transportation group.

(8) The specialized transportation member shall be a citizen with a demonstrated interest and involvement with a statewide specialized needs transportation group.

(9) Appointments of county, city, Washington department of transportation, transit, port, nonmotorized transportation, special needs transportation, and private sector representatives shall be made by the secretary of the department of transportation. Appointees shall be chosen from a list of two persons for each position nominated by the Washington state association of counties for county members, the association of Washington cities for city members, the Washington state transit association for the transit members, and the Washington public ports association for the port member. The private sector, nonmotorized transportation, and special needs members shall be sought through classified advertisements in selected newspapers collectively serving all urban areas of the state, and other appropriate means. Persons applying for the private sector, nonmotorized transportation, or special needs transportation member position must provide a letter of interest and a resume to the secretary of the department of transportation. In the case of a vacancy, the appointment shall be only for the remainder of the unexpired term in which the

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vacancy has occurred. A vacancy shall be deemed to have occurred on the board when any member elected to public office completes that term of office or is removed therefrom for any reason or when any member employed by a political subdivision terminates such employment for whatsoever reason or when a private sector, nonmotorized transportation, or special needs transportation member resigns or is unable or unwilling to serve.

(10) Appointments shall be for terms of four years. Terms of all appointed members shall expire on June 30th of even-numbered years. The initial term of appointed members may be for less than four years. No appointed member may serve more than two consecutive four-year terms.

(11) The board shall elect a chair from among its members for a two-year term.

(12) Expenses of the board shall be paid in accordance with RCW 47.26.140.

(13) For purposes of this section, "public transit system" means a city-owned transit system, county transportation authority, metropolitan municipal corporation, public transportation benefit area, or regional transit authority. [1996 c 49 § 1; 1995 c 269 § 2603; 1994 c 179 § 13; 1993 c 172 § 1. Prior: 1991 c 363 § 124; 1991 c 308 § 1; 1990 c 266 § 4; 1988 c 167 § 1.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

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

Effective date—1993 c 172: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 172 § 2.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Effective date—1991 c 308: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 308 § 2.]

References to urban arterial board—1988 c 167: "References in the Revised Code of Washington to the urban arterial board shall be construed to mean the transportation improvement board." [1988 c 167 § 35.]

Savings—1988 c 167: "All rules and all pending business before the urban arterial board shall be continued and acted upon by the transportation improvement board. All existing contracts and obligations of the urban arterial board shall remain in full force and shall be performed by the transportation improvement board." [1988 c 167 § 36.]

Severability—1988 c 167: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 167 § 37.]

47.26.130 Transportation improvement board—Travel expenses. Members of the transportation improvement board shall receive no compensation for their services on the board, but shall be reimbursed for travel expenses incurred while attending meetings of the board or while engaged on other business of the board when authorized by the board in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1988 c 167 § 15; 1975-'76 2nd ex.s. c 34 § 139; 1975 1st ex.s. c 1 § 2; 1969 ex.s. c 171 § 2; 1967 ex.s. c 83 § 19.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.140 Transportation improvement board—Executive director, staff—Finances. The transportation improvement board shall appoint an executive director, who shall serve at its pleasure and whose salary shall be set by the board, and may employ additional staff as it deems appropriate. All costs associated with staff, together with travel expenses in accordance with RCW 43.03.050 and 43.03.060, shall be paid from the urban arterial trust account, public transportation systems account, and the transportation improvement account in the motor vehicle fund as determined by the biennial appropriation. [1999 c 94 § 19; 1996 c 49 § 2; 1995 c 269 § 2605; 1994 c 179 § 14; 1988 c 167 § 16; 1977 ex.s. c 151 § 58; 1975-'76 2nd ex.s. c 34 § 140; 1969 ex.s. c 171 § 3; 1967 ex.s. c 83 § 20.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective date—1995 c 269: See note following RCW 9.94A.850.

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

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

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

47.26.150 Transportation improvement board—Meetings. The transportation improvement board shall meet at least once quarterly and upon the call of its chairman and shall from time to time adopt rules and regulations for its own government and as may be necessary for it to discharge its duties and exercise its powers under this chapter. [1988 c 167 § 17. Prior: 1967 ex.s. c 83 § 21.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.160 Transportation improvement board—Powers and duties. The transportation improvement board shall:

(1) Adopt rules necessary to implement the provisions of chapter 47.66 RCW and this chapter relating to the allocation of funds;

(2) Adopt reasonably uniform design standards for city and county arterials. [1995 c 269 § 2607; 1994 c 179 § 15; 1988 c 167 § 18; 1987 c 505 § 51; 1984 c 7 § 155; 1977 ex.s. c 235 § 17; 1971 ex.s. c 291 § 1; 1967 ex.s. c 83 § 22.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

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

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.164 City hardship assistance program—Implementation. The board shall adopt reasonable rules necessary to implement the city hardship assistance program as recommended by the road jurisdiction study.

The following criteria shall be used to implement the program:

(1) Cities with a population of twenty thousand or less and a net gain in cost responsibility due to jurisdictional transfers in chapter 342, Laws of 1991, and thereafter under RCW 47.26.167, are eligible to receive money from the small

city pavement and sidewalk account created in RCW 47.26.340;

(2) The board shall develop criteria and procedures under which eligible cities may receive funding for rehabilitation projects on transferred city streets; and

(3) The amount spent for the city hardship assistance program shall not exceed the amount deposited under RCW 46.68.110(3). [2007 c 148 § 3; 1999 c 94 § 20; 1991 c 342 § 60.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—1991 c 342: See note following RCW 47.26.167.

47.26.165 Coordination of long-range needs studies. See RCW 47.01.240.

47.26.167 Jurisdictional transfers. The legislature recognizes the need for a multijurisdictional body to review future requests for jurisdictional transfers. The board is hereby directed, beginning September 1, 1991, to receive petitions from cities, counties, or the state requesting any addition or deletion from the state highway system. The board is required to utilize the criteria established in RCW 47.17.001 in evaluating petitions and to adopt rules for implementation of this process. The board shall forward to the senate and house transportation committees by November 15 each year any recommended jurisdictional transfers. [2005 c 319 § 130; 1991 c 342 § 62.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Effective dates—1991 c 342: "(1) Sections 62 and 63 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1991.

(2) The remainder of this act shall take effect April 1, 1992." [1991 c 342 § 68.]

47.26.170 Long-range arterial construction planning—Arterial inventory data. Each county having within its boundaries an urban area and cities and towns shall prepare and submit to the transportation improvement board arterial inventory data required to determine the long-range arterial construction needs. The counties, cities, and towns shall revise the arterial inventory data every four years to show the current arterial construction needs through the advanced planning period, and as revised shall submit them to the transportation improvement board during the first week of January every four years beginning in 1996. The inventory data shall be prepared pursuant to guidelines established by the transportation improvement board. As information is updated, it shall be made available to the commission. [2005 c 319 § 131; 1994 c 179 § 16; 1988 c 167 § 19; 1984 c 7 § 156; 1971 ex.s. c 291 § 2; 1967 ex.s. c 83 § 23.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.185 Qualifications for administering and supervising projects—Rules. The transportation improvement board may adopt rules establishing qualifications for

cities and counties administering and supervising the design and construction of projects financed in part from funds administered by the board. The rules establishing qualification shall take into account the resources and population of the city or county, its permanent engineering staff, its design and construction supervision experience, and other factors the board deems appropriate. Any city or county failing to meet the qualifications established by the board for administering and supervising a project shall contract with a qualified city or county or the department for the administration and supervision of the design and construction of any approved project as a condition for receiving funds for the project. [1994 c 179 § 17; 1988 c 167 § 21; 1984 c 7 § 157; 1975 1st ex.s. c 253 § 4.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.190 Geographical diversity—Rules. The board shall adopt rules that provide geographical diversity in selecting improvement projects to be funded from the urban arterial trust account and *small city account funds. [1994 c 179 § 18; 1988 c 167 § 22; 1987 c 360 § 1; 1981 c 315 § 4; 1979 c 151 § 162; 1977 ex.s. c 317 § 14; 1973 1st ex.s. c 126 § 2; 1971 ex.s. c 291 § 3; 1969 ex.s. c 171 § 4; 1967 ex.s. c 83 § 25.]

***Reviser's note:** The "small city account" was renamed the "small city program" pursuant to 1999 c 94 § 18.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Effective date—1981 c 315: See note following RCW 47.26.080.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

Population determinations, office of financial management: Chapter 43.62 RCW.

47.26.200 Counties—Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way. See RCW 36.81.121.

47.26.210 Cities—Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way. See RCW 35.77.010.

47.26.260 Payment of funds—Rules—Limitations. The transportation improvement board shall adopt rules providing for the approval of payments of funds in the accounts to a county, city, town, or transportation benefit district for costs of predesign, design, engineering, and costs of construction of an approved project from time to time as work progresses. These payments shall at no time exceed the account share of the costs incurred to the date of the voucher covering such payment. [1994 c 179 § 19; 1988 c 167 § 26; 1973 1st ex.s. c 126 § 1; 1967 ex.s. c 83 § 32.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.270 Matching funds requirements. Counties, cities, towns, and transportation benefit districts receiving

funds from the board shall provide such matching funds as established by rules adopted by the transportation improvement board. When determining matching requirements, the board shall consider (1) financial resources available to counties and cities to meet arterial needs, (2) the amounts and percentages of funds available for road or street construction traditionally expended by counties and cities on arterials, (3) in the case of counties, the relative needs of arterials lying outside urban areas, and (4) the requirements necessary to avoid diversion of funds traditionally expended for arterial construction to other street or road purposes or to nonhighway purposes. [1994 c 179 § 20; 1988 c 167 § 27; 1983 1st ex.s. c 49 § 22; 1977 ex.s. c 317 § 16; 1967 ex.s. c 83 § 33.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.282 Land use implications. In any project funded by the transportation improvement board, except for projects in cities having a population of less than five thousand persons, and in addition to any other items required to be considered by statute, the board also shall consider the land use implications of the project, such as whether the programs and projects:

- (1) Support development in and revitalization of existing downtowns;
- (2) Implement local comprehensive plans for rural and urban residential and nonresidential densities;
- (3) Have land use planning and regulations encouraging compact development for rural and urban residential and nonresidential densities; and
- (4) Promote the use of multimodal transportation. [2002 c 189 § 5.]

47.26.300 Bicycle routes—Legislative declaration. The state of Washington is confronted with emergency shortages of energy sources utilized for the transportation of its citizens and must seek alternative methods of providing public mobility.

Bicycles are suitable for many transportation purposes, and are pollution-free in addition to using a minimal amount of resources and energy. However, the increased use of bicycles for both transportation and recreation has led to an increase in both fatal and nonfatal injuries to bicyclists.

The legislature therefore finds that the establishment, improvement, and upgrading of bicycle routes is necessary to promote public mobility, conserve energy, and provide for the safety of the bicycling and motoring public. [1974 ex.s. c 141 § 1.]

47.26.305 Bicycle routes—Use of board funds. Bicycle routes shall, when established in accordance with RCW 47.06.100 be eligible for establishment, improvement, and upgrading with board funds. The board shall adopt rules and procedures that will encourage the development of a system of bicycle routes within counties, cities, and towns. [1994 c 179 § 21; 1988 c 167 § 28; 1974 ex.s. c 141 § 2.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.320 Advance right-of-way acquisition—Definition. The term "advance right-of-way acquisition" as used in this chapter means the acquisition of property and property rights, together with the engineering costs necessary for the advance right-of-way acquisition. Property or property rights purchased must be for projects approved by the transportation improvement board or the county road administration board as part of a city or county six-year plan or program. [2001 c 201 § 1.]

47.26.325 Advance right-of-way acquisition—Revolving fund. The city and county advance right-of-way revolving fund is created in the custody of the treasurer. The transportation improvement board is the administrator of the fund and may deposit directly and spend without appropriation.

The transportation improvement board and the county road administration board, in consultation with the association of Washington cities and the Washington association of counties, shall adopt reasonable rules and develop policies to implement this program. [2001 c 201 § 2.]

47.26.330 Advance right-of-way acquisition—Management of properties and funds. (1) After any properties or property rights are acquired through funds in the city and county advance right-of-way revolving fund, the acquiring city or county is responsible for the management of the properties in accordance with sound business practices and shall provide annual status reports to the board. Funds received by the city or county from the interim management of the properties must be deposited into the city and county advance right-of-way revolving fund.

(2) When the city or county proceeds with the construction of an arterial project that will require the use of any of the property so acquired, the city or county shall reimburse the city and county advance right-of-way revolving fund. Reimbursement must reflect the original cost of the acquired property or property rights required for the project plus an interest rate as determined annually by the board. The board shall report on the interest rate set to the transportation committees through its annual report.

(3) When the city or county determines that any properties or property rights acquired from funds in the city and county advance right-of-way revolving fund will not be required for an arterial construction project or the property has been held by the city or county for more than six years, the city or county shall either sell the property at fair market value or reimburse the fund at fair market value. All proceeds of the sale must be deposited in the city and county advance right-of-way revolving fund. At the board's discretion, a portion of savings on transportation improvement board projects realized through the use of the city and county advance [right-of-way] revolving fund may be deposited back into the city and county advance right-of-way revolving fund.

(4) Deposits in the fund may be reexpended without further or additional appropriations. [2001 c 201 § 3.]

[Title 47 RCW—page 104]

47.26.340 Small city pavement and sidewalk account.

The small city pavement and sidewalk account is created in the state treasury. All state money allocated to the small city pavement and sidewalk account for the ongoing support of cities and towns must be deposited into the account. Money in the account may be spent only after appropriation. Expenditures from the account must be used for small city pavement and sidewalk projects or improvements selected by the board in accordance with RCW 47.26.164 or 47.26.345, to pay principal and interest on bonds authorized for these projects or improvements, to make grants or loans in accordance with this chapter, or to pay for engineering feasibility studies selected by the board. [2007 c 148 § 4; 2005 c 83 § 2.]

Findings—2005 c 83: "The state legislature finds that it is in the state's interest to support the economic vitality of all cities and towns and recognizes that those cities and towns with a population of less than five thousand are unable to fully maintain and preserve their street system. Therefore, the legislature finds it is necessary to create a small city pavement and sidewalk account." [2005 c 83 § 1.]

Effective dates—2005 c 83: "Except for section 5 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 83 § 6.]

47.26.345 Small city pavement and sidewalk funding.

All cities and towns with a population of less than five thousand are eligible to receive money from the small city pavement and sidewalk account created under RCW 47.26.340 for maintenance, repair, and resurfacing of city and town streets. The board shall determine the allocation of money based on:

(1) The amount of available funds within the small city pavement and sidewalk account;

(2) Whether the city or town meets one or more of the following criteria:

(a) The city or town has identified a street in a six-year transportation improvement plan, as defined by RCW 35.77.010, or a project identified through the use of a pavement management system;

(b) The city or town has provided pavement rating information on the proposed street improvement or street network improvement;

(c) The city or town has provided sidewalk information on the proposed sidewalk system improvement;

(d) The city or town has provided information, where available, on traffic conditions for truck routes, bus routes, and traffic volumes;

(e) The city or town has the ability to provide a local match as demonstrated by one or more of the following:

(i) A funding match based upon a city's assessed valuation;

(ii) Community involvement and support, including volunteer participation, such as landscaping and maintaining landscaping along the street or sidewalk system; or

(iii) Partnership efforts with federal or other state programs, including the department of community, trade, and economic development mainstreet program. [2005 c 83 § 3.]

Findings—Effective dates—2005 c 83: See notes following RCW 47.26.340.

(2008 Ed.)

BOND ISSUE—STATE HIGHWAYS IN URBAN AREAS

47.26.400 Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose.

In order to provide funds necessary to meet the urgent needs for highway construction on state highways within urban areas, there shall be issued and sold general obligation bonds of the state of Washington in the sum of two hundred million dollars or such amount thereof and at such times as determined to be necessary by the commission. The amount of the bonds issued and sold under the provisions of RCW 47.26.400 through 47.26.407 in any biennium shall not exceed the amount of a specific appropriation therefor from the proceeds of such bonds, for the construction of state highways in urban areas. The issuance, sale, and retirement of the bonds shall be under the supervision and control of the state finance committee which, upon request being made by the commission, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the commission. [1984 c 7 § 161; 1973 1st ex.s. c 169 § 1; 1967 ex.s. c 83 § 36.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.401 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1973 1st ex.s. c 169 § 2; 1967 ex.s. c 83 § 37.]

47.26.402 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If the bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 shall be legal investment for any of the funds of the state, except the permanent school fund. [1967 ex.s. c 83 § 38.]

(2008 Ed.)

47.26.403 Bonds—Bond proceeds—Deposit and use.

The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the construction of state highways within the urban areas of the state, and for payment of the expenses incurred in the printing, issuance, and sale of any such bonds. [1967 ex.s. c 83 § 39.]

47.26.404 Bonds—Statement describing nature of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.26.400 through 47.26.407 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter 82.36 RCW and *chapter 82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.26.400 through 47.26.407, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.26.400 through 47.26.407. [1973 1st ex.s. c 169 § 3; 1967 ex.s. c 83 § 40.]

***Reviser's note:** Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33; for later enactment, see chapter 82.38 RCW.

47.26.405 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay such bonds, or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state under the provisions of *RCW 46.68.090(1)(c) for construction of state highways in urban areas, and shall never constitute a charge against any allocations of any other such funds to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available to the state for construction of state highways in urban areas proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1999 c 269 § 5; 1977 ex.s. c 317 § 17; 1967 ex.s. c 83 § 41.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(c) to subsection (2)(a).

Effective date—1999 c 269: See note following RCW 36.78.070.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.406 Bonds—Repayment procedure—Bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.405, the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which shall be required

to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the bond retirement fund, hereby created, which fund shall be available solely for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1967 ex.s. c 83 § 42.]

47.26.407 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels payable into the bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1967 ex.s. c 83 § 43.]

BOND ISSUE—COUNTY AND CITY ARTERIALS IN URBAN AREAS

47.26.420 Issuance and sale of general obligation bonds—Authorized—Amount—Declaration of purpose. In order to provide funds necessary to meet the urgent construction needs on county and city arterials within urban areas, there are hereby authorized for issuance general obligation bonds of the state of Washington, the first authorization of which shall be in the sum of two hundred fifty million dollars, and the second authorization of which, to be known as series II bonds, shall be in the sum of sixty million dollars, and the third authorization of which, to be known as series III bonds, shall be in the sum of one hundred million dollars, which shall be issued and sold in such amounts and at such times as determined to be necessary by the transportation improvement board. The amount of such bonds issued and sold under the provisions of RCW 47.26.420 through 47.26.427 in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of county and city arterials in urban areas. The issuance, sale, and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the transportation improvement board, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the transportation improvement board. [2007 c 519 § 6; 1981 c 315 § 5; 1979 c 5 § 3. Prior: 1977 ex.s. c 317 § 18; 1973 1st ex.s. c 169 § 4; 1967 ex.s. c 83 § 45.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Appropriation—Expenditure limited to bond sale proceeds—1981 c 315: "There is appropriated from the urban arterial trust account in the motor vehicle fund to the urban arterial board for the biennium ending June 30, 1983, the sum of thirty-five million dollars, or so much thereof as may be necessary, to carry out section 5 of this act: PROVIDED, That the money available for expenditure under this appropriation may not exceed the amount of money derived from the sale of bonds authorized by section 5 of this act and deposited to the credit of the urban arterial trust account in the motor vehicle fund." [1981 c 315 § 13.]

Construction—1979 c 5: "Nothing in this 1979 act shall be construed to impair the obligations of any first authorization bonds issued or to be issued under RCW 47.26.420 through 47.26.427, or to enlarge the original authorization thereof over two hundred million dollars, and the retirement of and issuance of the remainder of the authorized amount of such bonds shall proceed in accordance with law under the supervision of the state finance committee." [1979 c 5 § 12.]

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.421 Bonds—Term—Terms and conditions—Signatures—Registration—Where payable—Negotiable instruments. Each of such first authorization bonds, series II bonds, and series III bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, either or both of which signatures may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in Seattle or New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1986 c 290 § 3; 1981 c 315 § 6; 1979 c 5 § 4; 1973 1st ex.s. c 169 § 5; 1967 ex.s. c 83 § 46.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.422 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The first authorization bonds, series II bonds, and series III bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issu-

ance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. Bonds issued under the provisions of RCW 47.26.420 through 47.26.427 and 47.26.425 shall be legal investment for any of the funds of the state, except the permanent school fund. [1986 c 290 § 4; 1981 c 315 § 7; 1979 c 5 § 5; 1967 ex.s. c 83 § 47.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.423 Bonds—Bond proceeds—Deposit and use.

The money arising from the sale of the first authorization bonds, series II bonds, and series III bonds shall be deposited in the state treasury to the credit of the urban arterial trust account in the motor vehicle fund, and such money shall be available only for the construction and improvement of county and city urban arterials, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 5; 1981 c 315 § 8; 1979 c 5 § 6; 1967 ex.s. c 83 § 48.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.424 Bonds—Statement describing nature of obligation—Pledge of excise taxes. The first authorization bonds, series II bonds, and series III bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on such bonds shall be first payable in the manner provided in RCW 47.26.420 through 47.26.427, 47.26.425, and 47.26.4254 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [1995 c 274 § 11; 1981 c 315 § 9; 1979 c 5 § 7; 1977 ex.s. c 317 § 19; 1973 1st ex.s. c 169 § 6; 1967 ex.s. c 83 § 49.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.425 Bonds—Designation of funds to repay bonds and interest. Any funds required to repay the first authorization of two hundred fifty million dollars of bonds authorized by RCW 47.26.420, as amended by section 18, chapter 317, Laws of 1977 ex. sess. or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on

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motor vehicle and special fuels and which is distributed to the urban arterial trust account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the urban arterial trust account proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [2007 c 519 § 7; 1999 sp.s. c 1 § 609. Prior: 1999 c 269 § 6; 1999 c 94 § 21; 1994 c 179 § 22; 1977 ex.s. c 317 § 20; 1967 ex.s. c 83 § 50.]

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Effective dates—Severability—1977 ex.s. c 317: See notes following RCW 82.36.010.

47.26.4252 Bonds—Series II bonds, 1979 reenactment—Designation of funds to repay bonds and interest.

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, shall first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and which is distributed to the urban arterial trust account in the motor vehicle fund pursuant to *RCW 46.68.090(1)(g), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the urban arterial trust account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues. [1999 sp.s. c 1 § 610. Prior: 1999 c 269 § 7; 1999 c 94 § 22; 1995 c 274 § 12; 1994 c 179 § 23; 1983 1st ex.s. c 49 § 23; 1979 c 5 § 8.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(g) to subsection (2)(e).

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.4254 Bonds—Series III bonds—Designation of funds to repay bonds and interest. (1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and that is distributed to the urban arterial trust account in the motor vehicle fund pursuant to *RCW 46.68.090(1)(g), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the urban arterial trust account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon shall next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the urban arterial trust account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent shall first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to *RCW 46.68.090(1)(i) and to the counties pursuant to *RCW 46.68.090(1)(j). Of the counties', cities', and towns' share of any additional amounts required in each fiscal year, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share shall correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by the chairman of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns shall be repaid from the first moneys distributed to the urban arterial trust account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds. [1999 sp.s. c 1 § 611. Prior: 1999 c 269 § 8; 1999 c 94 § 23; 1995 c 274 § 13; 1994 c 179 § 24; 1988 c 167 § 30; 1983 1st ex.s. c 49 § 24; 1981 c 315 § 10.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(g), (i), and (j) to subsection (2)(e), (g), and (h).

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—Effective date—1983 1st ex.s. c 49: See RCW 36.79.900 and 36.79.901.

Effective date—1981 c 315: See note following RCW 47.26.080.

47.26.4255 Bonds—Series II bonds, 1979 reenactment—Charge against fuel tax revenues. Except as otherwise provided by statute, the series II bonds issued under authority of RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, the bonds authorized by RCW 47.60.560 through 47.60.640, and any general obligation bonds of the state of Washington which may be authorized by the forty-sixth legislature or thereafter and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1979 c 5 § 9.]

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.426 Bonds—Repayment procedure—Bond retirement account. At least one year prior to the date any interest is due and payable on such first authorization bonds, series II bonds, and series III bonds or before the maturity date of any such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.26.425, 47.26.4252, and 47.26.4254 the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments hereunder when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to RCW 47.26.425, 47.26.4252, and 47.26.4254, shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the transportation improvement board bond retirement account, maintained in the office of the state treasurer, which fund shall be available for payment of interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1999 c 268 § 1; 1981 c 315 § 11; 1979 c 5 § 10; 1967 ex.s. c 83 § 51.]

Effective date—1981 c 315: See note following RCW 47.26.080.

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.427 Bonds—Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the transportation improvement board bond retirement account, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund

[account] to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1999 c 268 § 2; 1979 c 5 § 11; 1967 ex.s. c 83 § 52.]

Construction—1979 c 5: See note following RCW 47.26.420.

47.26.440 Budget for expenditures from funds administered by board—Estimate of revenues. Not later than November 1st of each even-numbered year the transportation improvement board shall prepare and present to the commission for comment and recommendation an adopted budget for expenditures from funds administered by the board during the ensuing biennium. The budget shall contain an estimate of the revenues to be credited to the several accounts and the amount, if any, of bond proceeds which the board determines should be made available through the sale of bonds in the ensuing biennium. [1994 c 179 § 25; 1988 c 167 § 32; 1984 c 7 § 163; 1967 ex.s. c 83 § 54.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

Severability—1984 c 7: See note following RCW 47.01.141.

47.26.450 Allocation of funds—Value engineering studies—Rules. The board shall adopt rules and procedures to govern the allocation of funds subject to the appropriations actually approved by the legislature.

The board shall develop rules and procedures to require value engineering studies performed by an interagency team for certain board funded projects. When determining the process, the board shall consider the project cost, length, and complexity. [1994 c 179 § 26; 1988 c 167 § 33; 1987 c 360 § 2; 1973 1st ex.s. c 126 § 3; 1969 ex.s. c 171 § 6.]

Savings—Severability—1988 c 167: See notes following RCW 47.26.121.

47.26.460 Increase in funds allocated to a project—Rules—Factors. The board shall adopt reasonable rules pursuant to which funds allocated to a project may be increased upon a subsequent application of the county, city, town, or transportation benefit district constructing the project. The rules adopted by the board shall consider the following factors: (1) The financial effect of increasing the original allocation for the project upon other urban arterial projects either approved or requested; (2) whether the project for which an additional authorization is requested can be reduced in scope while retaining a usable segment; (3) whether the cost of the project shown in the original application was based upon reasonable engineering estimates; and (4) whether the requested additional authorization is to pay for an expansion in the scope of work originally approved. [1994 c 179 § 27; 1969 ex.s. c 171 § 7.]

BOND ISSUE—TRANSPORTATION PROJECTS IN URBAN AREAS

47.26.500 Issuance authorized. In order to provide funds necessary to meet the urgent construction needs on state, county, and city transportation projects, there are hereby authorized for issuance general obligation bonds of the state of Washington in the sum of one hundred million

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dollars, which shall be issued and sold in such amounts and at such times as determined to be necessary by the state transportation improvement board. The amount of such bonds issued and sold under the provisions of RCW 47.26.500 through 47.26.507 in any biennium shall not exceed the amount of a specific appropriation therefor, from the proceeds of such bonds, for the construction of state, county, and city transportation projects. The issuance, sale, and retirement of the bonds shall be under the supervision and control of the state finance committee which, upon request being made by the board, shall provide for the issuance, sale, and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as shall be requested by the board. [2000 2nd sp.s. c 6 § 1; 1994 c 179 § 28; 1993 c 440 § 1.]

47.26.501 Term—Signatures—Registration—Negotiable instruments. Each of such bonds shall be made payable at any time not exceeding thirty years from the date of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. The bonds shall be signed by the governor and the state treasurer under the seal of the state, either or both of which signatures may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in Seattle or New York City, as to principal alone, or as to both principal and interest under such rules as the state treasurer may adopt. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1993 c 440 § 2.]

47.26.502 Denominations—Manner and terms of sale—State investment. The bonds issued under RCW 47.26.500 through 47.26.507 shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued. Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 shall be legal

investment for any of the funds of the state, except the permanent school fund. [1993 c 440 § 3.]

47.26.503 Use of proceeds. The money arising from the sale of the bonds shall be deposited in the state treasury to the credit of the transportation improvement account in the motor vehicle fund, and such money shall be available only for the construction and improvement of state, county, and city transportation projects, and for payment of the expense incurred in the printing, issuance, and sale of any such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1993 c 440 § 4.]

47.26.504 Statement of obligation—Pledge of excise taxes. Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on such bonds shall be first payable in the manner provided in RCW 47.26.500 through 47.26.507 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds. [1995 c 274 § 14; 1993 c 440 § 5.]

47.26.505 Funds for repayment. Any funds required to repay such bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the transportation improvement account in the motor vehicle fund under *RCW 46.68.090(1)(h), and shall never constitute a charge against any allocations of any other such funds in the motor vehicle fund to the state, counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise tax on motor vehicle and special fuels and distributed to the transportation improvement account proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1999 sp.s. c 1 § 612. Prior: 1999 c 269 § 9; 1999 c 94 § 24; 1994 c 179 § 29; 1993 c 440 § 6.]

*Reviser's note: RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(h) to subsection (2)(f).

Severability—Effective date—1999 sp.s. c 1: See notes following RCW 43.19.1906.

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

47.26.506 Repayment procedure—Bond retirement account. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any such bonds, the state finance committee shall estimate, sub-

ject to the provisions of RCW 47.26.505 the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments under RCW 47.26.500 through 47.26.507 when due, and shall notify the state treasurer of such estimated requirement. The state treasurer, subject to RCW 47.26.505, shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the transportation improvement board bond retirement account, maintained in the office of the state treasurer, which account shall be available for payment of principal and interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1997 c 456 § 24; 1993 c 440 § 7.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

47.26.507 Sums in excess of retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the transportation improvement board bond retirement account, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund [account] to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1999 c 268 § 3; 1993 c 440 § 8.]

47.26.900 Severability—1967 ex.s. c 83. If any provision of this 1967 amendatory act or the application thereof to any person, firm, or corporation or circumstance is held invalid, in whole or in part, such invalidity shall not affect other provisions of the act which can be given effect without the invalid provisions or application and to this end the provisions of this 1967 amendatory act are declared to be severable. [1967 ex.s. c 83 § 55.]

47.26.910 Effective dates—1967 ex.s. c 83. This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and sections 1 through 55 and section 56, renumbered "Sec. 62", shall take effect on the first day of the month following the approval of this act by the governor; sections 56 through 61 shall take effect on July 1, 1967 with respect to fees paid on or after July 1, 1967. Fees paid pursuant to RCW 46.16.070, 46.16.072, 46.16.075 or 46.16.120 prior to July 1, 1967 shall not be affected by this act. [1967 ex.s. c 83 § 62.]

47.26.930 Construction—1969 ex.s. c 171. The rule of strict construction shall have no application to this 1969 act or to the provisions of chapter 47.26 RCW, and they shall be liberally construed in order to carry out an effective, efficient and equitable program of financial assistance to urban area cities and counties for arterial roads and streets. [1969 ex.s. c 171 § 8.]

Chapter 47.28 RCW

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

Sections

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Liens for labor, materials on public works: Chapter 60.28 RCW.

Size, weight, load of vehicles: Chapter 46.44 RCW.

Viaducts, bridges, elevated roadways, etc., authority of cities to construct: Chapter 35.85 RCW.

47.28.010 Latitude in selecting route. Whenever the general route of any state highway shall be designated and laid out as running to or by way of certain designated points, without specifying the particular route to be followed to or by way of such points, the department shall determine the particular route to be followed by said state highway to or by way of said designated points, and shall be at liberty to select and adopt as a part of such state highway, the whole or any part of any existing public highway previously designated as a county road, primary road, or secondary road or now or hereafter classified as a county road. The department need not select and adopt the entire routes for such state highways at one time, but may select and adopt parts of such routes from time to time as it deems advisable. Where a state highway is designated as passing by way of a certain point, this shall not require the department to cause such state highway to pass through or touch such point but such designation is direc-

tional only and may be complied with by location in the general vicinity. The department is empowered to construct as a part of any state highway as designated and in addition to any portion meeting the limits of any incorporated city or town a bypass section either through or around any such incorporated city or town. [2006 c 334 § 22; 1977 ex.s. c 151 § 59; 1961 c 13 § 47.28.010. Prior: 1937 c 53 § 31; RRS § 6400-31.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.28.020 Width of right-of-way. From and after April 1, 1937, the width of one hundred feet is the necessary and proper right-of-way width for state highways unless the department, for good cause, adopts and designates a different width. This section shall not be construed to require the department to acquire increased right-of-way for any state highway in existence on such date. [1984 c 7 § 164; 1961 c 13 § 47.28.020. Prior: 1937 c 53 § 30; RRS § 6400-30; 1913 c 65 § 8; RRS § 6831.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.025 Description and plan of new or limited access highway—Recording. Whenever the department establishes the location, width, and lines of any new highway, or declares any such new highway as a limited access facility and schedules the acquisition of the right-of-way for the highway or facility within the ensuing two years, it may cause the description and plan of any such highway to be made, showing the center line of the highway and the established width thereof, and attach thereto a certified copy of the resolution. Such description, plan, and resolution shall then be recorded in the office of the county auditor of the proper county. [1999 c 233 § 5; 1984 c 7 § 165; 1977 ex.s. c 225 § 1; 1961 c 13 § 47.28.025. Prior: 1955 c 161 § 1.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.026 Description and plan of new or limited access highway—Buildings and improvements prohibited, when. (1) No owner or occupier of lands, buildings, or improvements may erect any buildings or make any improvements within the limits of any such highway, the location, width, and lines of which have been established and recorded as provided in RCW 47.28.025. If any such erection and improvements are made, no allowances may be had therefor by the assessment of damages. No permits for improvements within the limits may be issued by any authority. The establishment of any highway location as set forth in RCW 47.28.025 is ineffective after one year from the filing thereof if no action to condemn or acquire the property within the limits has been commenced within that time.

(2) Unless and until the department causes a plan of a proposed new highway or limited access facility to be recorded in the office of the county auditor as authorized in RCW 47.28.025, nothing contained in RCW 47.28.025 or 47.28.026 may be deemed to restrict or restrain in any manner the improvement, development, or other use by owners or occupiers of lands, buildings, or improvements within the limits of any proposed new or limited access highway or any proposed relocated or widened highway. Because of the

uncertainties of federal aid and the state level of funding of proposed construction or improvement of state highways, plans for such improvements approved by the department shall be deemed tentative until filed with the county auditor as authorized in RCW 47.28.025 or until the department commences action to condemn or otherwise acquire the right-of-way for the highway improvements. [1984 c 7 § 166; 1977 ex.s. c 225 § 2; 1961 c 13 § 47.28.026. Prior: 1955 c 161 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.030 Contracts—State forces—Monetary limits—Small businesses, minority, and women contractors—Rules. A state highway shall be constructed, altered, repaired, or improved, and improvements located on property acquired for right-of-way purposes may be repaired or renovated pending the use of such right-of-way for highway purposes, by contract or state forces. The work or portions thereof may be done by state forces when the estimated costs thereof are less than fifty thousand dollars and effective July 1, 2005, sixty thousand dollars: PROVIDED, That when delay of performance of such work would jeopardize a state highway or constitute a danger to the traveling public, the work may be done by state forces when the estimated cost thereof is less than eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. When the department of transportation determines to do the work by state forces, it shall enter a statement upon its records to that effect, stating the reasons therefor. To enable a larger number of small businesses, and minority, and women contractors to effectively compete for department of transportation contracts, the department may adopt rules providing for bids and award of contracts for the performance of work, or furnishing equipment, materials, supplies, or operating services whenever any work is to be performed and the engineer's estimate indicates the cost of the work would not exceed eighty thousand dollars and effective July 1, 2005, one hundred thousand dollars. The rules adopted under this section:

(1) Shall provide for competitive bids to the extent that competitive sources are available except when delay of performance would jeopardize life or property or inconvenience the traveling public; and

(2) Need not require the furnishing of a bid deposit nor a performance bond, but if a performance bond is not required then progress payments to the contractor may be required to be made based on submittal of paid invoices to substantiate proof that disbursements have been made to laborers, material suppliers, mechanics, and subcontractors from the previous partial payment; and

(3) May establish prequalification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the prequalification standards and procedures under RCW 47.28.070 shall always be sufficient.

The department of transportation shall comply with such goals and rules as may be adopted by the office of minority and women's business enterprises to implement chapter 39.19 RCW with respect to contracts entered into under this chapter. The department may adopt such rules as may be necessary to comply with the rules adopted by the office of minority and women's business enterprises under chapter

39.19 RCW. [2007 c 218 § 90; 1999 c 15 § 1; 1984 c 194 § 1; 1983 c 120 § 15; 1977 ex.s. c 225 § 3; 1973 c 116 § 1; 1971 ex.s. c 78 § 1; 1969 ex.s. c 180 § 2; 1967 ex.s. c 145 § 40; 1961 c 233 § 1; 1961 c 13 § 47.28.030. Prior: 1953 c 29 § 1; 1949 c 70 § 1, part; 1943 c 132 § 1, part; 1937 c 53 § 41, part; Rem. Supp. 1949 § 6400-41, part.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910 and 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.035 Cost of project, defined. The cost of any project for the purposes of RCW 47.28.030 shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously. The department shall not permit the construction of any project by state forces by dividing a project into units of work or classes of work to give the appearance of compliance with RCW 47.28.030. [1984 c 194 § 2.]

47.28.040 Precontract preparation of maps, plans, and specifications—Filing. Before entering into any contract for the construction, alteration, repair, or improvement of any state highway the department shall cause the highway to be surveyed throughout the entire length of the proposed construction, alteration, repair, or improvement and cause to be prepared maps, plans, and specifications, together with an estimate of the cost of the proposed work, and such information and directions as will enable a contractor to carry them out. The maps, plans, specifications, and directions shall be approved by the department and a copy thereof filed permanently in the department's office. [1984 c 7 § 167; 1961 c 13 § 47.28.040. Prior: 1937 c 53 § 32, part; RRS § 6400-32, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.050 Call for bids. Except as may be provided by rules and regulations adopted under RCW 47.28.030 as now or hereafter amended the department of transportation shall publish a call for bids for the construction of the highway according to the maps, plans, and specifications, once a week for at least two consecutive weeks, next preceding the day set for receiving and opening the bids, in not less than one trade paper of general circulation in the state. The call shall state the time, place, and date for receiving and opening the bids, give a brief description of the location and extent of the work, and contain such special provisions or specifications as the department deems necessary. When necessary to implement chapter 39.19 RCW and the rules adopted to implement that chapter, the department shall include in its call for bids provisions or specifications requiring bidders to comply with chapter 39.19 RCW and the rules adopted to implement it: PROVIDED, That when the estimated cost of any contract to be awarded is less than fifty thousand dollars, the call for bids need only be published in at least one paper of general circulation in the county where the major part of the work is to be performed: PROVIDED FURTHER, That when the estimated cost of a contract to be awarded is seven thousand five hundred dollars or less, including the cost of materials, sup-

plies, engineering, and equipment, the department of transportation need not publish a call for bids: PROVIDED FURTHER, That after a bid call has been advertised for two consecutive weeks it may be postponed and the bids opened one week later. [1983 c 120 § 16; 1979 ex.s. c 69 § 1; 1977 c 65 § 1; 1973 c 116 § 2; 1969 ex.s. c 180 § 1; 1961 c 13 § 47.28.050. Prior: 1959 c 319 § 33; 1955 c 147 § 1; 1937 c 53 § 33; RRS § 6400-33.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910 and 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.060 Copy of map, plans, etc.—Charge. Any person, firm, or corporation is entitled to receive copies of the maps, plans, specifications, and directions for any work upon which call for bids has been published, upon request therefor and subsequent payment to the department of a reasonable sum as required by the department in the call for bids for each copy of such maps, plans, and specifications. Any money so received shall be certified by the department to the state treasurer and deposited to the credit of the motor vehicle fund. The department may deliver with or without charge informational copies of maps, plans, specifications, and directions at such places as it may designate. [1985 c 242 § 1; 1984 c 7 § 168; 1971 c 36 § 1; 1965 ex.s. c 64 § 1; 1961 c 13 § 47.28.060. Prior: 1937 c 53 § 34; RRS § 6400-34.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.070 Form of bid—Data required—Requirements—Refusal to furnish form—Appeal. Bid proposals upon any construction or improvement of any state highway shall be made upon contract proposal form supplied by the department and in no other manner. The department shall, before furnishing any person, firm, or corporation desiring to bid upon any work for which a call for bid proposals has been published with a contract proposal form, require from the person, firm, or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of the person, firm, or corporation in performing state highway, road, or other public work. The questionnaire and financial statement shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the department may require. Whenever the department is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement or whenever the department determines that the person, firm, or corporation does not meet all of the requirements set forth in this section it may refuse to furnish the person, firm, or corporation with a contract proposal form, and any bid proposal of the person, firm, or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm, or corporation shall have all of the following requirements:

(1) Adequate financial resources or the ability to secure such resources;

(2) The necessary experience, organization, and technical qualifications to perform the proposed contract;

(3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;

(4) A satisfactory record of performance, integrity, judgment, and skills; and

(5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

The refusal is conclusive unless appeal therefrom to the superior court of Thurston county is taken within five days, which appeal shall be heard summarily within ten days after it is taken and on five days' notice thereof to the department. [1984 c 7 § 169; 1967 ex.s. c 145 § 39; 1961 c 13 § 47.28.070. Prior: 1937 c 53 § 35; RRS § 6400-35.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.075 Financial information not open to public inspection. The department of transportation shall not be required to make available for public inspection and copying financial information supplied by any person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for highway construction or improvement as required by RCW 47.28.070. [1981 c 215 § 1.]

47.28.080 Withdrawal of bids—New bids—Time fixed in call controls. Any person, firm, or corporation proposing a bid for the construction or improvement of any state highway in response to a call for bids published therefor may withdraw the bid proposal without forfeiture and without prejudice to the right of the bidder to file a new bid proposal before the time fixed for the opening of the bid proposals. The request for the withdrawal shall be made in writing, signed by the person proposing the bid or his duly authorized agent, and filed at the place and before the time fixed in the call for bids for receipt of the bid proposals. No bid proposal may be considered that has not been filed with the department before the time fixed for the receipt of bid proposals. In any provisions regarding the filing or withdrawing of bid proposals the time fixed for the receipt of bid proposals in the call for bid proposals as published shall control without regard for the time when the bid proposals are actually opened. [1985 c 242 § 2; 1984 c 7 § 170; 1961 c 13 § 47.28.080. Prior: 1937 c 53 § 36; RRS § 6400-36.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.090 Opening of bids and award of contract—Deposit. At the time and place named in the call for bids the department of transportation shall publicly open and read the final figure in each of the bid proposals that have been properly filed and read only the unit prices of the three lowest bids, and shall award the contract to the lowest responsible bidder unless the department has, for good cause, continued the date of opening bids to a day certain, or rejected that bid. Any bid may be rejected if the bidder has previously defaulted in the performance of and failed to complete a written public contract, or has been convicted of a crime arising from a previous public contract. If the lowest responsible bidder fails to meet the provisions or specifications requiring compliance with chapter 39.19 RCW and the rules adopted to implement that chapter, the department may award the contract to the next lowest responsible bidder which does meet

the provisions or specifications or may reject all bids and readvertise. All bids shall be under sealed cover and accompanied by deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the amount of the bid, and a bid shall not be considered unless the deposit is enclosed with it. [1985 c 242 § 3; 1983 c 120 § 17; 1971 ex.s. c 21 § 2; 1961 c 13 § 47.28.090. Prior: 1955 c 83 § 1; 1949 c 64 § 1; 1937 c 53 § 37; Rem. Supp. 1949 § 6400-37.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910 and 39.19.920.

Office of minority and women's business enterprises: Chapter 39.19 RCW.

47.28.100 Failure or rejection of bidder. If the successful bidder fails to enter into the contract and furnish satisfactory bond as provided by law within twenty days from the award, exclusive of the day of the award, his or her deposit shall be forfeited to the state and deposited by the state treasurer to the credit of the motor vehicle fund, and the department may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder fails to enter into the contract and furnish bond within twenty days after award to him or her, forfeiture of his or her deposit shall also be made, and the contract may be awarded to the third lowest responsible bidder, and in like manner until the contract and bond are executed by a responsible bidder to whom award is made, or further bid proposals are rejected, or the number of bid proposals are exhausted. If the contract is not executed or no contractor's bond provided within the time required, and there appear circumstances that are deemed to warrant an extension of time, the department may extend the time for execution of the contract or furnishing bond for not to exceed twenty additional days. After awarding the contract the deposits of unsuccessful bidders shall be returned, but the department may retain the deposit of the next lowest responsible bidder or bidders as it desires until such time as the contract is entered into and satisfactory bond is provided by the bidder to whom the award is ultimately made. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If in the opinion of the department the acceptance of the bid of the lowest responsible bidder or bidders, or on prior failure of the lowest responsible bidder or bidders the acceptance of the bid of the remaining lowest responsible bidder or bidders, will not be for the best interest of the state, it may reject all bids or all remaining bids and republish a call for bids in the same manner as for an original publication thereof. [1996 c 18 § 8; 1984 c 7 § 171; 1961 c 13 § 47.28.100. Prior: 1953 c 53 § 1; 1937 c 53 § 38; RRS § 6400-38.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.110 Sureties—Qualifications—Additional sureties. At any time and as often as it may be deemed necessary, the department may require any or all sureties or any surety company to appear and qualify themselves upon any contractor's bond. Whenever the surety or sureties upon any contractor's bond become insufficient or are deemed by the department to have become insufficient, the department may demand in writing that the contracting person, firm, or corpo-

ration furnish such further contractor's bond or bonds or additional surety in an amount not exceeding that originally required as may be deemed necessary considering the extent of the work remaining to be done upon the contract. No further payments may be made on the contract until such additional surety as is required is furnished. [1984 c 7 § 172; 1961 c 13 § 47.28.110. Prior: 1937 c 53 § 39; RRS § 6400-39.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.120 Actions for labor and materials—Limitation of action. Any contracting person, firm, or corporation performing any labor or furnishing any materials upon their contract or otherwise for public work or improvement under the direction of the department or any person claiming any right of action upon any such contract with the state of Washington or who claims a cause of action against the state of Washington arising out of any such contract must bring such suit in the proper court in Thurston county before the expiration of one hundred and eighty days from and after the final acceptance and the approval of the final estimate of such work by the department; otherwise the action is forever barred. [1984 c 7 § 173; 1961 c 13 § 47.28.120. Prior: 1937 c 53 § 40; RRS § 6400-40.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.140 Highway, public transportation improvements, flood damage prevention—Cooperative agreements. When in the opinion of the governing authorities representing the department and any agency, instrumentality, municipal corporation, or political subdivision of the state of Washington, any highway, road, or street will be benefited or improved by constructing, reconstructing, locating, relocating, laying out, repairing, surveying, altering, improving, or maintaining, or by the establishment adjacent to, under, upon, within, or above any portion of any such highway, road, or street of an urban public transportation system, by either the department or any agency, instrumentality, municipal corporation, or political subdivision of the state, and it is in the public interest to do so, the authorities may enter into cooperative agreements wherein either agrees to perform the work and furnish the materials necessary and pay the cost thereof, including necessary engineering assistance, which costs and expenses shall be reimbursed by the party whose responsibility it was to do or perform the work or improvement in the first instance. The work may be done by either day labor or contract, and the cooperative agreement between the parties shall provide for the method of reimbursement. In the case of some special benefit or improvement to a state highway derived from any project that assists in preventing or minimizing flood damages as defined in RCW 86.16.120 or from the construction of any public works project, including any urban public transportation system, the department may contribute to the cost thereof by making direct payment to the particular state department, agency, instrumentality, municipal corporation, or political subdivision on the basis of benefits received, but such payment shall be made only after a cooperative agreement has been entered into for a specified amount or on an actual cost basis prior to the commencement of the particular public works project. [1991 c 322 § 29; 1984

c 7 § 174; 1967 c 108 § 6; 1961 c 13 § 47.28.140. Prior: 1955 c 384 § 8.]

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Severability—1984 c 7: See note following RCW 47.01.141.

Urban public transportation system defined: RCW 47.04.082.

47.28.150 Underpasses, overpasses constructed with federal funds—Maintenance cost apportionment. Notwithstanding any of the provisions of RCW 81.53.090, where the cost of constructing an overpass or underpass which is part of the state highway system has been paid for in whole or in part by the use of federal funds, the state shall at its expense maintain the entire overpass structure and the approaches thereto, and the railroad company shall at its expense maintain the entire underpass structure, including the approaches thereto. The state shall at its expense maintain the roadway, and the railroad company shall at its expense maintain its roadbed and tracks on or under all such structures. [1961 c 13 § 47.28.150. Prior: 1959 c 319 § 34.]

47.28.170 Emergency protection and restoration of highways. (1) Whenever the department finds that as a consequence of accident, natural disaster, or other emergency, an existing state highway is in jeopardy or is rendered impassible in one or both directions and the department further finds that prompt reconstruction, repair, or other work is needed to preserve or restore the highway for public travel, the department may obtain at least three written bids for the work without publishing a call for bids, and the secretary of transportation may award a contract forthwith to the lowest responsible bidder.

The department shall notify any association or organization of contractors filing a request to regularly receive notification. Notification to an association or organization of contractors shall include: (a) The location of the work to be done; (b) the general anticipated nature of the work to be done; and (c) the date determined by the department as reasonable in view of the nature of the work and emergent nature of the problem after which the department will not receive bids.

(2) Whenever the department finds it necessary to protect a highway facility from imminent damage or to perform emergency work to reopen a highway facility, the department may contract for such work on a negotiated basis not to exceed force account rates for a period not to exceed thirty working days.

(3) The secretary shall review any contract exceeding seven hundred thousand dollars awarded under subsection (1) or (2) of this section with the office of financial management within thirty days of the contract award.

(4) Any person, firm, or corporation awarded a contract for work must be prequalified pursuant to RCW 47.28.070 and may be required to furnish a bid deposit or performance bond. [2006 c 334 § 23; 1990 c 265 § 1; 1984 c 7 § 175; 1971 ex.s. c 89 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Severability—1984 c 7: See note following RCW 47.01.141.

47.28.220 Compost products. (1) A contract awarded in whole or in part for the purchase of compost products as a

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soil cover or soil amendment to state highway rights-of-way shall specify that compost products be purchased in accordance with the following schedule:

(a) For the period July 1, 1996, through June 30, 1997, twenty-five percent of the total dollar amount purchased;

(b) For the period July 1, 1998, through June 30, 1999, fifty percent of the total dollar amount purchased. The percentages in this subsection apply to the materials' value and include services or other materials.

(2) In order to carry out the provisions of this section, the department of transportation shall develop and adopt bid specifications for compost products used in state highway construction projects.

(3)(a) For purposes of this section, "compost products" means mulch, soil amendments, ground cover, or other landscaping material derived from the biological or mechanical conversion of biosolids or cellulose-containing waste materials.

(b) For purposes of this section, "biosolids" means municipal sewage sludge or septic tank septage sludge that meets the requirements of chapter 70.95J RCW. [1996 c 198 § 4; 1992 c 174 § 14; 1991 c 297 § 14.]

Captions not law—1991 c 297: See RCW 43.19A.900.

47.28.241 Alternative delivery of construction services—Definitions. The definitions in this section apply throughout RCW 47.28.251 and *41.06.380 unless the context clearly requires otherwise.

(1) "Construction services" means those services that aid in the delivery of the highway construction program and include, but are not limited to, real estate services and construction engineering services.

(2) "Construction engineering services" include, but are not limited to, construction management, construction administration, materials testing, materials documentation, contractor payments and general administration, construction oversight, and inspection and surveying. [2003 c 363 § 102.]

***Reviser's note:** RCW 41.06.380 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Part headings not law—2003 c 363: "Part headings used in this act are not part of the law." [2003 c 363 § 308.]

Severability—2003 c 363: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 363 § 309.]

47.28.251 Alternative delivery of construction services—Financial incentives—Private contracting—Reports. (1) The department of transportation shall work

with representatives of transportation labor groups to develop a financial incentive program to aid in retention and recruitment of employee classifications where problems exist and program delivery is negatively affected. The department's financial incentive program must be reviewed and approved by the legislature before it can be implemented. This program must support the goal of enhancing project delivery timelines as outlined in section 101, chapter 363, Laws of 2003. Upon receiving approval from the legislature, the department of personnel shall implement, as required, specific aspects of the financial incentive package, as developed by the department of transportation.

(2) Notwithstanding chapter 41.06 RCW, the department of transportation may acquire services from qualified private firms in order to deliver the transportation construction program to the public. Services may be acquired solely for augmenting the department's workforce capacity and only when the department's transportation construction program cannot be delivered through its existing or readily available workforce. The department of transportation shall work with representatives of transportation labor groups to develop and implement a program identifying those projects requiring contracted services while establishing a program as defined in subsection (1) of this section to provide the classified personnel necessary to deliver future construction programs. The procedures for acquiring construction engineering services from private firms may not be used to displace existing state employees nor diminish the number of existing classified positions in the present construction program. The acquisition procedures must be in accordance with chapter 39.80 RCW.

(3) Starting in December 2004, and biennially thereafter, the secretary shall report to the transportation committees of the legislature on the use of construction engineering services from private firms authorized under this section. The information provided to the committees must include an assessment of the benefits and costs associated with using construction engineering services, or other services, from private firms, and a comparison of public versus private sector costs. The secretary may act on these findings to ensure the most cost-effective means of service delivery. [2003 c 363 § 103.]

Finding—Intent—2003 c 363 §§ 103 and 104: "The legislature finds that there is a pressing need for additional transportation projects to meet the mobility needs of Washington's citizens. With major new investments approved to meet these pressing needs, additional workforce assistance is necessary to ensure and enhance project delivery timelines. Recruiting and retaining a high quality workforce, and implementing new and innovative procedures for delivering these transportation projects, is required to accomplish them on a timely basis that best serves the public. It is the intent of sections 103 and 104 of this act that no state employees will lose their employment as a result of implementing new and innovative project delivery procedures." [2003 c 363 § 101.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

Chapter 47.29 RCW

TRANSPORTATION INNOVATIVE PARTNERSHIPS

Sections

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47.29.010 Finding—Intent. (1) The legislature finds that the public-private transportation initiatives act created under chapter 47.46 RCW has not met the needs and expectations of the public or private sectors for the development of transportation projects. The legislature intends to phase out chapter 47.46 RCW coincident with the completion of the Tacoma Narrows Bridge - SR 16 public-private partnership. From July 24, 2005, this chapter will provide a more desirable and effective approach to developing transportation projects in partnership with the private sector by applying lessons learned from other states and from this state's ten-year experience with chapter 47.46 RCW.

(2) It is the legislature's intent to achieve the following goals through the creation of this new approach to public-private partnerships:

(a) To provide a well-defined mechanism to facilitate the collaboration between public and private entities in transportation;

(b) To bring innovative thinking from the private sector and other states to bear on public projects within the state;

(c) To provide greater flexibility in achieving the transportation projects; and

(d) To allow for creative cost and risk sharing between the public and private partners.

(3) The legislature intends that the powers granted in this chapter to the commission or department are in addition to any powers granted under chapter 47.56 RCW.

(4) It is further the intent of the legislature that an expert review panel be established for each project developed under chapter 334, Laws of 2006. Expert review panels shall be responsible for reviewing selected proposals, analyzing and reviewing tentative agreements, and making recommendations to the governor and the transportation commission on the advisability of executing agreements under chapter 334, Laws of 2006. [2006 c 334 § 48; 2005 c 317 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.29.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Authority" means the transportation commission.

(2) "Commission" means the transportation commission.

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

(4) "Eligible project" means any project eligible for development under RCW 47.29.050.

(5) "Eligible public works project" means only a project that meets the criteria of either RCW 47.29.060 (3) or (4).

(6) "Private sector partner" and "private partner" means a person, entity, or organization that is not the federal government, a state, or a political subdivision of a state.

(7) "Public funds" means all moneys derived from taxes, fees, charges, tolls, etc.

(8) "Public sector partner" and "public partner" means any federal or state unit of government, bistate transportation organization, or any other political subdivision of any state.

(9) "Transportation innovative partnership program" or "program" means the program as outlined in RCW 47.29.040.

(10) "Transportation project" means a project, whether capital or operating, where the state's primary purpose for the project is to preserve or facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.

(11) "Unit of government" means any department or agency of the federal government, any state or agency, office, or department of a state, any city, county, district, commission, authority, entity, port, or other public corporation organized and existing under statutory law or under a voter-approved charter or initiative, and any intergovernmental entity created under chapter 39.34 RCW or this chapter. [2005 c 317 § 2.]

47.29.030 Transportation commission powers and duties. In addition to the powers it now possesses, the commission shall:

(1) Approve or review contracts or agreements authorized in this chapter;

(2) Adopt rules to carry out this chapter and govern the program, which at a minimum must address the following issues:

(a) The types of projects allowed; however, all allowed projects must be included in the Washington transportation plan or identified by the authority as being a priority need for the state;

(b) The types of contracts allowed, with consideration given to the best practices available;

(c) The composition of the team responsible for the evaluation of proposals to include:

(i) Washington state department of transportation staff;

(ii) An independent representative of a consulting or contracting field with no interests in the project that is prohibited from becoming a project manager for the project and bidding on any part of the project;

(iii) An observer from the state auditor's office or the joint legislative audit and review committee;

(iv) A person appointed by the commission, if the secretary of transportation is a cabinet member, or appointed by the governor if the secretary of transportation is not a cabinet member; and

(v) A financial expert;

(d) Minimum standards and criteria required of all proposals;

(e) Procedures for the proper solicitation, acceptance, review, and evaluation of projects;

(f) Criteria to be considered in the evaluation and selection of proposals that includes:

(i) Comparison with the department's internal ability to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and

(ii) Factors such as, but not limited to: Priority, cost, risk sharing, scheduling, and management conditions;

(g) The protection of confidential proprietary information while still meeting the need for public disclosure that is consistent with RCW 47.29.190;

(h) Protection for local contractors to participate in sub-contracting opportunities;

(i) Specifying that maintenance issues must be resolved in a manner consistent with the personnel system reform act, chapter 41.80 RCW;

(j) Specifying that provisions regarding patrolling and law enforcement on a public facility are subject to approval by the Washington state patrol;

(3) Adopt guidelines to address security and performance issues.

Preliminary rules and guidelines developed under this section must be submitted to the chairs and ranking members of both transportation committees by November 30, 2005, for review and comment. All final rules and guidelines must be submitted to the full legislature during the 2006 session for review. [2005 c 317 § 3.]

47.29.040 Purpose. The Transportation Innovative Partnerships Act is created for the planning, acquisition, design, financing, management, development, construction, reconstruction, replacement, improvement, maintenance, preservation, repair, and operation of transportation projects. The goals of this chapter are to:

(1) Reduce the cost of transportation project delivery;

(2) Recover transportation investment costs;

(3) Develop an expedited project delivery process;

(4) Encourage business investment in public infrastructure;

(5) Use any fund source outside the state treasury, where financially advantageous and in the public interest;

(6) Maximize innovation;

(7) Develop partnerships between and among private entities and the public sector for the advancement of public purposes on mutually beneficial terms;

(8) Create synergies between and among public sector entities to develop projects that serve both transportation and other important public purposes; and

(9) Access specialized construction management and project management services and techniques available in the private sector. [2005 c 317 § 4.]

47.29.050 Eligible projects. Projects eligible for development under this chapter include:

(1) Transportation projects, whether capital or operating, where the state's primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel. However, this does not include projects that are primarily for recreational purposes, such as parks, hiking trails, off-road vehicle trails, etc.; and

(2) Facilities, structures, operations, properties, vehicles, vessels, or the like that are developed concurrently with an eligible transportation project and that are capable of (a) providing revenues to support financing of an eligible transportation project, or (b) that are public projects that advance public purposes unrelated to transportation. [2005 c 317 § 5.]

47.29.060 Eligible financing. (1) Subject to the limitations in this section, the department may, in connection with the evaluation of eligible projects, consider any financing mechanisms identified under subsections (3) through (5) of this section or any other lawful source, either integrated as part of a project proposal or as a separate, stand-alone proposal to finance a project. Financing may be considered for all or part of a proposed project. A project may be financed in whole or in part with:

(a) The proceeds of grant anticipation revenue bonds authorized by 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization and appropriation is required in order to use this source of financing;

(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit, or other financing arrangements available under the Transportation Infrastructure Finance and Innovation Act under 23 U.S.C. Sec. 181 et seq., or any other applicable federal law;

(c) Infrastructure loans or assistance from the state infrastructure bank established by RCW 82.44.195;

(d) Federal, state, or local revenues, subject to appropriation by the applicable legislative authority;

(e) User fees, tolls, fares, lease proceeds, rents, gross or net receipts from sales, proceeds from the sale of development rights, franchise fees, or any other lawful form of consideration. However, projects financed by tolls or equivalent funding sources must first be authorized by the legislature under RCW 47.56.820.

(2) As security for the payment of financing described in this section, the revenues from the project may be pledged, but no such pledge of revenues constitutes in any manner or to any extent a general obligation of the state. Any financing described in this section may be structured on a senior, parity, or subordinate basis to any other financing.

(3) For any transportation project developed under this chapter that is owned, leased, used, or operated by the state, as a public facility, if indebtedness is issued, it must be issued by the state treasurer for the transportation project.

(4) For other public projects defined in RCW 47.29.050(2) that are developed in conjunction with a transportation project, financing necessary to develop, construct, or operate the public project must be approved by the state finance committee or by the governing board of a public benefit corporation as provided in the federal Internal Revenue Code section 63-20;

(5) For projects that are developed in conjunction with a transportation project but are not themselves a public facility or public project, any lawful means of financing may be used. [2008 c 122 § 18; 2005 c 317 § 6.]

47.29.070 Use of federal funds and similar revenues. The department may accept from the United States or any of its agencies such funds as are available to this state or to any other unit of government for carrying out the purposes of this chapter, whether the funds are made available by grant, loan, or other financing arrangement. The department may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper, and convenient for carrying out the purposes of this chapter, subject to RCW 47.29.080. [2005 c 317 § 7.]

47.29.080 Other sources of funds or property. The department may accept from any source any grant, donation, gift, or other form of conveyance of land, money, other real or personal property, or other valuable thing made to the state of Washington, the department, or a local government for carrying out the purposes of this chapter.

Any eligible project may be financed in whole or in part by contribution of any funds or property made by any private entity or public sector partner that is a party to any agreement entered into under this chapter. [2005 c 317 § 8.]

47.29.090 Project review, evaluation, and selection. (1) Subject to subsection (2) of this section, the commission may:

(a) Solicit concepts or proposals for eligible projects from private entities and units of government;

(b) On or after January 1, 2007, accept unsolicited concepts or proposals for eligible projects from private entities and units of government, subject to RCW 47.29.170;

(c) Direct the department to evaluate projects for inclusion in the transportation innovative partnerships program that are already programmed or identified for traditional development by the state;

(d) Direct the department to evaluate the concepts or proposals received under this section; and

(e) Select potential projects based on the concepts or proposals. The evaluation under this subsection must include consultation with any appropriate unit of government.

(2) Before undertaking any of the activities contained in subsection (1) of this section, the commission must have:

(a) Completed the tolling feasibility study; and

(b) Adopted rules specifying procedures for the proper solicitation, acceptance, review, and evaluation of projects, which procedures must include:

(i) A comparison with the department's internal ability to complete the project that documents the advantages of completing the project as a partnership versus solely as a public venture; and

(ii) Factors such as priority, cost, risk sharing, scheduling, and management conditions. [2005 c 317 § 9.]

47.29.100 Administrative fee. The department may charge a reasonable administrative fee for the evaluation of an unsolicited project proposal. The amount of the fee will be established in rules of the commission. [2005 c 317 § 10.]

47.29.110 Funds for proposal evaluation and negotiation. The department may spend, out of any funds identified for the purpose, such moneys as may be necessary for the evaluation of concepts or proposals for eligible projects and for negotiating agreements for eligible projects authorized by this chapter. The department may employ engineers, consultants, or other experts the department determines are needed for the purposes of doing the evaluation and negotiation. Expenses incurred by the department under this section before the issuance of transportation project bonds or other financing must be paid by the department and charged to the appropriate project. The department shall keep records and accounts showing each amount so charged.

Unless otherwise provided in the omnibus transportation budget the funds spent by the department under this section in

connection with the project must be repaid from the proceeds of the bonds or other financing upon the sale of transportation project bonds or upon obtaining other financing for an eligible project, as allowed by law or contract. [2005 c 317 § 11.]

47.29.120 Expert consultation. The commission and department may consult with legal, financial, and other experts inside and outside the public sector in the evaluation, negotiation, and development of projects under this chapter, consistent with RCW 43.10.040 where applicable. [2005 c 317 § 12.]

47.29.130 Contracted studies. Notwithstanding any other provision of law, and in the absence of any direct federal funding or direction, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies and engineering and technical studies. [2005 c 317 § 13.]

47.29.140 Partnership agreements. (1) The following provisions must be included in any agreement to which the state is a party:

(a) For any project that proposes terms for stand-alone maintenance or asset management services for a public facility, those services must be provided in a manner consistent with any collective bargaining agreements, the personnel system reform act (chapter 41.80 RCW), and civil service laws that are in effect for the public facility;

(b) Transportation projects that are selected for development under this chapter must be identified in the Washington transportation plan or be identified by the authority as being a priority need for the state;

(c) If there is a tolling component to the project, then it must be specified that tolling technology used in the project must be consistent with tolling technology standards adopted by the department for transportation-related projects;

(d) Provisions for bonding, financial guarantees, deposits, or the posting of other security to secure the payment of laborers, subcontractors, and suppliers who perform work or provide materials as part of the project;

(e) All projects must be financed in a manner consistent with RCW 47.29.060. This chapter is null and void if this subsection or RCW 47.29.060 fails to become law or is held invalid by a court of final jurisdiction.

(2) Agreements between the state and private sector partners entered into under this section must specifically include the following contractual elements:

(a) The point in the project at which public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project;

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(h) For any project that reverts to public ownership, the responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable government standards upon reversion of the facility to the state; and

(i) Provisions for patrolling and law enforcement on transportation projects that are public facilities. [2005 c 317 § 14.]

47.29.150 Public involvement and participation. (1) Before final approval, agreements entered into under this chapter must include a process that provides for public involvement and participation with respect to the development of the projects. This plan must be submitted along with the proposed agreement, and both must be approved under RCW 47.29.160 before the state may enter a binding agreement.

(2) All workshops, forums, open houses, meetings, public hearings, or similar public gatherings must be administered and attended by representatives of the state and any other public entities that are party to an agreement authorized by this chapter. [2005 c 317 § 15.]

47.29.160 Approval and execution. (1) Before approving an agreement under subsection (2) of this section, the commission, with the technical assistance of the department, must:

(a) Prepare a financial analysis that fully discloses all project costs, direct and indirect, including costs of any financing;

(b) Publish notice and make available the contents of the agreement, with the exception of patent information, at least twenty days before the public hearing required in (c) of this subsection; and

(c) Hold a public hearing on the proposed agreement, with proper notice provided at least twenty days before the hearing. The public hearing must be held within the boundaries of the county seat of the county containing the project.

(2) The commission must allow at least twenty days from the public hearing on the proposed agreement required under subsection (1)(c) of this section before approving and executing any agreements authorized under this chapter. [2005 c 317 § 16.]

47.29.170 Unsolicited proposals. Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

(1) Provisions that specify unsolicited proposals must meet predetermined criteria;

(2) Provisions governing procedures for the cessation of negotiations and consideration;

(3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;

(4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of the proposed project and

impact; proposed project financing; and known public benefits and opposition; and

(5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:

(a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, 2009. [2007 c 518 § 702; 2006 c 370 § 604; 2005 c 317 § 17.]

Severability—Effective date—2007 c 518: See notes following RCW 46.68.170.

Severability—2006 c 370: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 370 § 701.]

Effective date—2006 c 370: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 370 § 702.]

47.29.180 Advisory committees. For projects with costs, including financing costs, of three hundred million dollars or greater, advisory committees are required.

(1) The commission must establish an advisory committee to advise with respect to eligible projects. An advisory committee must consist of not fewer than five and not more than nine members, as determined by the public partners. Members must be appointed by the commission, or for projects with joint public sector participation, in a manner agreed to by the commission and any participating unit of government. In making appointments to the committee, the commission shall consider persons or organizations offering a diversity of viewpoints on the project.

(2) An advisory committee shall review concepts or proposals for eligible projects and submit comments to the public sector partners.

(3) An advisory committee shall meet as necessary at times and places fixed by the department, but not less than twice per year. The state shall provide personnel services to assist the advisory committee within the limits of available funds. An advisory committee may adopt rules to govern its proceedings and may select officers.

(4) An advisory committee must be dissolved once the project has been fully constructed and debt issued to pay for the project has been fully retired. [2005 c 317 § 18.]

47.29.190 Confidentiality. A proposer shall identify those portions of a proposal that the proposer considers to be confidential, proprietary information, or trade secrets and provide any justification as to why these materials, upon

request, should not be disclosed by the authority. Patent information will be covered until the patent expires. Other information such as originality of design or records of negotiation may only be protected under this section until an agreement is reached. Disclosure must occur before final agreement and execution of the contract. Projects under federal jurisdiction or using federal funds must conform to federal regulations under the Freedom of Information Act. [2005 c 317 § 19.]

47.29.200 Prevailing wages. If public funds are used to pay any costs of construction of a public facility that is part of an eligible project, chapter 39.12 RCW applies to the entire eligible public works project. [2005 c 317 § 20.]

47.29.210 Government agreements. The state may, either separately or in combination with any other public sector partner, enter into working agreements, coordination agreements, or similar implementation agreements, including the formation of bistate transportation organizations, to carry out the joint implementation of a transportation project selected under this chapter. The state may enter into agreements with other units of government or Canadian provinces for transborder transportation projects. [2005 c 317 § 21.]

47.29.220 Eminent domain. The state may exercise the power of eminent domain to acquire property, rights-of-way, or other rights in property for projects that are necessary to implement an eligible project developed under this chapter, regardless of whether the property will be owned in fee simple by the state. [2005 c 317 § 22.]

47.29.230 Transportation innovative partnership account. (1) The transportation innovative partnership account is established in the custody of the state treasurer separate and distinct from the state general fund. Interest earned by the transportation innovative partnership account must be credited to the account. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) The following moneys must be deposited into the transportation innovative partnership account:

(a) Proceeds from bonds or other financing instruments issued under RCW 47.29.250;

(b) Revenues received from any transportation project developed under this chapter or developed under the general powers granted to the department; and

(c) Any other moneys that are by donation, grant, contract, law, or other means transferred, allocated, or appropriated to the account.

(3) Moneys in the transportation innovative partnership account may only be expended upon evidence of approval by the Washington state legislature, either upon appropriation of supporting state funds or by other statutory direction.

(4) The state treasurer shall serve as a fiduciary for the purpose of carrying out this chapter and implementing all or portions of any transportation project financed under this chapter.

(5) Moneys in the transportation innovative partnership account that were derived from revenue subject to Article II, section 40 (Amendment 18) of the Washington state Consti-

tution, may be used only for purposes authorized by that provision of the state Constitution.

(6) The state treasurer shall establish separate subaccounts within the transportation innovative partnership account for each transportation project that is initiated under this chapter or under the general powers granted to the department. Except as provided in subsection (5) of this section, the state may pledge moneys in the transportation innovative partnership account to secure revenue bonds or any other debt obligations relating to the project for which the account is established. [2005 c 317 § 23.]

47.29.240 Use of account. (1) The state may use moneys in the transportation innovative partnership subaccount to ensure the repayment of loan guarantees or extensions of credit made to or on behalf of private entities engaged in the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, preservation, management, repair, or operation of any eligible project that is related to a subaccount established under this chapter.

(2) The lien of a pledge made under this section is subordinate to the lien of a pledge securing bonds payable from moneys in the motor vehicle fund established in RCW 46.68.070, or the transportation innovative partnership account established in RCW 47.29.230. [2005 c 317 § 24.]

47.29.250 Issuing bonds and other obligations. (1) In addition to any authority the commission or department has to issue and sell bonds and other similar obligations, this section establishes continuing authority for the issuance and sale of bonds and other similar obligations in a manner consistent with this section. To finance a project in whole or in part, the commission may request that the state treasurer issue revenue bonds on behalf of the public sector partner. The bonds must be secured by a pledge of, and a lien on, and be payable only from moneys in the transportation innovative partnership account established in RCW 47.29.230, and any other revenues specifically pledged to repayment of the bonds. Such a pledge by the public partner creates a lien that is valid and binding from the time the pledge is made. Revenue bonds issued under this section are not general obligations of the state or local government and are not secured by or payable from any funds or assets of the state other than the moneys and revenues specifically pledged to the repayment of such revenue bonds.

(2) Moneys received from the issuance of revenue bonds or other debt obligations, including any investment earnings thereon, may be spent:

(a) For the purpose of financing the costs of the project for which the bonds are issued;

(b) To pay the costs and other administrative expenses of the bonds;

(c) To pay the costs of credit enhancement or to fund any reserves determined to be necessary or advantageous in connection with the revenue bonds; and

(d) To reimburse the public sector partners for any costs related to carrying out the projects authorized under this chapter. [2005 c 317 § 25.]

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47.29.260 Study and report. The department shall conduct a study of:

(1) The contracting powers and project management authorities it currently possesses; those same powers and authorities authorized under this chapter; and those powers and authorities employed by other states or the private sector;

(2) Methods of encouraging competition for the development of transportation projects; and

(3) Any additional procedures that may be necessary or desirable for negotiating contracts in situations of a single qualified bidder, in either solicited or unsolicited proposals.

The department must submit its report, along with any recommended legislative changes, to the commission by November 1, 2005, and to the governor and the legislature for consideration in the 2006 legislative session. [2005 c 317 § 26.]

47.29.270 Federal laws. Notwithstanding any provision of this chapter, applicable federal laws, rules, and regulations govern in any situation that involves federal funds if the federal laws, rules, or regulations:

(1) Conflict with any provision of this chapter;

(2) Require procedures that are additional to or different from those provided in this chapter; or

(3) Require contract provisions not authorized in this chapter. If no federal funds are provided, state laws, rates, and rules will govern. [2005 c 317 § 27.]

47.29.280 Expert review panel on proposed project agreements—Creation—Authority. (1) The department shall establish an expert review panel to review, analyze, and make recommendations to the governor and the transportation commission on whether to approve, reject, or continue negotiations on a proposed project agreement under this chapter. The department shall provide staff to support the expert review panel, if requested by the panel. The expert review panel may utilize any of the consultants under contract for the department, and the expert review panel may contract for consulting expertise in specific areas as it deems necessary to ensure a thorough and critical review of any proposed project agreement.

(2) The governor shall appoint members of an expert review panel that have experience in large capital project delivery, public-private partnerships, public financing of infrastructure improvements, or other areas of expertise that will benefit the panel. The panel shall consist of no less than three, but no more than five members, as determined by the governor. [2006 c 334 § 49.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.29.290 Expert review panel on proposed project agreements—Execution of agreements. Upon receiving the recommendations of the expert review panel as provided in RCW 47.29.280, and upon consultation with the governor, the transportation commission shall either execute the proposed project agreement, reject the proposed project agreement, or continue further negotiations between the state and a private partner. The execution of any agreement or the rejection of any agreement shall constitute a final action for legal or administrative purposes. [2006 c 334 § 50.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.29.900 Captions not law. Captions used in this chapter are not part of the law. [2005 c 317 § 28.]

Chapter 47.30 RCW TRAILS AND PATHS

Sections

47.30.005	Definitions.
47.30.010	Recreational trail interference.
47.30.020	Facilities for nonmotorized traffic—Joint usage of rights-of-way.
47.30.030	Facilities for nonmotorized traffic—Expenditure of available funds.
47.30.040	Establishing paths and trails—Factors to be considered.
47.30.050	Expenditures for paths and trails—Minimum amount.
47.30.060	Expenditures deemed to be for highway purposes—Powers and duties of department—Restrictions on use of paths and trails.
47.30.070	Bicycle, equestrian, pedestrian paths as public highways.

Recreation trails system: Chapter 79A.35 RCW.

47.30.005 Definitions. For the purposes of this chapter, "trail" or "path" means a public way constructed primarily for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for the exclusive use of pedestrians. The term "trail" or "path" also includes a widened shoulder of a highway, street, or road when the extra shoulder width is constructed to accommodate bicyclists consistent with a comprehensive plan or master plan for bicycle trails or paths adopted by a state or local governmental authority either prior to such construction or prior to January 1, 1980. [1979 ex.s. c 121 § 4.]

47.30.010 Recreational trail interference. (1) No limited access highway shall be constructed that will result in the severance or destruction of an existing recreational trail of substantial usage for pedestrians, equestrians or bicyclists unless an alternative recreational trail, satisfactory to the authority having jurisdiction over the trail being severed or destroyed, either exists or is reestablished at the time the limited access highway is constructed. If a proposed limited access highway will sever a planned recreational trail which is part of a comprehensive plan for trails adopted by a state or local governmental authority, and no alternative route for the planned trail exists which is satisfactory to the authority which adopted the comprehensive plan for trails, the state or local agency proposing to construct the limited access highway shall design the facility and acquire sufficient right-of-way to accommodate future construction of the portion of the trail which will properly lie within the highway right-of-way. Thereafter when such trail is developed and constructed by the authority having jurisdiction over the trail, the state or local agency which constructed the limited access highway shall develop and construct the portion of such trail lying within the right-of-way of the limited access highway.

(2) Where a highway other than a limited access highway crosses a recreational trail of substantial usage for pedestrians, equestrians, or bicyclists, signing sufficient to insure safety shall be provided.

(3) Where the construction or reconstruction of a highway other than a limited access highway would destroy the usefulness of an existing recreational trail of substantial usage for pedestrians, equestrians, or bicyclists or of a planned recreational trail for pedestrians, equestrians, or bicyclists incorporated into the comprehensive plans for trails of the state or any of its political subdivisions, replacement land, space, or facilities shall be provided and where such recreational trails exist at the time of taking, reconstruction of said recreational trails shall be undertaken. [1971 ex.s. c 130 § 1.]

47.30.020 Facilities for nonmotorized traffic—Joint usage of rights-of-way. Facilities for pedestrians, equestrians, or bicyclists shall be incorporated into the design of highways and freeways along corridors where such facilities do not exist upon a finding that such facilities would be of joint use and conform to the comprehensive plans of public agencies for the development of such facilities, will not duplicate existing or proposed routes, and that safety to both motorists and to pedestrians, equestrians, and bicyclists would be enhanced by the segregation of traffic.

In planning and design of all highways, every effort shall be made consistent with safety to promote joint usage of rights-of-way for trails and paths in accordance with the comprehensive plans of public agencies. [1971 ex.s. c 130 § 2.]

47.30.030 Facilities for nonmotorized traffic—Expenditure of available funds. Where an existing highway severs, or where the right-of-way of an existing highway accommodates a trail for pedestrians, equestrians, or bicyclists or where the separation of motor vehicle traffic from pedestrians, equestrians, or bicyclists will materially increase the motor vehicle safety, the provision of facilities for pedestrians, equestrians, or bicyclists which are a part of a comprehensive trail plan adopted by federal, state, or local governmental authority having jurisdiction over the trail is hereby authorized. The department of transportation, or the county or city having jurisdiction over the highway, road, or street, or facility is further authorized to expend reasonable amounts out of the funds made available to them, according to the provisions of RCW 46.68.090, as necessary for the planning, accommodation, establishment, and maintenance of such facilities. [1999 c 269 § 10; 1979 ex.s. c 121 § 1; 1974 ex.s. c 141 § 12; 1972 ex.s. c 103 § 2.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Severability—1972 ex.s. c 103: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 103 § 8.]

47.30.040 Establishing paths and trails—Factors to be considered. Before establishing paths and trails, the following factors shall be considered:

- (1) Public safety;
- (2) The cost of such paths and trails as compared to the need or probable use;
- (3) Inclusion of the trail in a plan for a comprehensive trail system adopted by a city or county in a state or federal trails plan. [1972 ex.s. c 103 § 3.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

47.30.050 Expenditures for paths and trails—Minimum amount. (1) The amount expended by a city, town, or county as authorized by RCW 47.30.030 shall never in any one fiscal year be less than 0.42 percent of the total amount of funds received from the motor vehicle fund according to RCW 46.68.090. However, this section does not apply to a city or town in any year in which the 0.42 percent equals five hundred dollars or less, or to a county in any year in which the 0.42 percent equals three thousand dollars or less. Also, a city, town, or county in lieu of expending the funds each year may credit the funds to a financial reserve or special fund, to be held for not more than ten years, and to be expended for the purposes required or permitted by RCW 47.30.030.

(2) In each fiscal year the department of transportation shall expend, as a minimum, for the purposes mentioned in RCW 47.30.030 a sum equal to three-tenths of one percent of all funds, both state and federal, expended for the construction of state highways in such year, or in order to more efficiently program trail improvements the department may defer any part of such minimum trail or path expenditures for a fiscal year for a period not to exceed four years after the end of such fiscal year. Any fiscal year in which the department expends for trail or path purposes more than the minimum sum required by this subsection, the amount of such excess expenditure shall constitute a credit which may be carried forward and applied to the minimum trail and path expenditure requirements for any of the ensuing four fiscal years.

(3) The department of transportation, a city, or a county in computing the amount expended for trails or paths under their respective jurisdictions may include the cost of improvements consistent with a comprehensive plan or master plan for bicycle trails or paths adopted by a state or local governmental authority either prior to such construction or prior to January 1, 1980. [1999 c 269 § 11; 1979 ex.s. c 121 § 2; 1972 ex.s. c 103 § 4.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

Perpetual advanced six-year plans for coordinated transportation program, expenditures—Nonmotorized transportation—Railroad right-of-way: RCW 36.81.121.

47.30.060 Expenditures deemed to be for highway purposes—Powers and duties of department—Restrictions on use of paths and trails. For the purposes of this chapter, the establishment of paths and trails and the expenditure of funds as authorized by RCW 47.30.030, as now or hereafter amended, shall be deemed to be for highway, road, and street purposes. The department of transportation shall, when requested, and subject to reimbursement of costs, provide technical assistance and advice to cities, towns, and counties in carrying out the purposes of RCW 47.30.030, as now or hereafter amended. The department shall recommend construction standards for paths and trails. The department shall provide a uniform system of signing paths and trails which shall apply to paths and trails under the jurisdiction of the department and of cities, towns, and counties. The department and cities, towns, and counties may restrict the use of paths and trails under their respective jurisdictions to pedestrians, equestrians, and nonmotorized vehicles. [1979 ex.s. c 121 § 3; 1972 ex.s. c 103 § 5.]

Severability—1972 ex.s. c 103: See note following RCW 47.30.030.

(2008 Ed.)

47.30.070 Bicycle, equestrian, pedestrian paths as public highways. For purposes of 43 U.S.C. 912 and related provisions of federal law involving federally granted railroad rights-of-way, a bicycle, equestrian or pedestrian path shall be deemed to be a public highway under the laws of the state of Washington. [1993 c 224 § 14.]

Chapter 47.32 RCW

OBSTRUCTIONS ON RIGHT-OF-WAY

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Fences: Chapter 16.60 RCW.

Mobile home or park model trailer movement permits and decals: RCW 46.44.170 through 46.44.175.

Removal of disabled vehicle: RCW 46.55.113.

47.32.010 Order to remove obstructions—Removal by state. Whenever the department determines and orders that it is necessary for the convenience and safety of public travel and the use of (or construction, alteration, repair, improvement, or maintenance of) any state highway to have the full width of right-of-way of any such state highway or of any portion of the right-of-way of any such state highway free from any and all obstructions, encroachments, and occupancy, other than pole lines, pipe lines, or other structures maintained thereon for public or quasi-public utilities by virtue of a valid franchise, and causes due notice of the order to be given as provided by law, the obstructions, encroachments, and means of occupancy, and any structure, building, improvement, or other means of occupancy of any of the right-of-way of the state highway not removed within the time allowed by law shall become an unlawful property and may be confiscated, removed, and sold or destroyed by the state of Washington according to procedure as provided in this chapter, without any right in anyone to make any claim therefor, either by reason of the removal thereof or otherwise. It is unlawful for any person to keep, maintain, or occupy any such unlawful structure. [1984 c 7 § 176; 1961 c 13 § 47.32.010. Prior: 1937 c 53 § 68; RRS § 6400-68.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.020 Notice of order, contents, posting—Return. Whenever the department determines that the right-of-way of any state highway or any portion of the right-of-way of any state highway shall be made free from any and all

obstructions, encroachments, and occupancy it shall forthwith cause to be posted, by a competent person eighteen years of age or over upon any and all structures, buildings, improvements, and other means of occupancy of the state highway or portion thereof, other than property of public or quasi-public utilities, by virtue of a valid franchise, a notice bearing a copy of the order and dated as of the date of posting, to all whom it may concern to vacate the right-of-way and to remove all property from the right-of-way within ten days after the posting of the notice, exclusive of the date of posting. The department shall also require the filing of duplicate affidavits in proof of the postings, showing upon what structures, buildings, improvements, or other means of occupancy of the state highway or portions thereof, respectively, copies of the notice were posted and the date of each such posting, sworn to by the person making the posting. [1984 c 7 § 177; 1971 ex.s. c 292 § 46; 1961 c 13 § 47.32.020. Prior: 1937 c 53 § 69; RRS § 6400-69.]

Severability—1984 c 7: See note following RCW 47.01.141.

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

47.32.030 Proceedings in rem authorized—Records certified. In case the property or any portion thereof described in the notice is not removed from the right-of-way within ten days after the date of the posting, exclusive of the date of posting, all such property upon the right-of-way of the state highway or portion thereof becomes unlawful, and the department shall commence proceedings in the name of the state of Washington for the removal thereof by court action. The department shall thereupon prepare two original copies of the order together with two copies each of the notice posted and of the affidavits in proof of posting thereof and duplicate copies of a certificate by the department describing with reasonable certainty and with due reference to the center line stationing of the state highway and to proper legal subdivisional points, each structure, building, improvement, encroachment, or other means of occupancy, other than pole lines, pipe lines, or other structures maintained for public and quasi-public utilities, on the state highway or portion thereof specified in the order that remain upon the right-of-way as aforesaid. Thereupon action shall be commenced in rem for the purpose of removal of all such unlawful property, in the superior court of the county in which the state highway or portion thereof containing the structures is situated, entitled and in the name of the state of Washington as plaintiff and describing each unlawful structure, building, improvement, encroachment, or other means of occupancy, which structures, buildings, improvements, encroachments, or other means of occupancy shall be briefly named as defendants. [1984 c 7 § 178; 1961 c 13 § 47.32.030. Prior: 1937 c 53 § 70; RRS § 6400-70; prior: 1925 ex.s. c 131 § 3; RRS § 6837-3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.040 Complaint, contents. The complaint shall, in such action, describe the property unlawfully remaining upon the right-of-way of the state highway or portion thereof with reasonable certainty by reference to the certificate of the department, which shall be attached to and filed with the complaint, and pray that an order be entered for the removal

from the right-of-way of the state highway or portion thereof of all the described property unlawfully thereon and the disposal thereof. [1984 c 7 § 179; 1961 c 13 § 47.32.040. Prior: 1937 c 53 § 71; RRS § 6400-71; prior: 1925 ex.s. c 131 § 4; RRS § 6837-4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.050 Notice, action, service, contents—Proceedings void when. Service of such complaint shall be given by publication of notice thereof once a week for two successive weeks in a newspaper of general circulation in the county in which such action is commenced, which notice shall briefly state the objects of the action and contain a brief description of each structure, building, improvement, encroachment or other means of occupancy sought to be removed from the right-of-way of the state highway, describe such state highway or portion thereof by number and location and state the time and place when and where the action will come before the court or judge thereof; and a copy of such notice shall also be posted at least ten days before the date of hearing of such action upon each such structure, building, improvement, encroachment or other means of occupancy described therein. Posting may be made by any person qualified to serve legal process. Want of posting upon, or failure to describe any such structure, building, improvement, encroachment or other means of occupancy shall render subsequent proceedings void as to those not posted upon or described but all others described and posted upon shall be bound by the subsequent proceedings. [1961 c 13 § 47.32.050. Prior: 1937 c 53 § 72; RRS 6400-72; prior: 1925 ex.s. c 131 § 5; RRS § 6837-5.]

47.32.060 Hearing—Findings—Order—Appellate review. At the time and place appointed for hearing upon the complaint, which hearing shall be by summary proceedings, if the court or judge thereof finds that due notice has been given by posting and publication and that the order of the department was duly made, and is further satisfied and finds that the state highway or portion thereof described is legally a state highway having the width of right-of-way specified in the order and that the structure, buildings, improvements, or other means of occupancy of the state highway or portion thereof as stated in the certificate of the department do in fact encroach, or that any portion thereof encroach, upon the state highway right-of-way, the court or judge thereof shall thereupon make and enter an order establishing that each of the structures, buildings, improvements, and other means of occupancy specified in the order is unlawfully maintained within the right-of-way and is subject to confiscation and sale and that they be forthwith confiscated, removed from the right-of-way, and sold, and providing that six days after the entry of the order, a writ shall issue from the court directed to the sheriff of the county, commanding the sheriff to seize and remove from the right-of-way of the state highway each such structure, building, improvement, or other means of occupancy specified in the order forthwith on receipt of a writ based on the order and to take and hold the property in his custody for a period of ten days, unless redelivered earlier as provided for by law, and if not then so redelivered to sell the property at public or private sale and to pay the proceeds

thereof into the registry of the court within sixty days after the issuance of the writ, and further in such action, including costs of posting original notices of the department, the costs of posting and publishing notices of hearing as part thereof and any cost of removal, be paid by the clerk to the state treasurer and credited to the motor vehicle fund. The order shall be filed with the clerk of the court and recorded in the minutes of the court, and is final unless appellate review thereof is sought within five days after filing of the order. [1988 c 202 § 45; 1984 c 7 § 180; 1961 c 13 § 47.32.060. Prior: 1937 c 53 § 73; RRS § 6400-73; prior: 1925 ex.s. c 131 § 7; RRS § 6837-7.]

Severability—1988 c 202: See note following RCW 2.24.050.

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.070 Writ, execution of—Return—Disposition of unsold property. Six days after filing of the order above provided for, if no review thereof be taken to the supreme court or the court of appeals of the state, the clerk of the court shall issue under seal of such court a writ directed to the sheriff of the county in which such court is held commanding him to remove, take into custody and dispose of the property described in such order and make returns thereof as provided for such writ by said order. On receipt of such writ it shall be the duty of such sheriff to obey the command thereof, proceed as therein directed and make return within the time fixed by such writ; and said sheriff shall be liable upon his official bond for the faithful discharge of such duties. Upon filing of such return the clerk of court shall make payments as provided for in the order of court. If by the sheriff's return any of the property seized and removed pursuant to such writ is returned as unsold and as of no sale value, and if the court or judge thereof be satisfied that such is the fact, the court or judge thereof may make further order directing the destruction of such property, otherwise directing the sheriff to give new notice and again offer the same for sale, when, if not sold, the same may on order of court be destroyed. [1971 c 81 § 115; 1961 c 13 § 47.32.070. Prior: 1937 c 53 § 74; RRS § 6400-74; prior: 1925 ex.s. c 131 § 8; RRS § 6837-8.]

47.32.080 Property reclaimed—Bond. At any time within ten days after the removal by virtue of such writ of any such property from the right-of-way of such state highway any person, firm, association or corporation claiming ownership or right of possession of any such property may have the right to demand and to receive the same from the sheriff upon making an affidavit that such claimant owns such property or is entitled to possession thereof, stating on oath the value thereof satisfactory to said sheriff, or which value shall be raised to a value satisfactory to said sheriff, which value shall be indorsed on said affidavit and signed both by said claimant and said sheriff before such sheriff shall be required to accept the bond hereinafter provided for, and deliver to the sheriff a bond with sureties in double the value of such property, conditioned that such claimant will appear in the superior court of such county within ten days after the bond is accepted by the sheriff and make good such claim of title thereto and pay all accrued costs of service of notice to remove, all costs and disbursements to be assessed to such property and the costs of removal and custody thereof and will hold said sheriff and the

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state of Washington free from any and all claims on account of such property or will return such property or pay its value to said sheriff, and that such claimant will at all times thereafter keep such property off the right-of-way of the state highway in question. [1961 c 13 § 47.32.080. Prior: 1937 c 53 § 75; RRS § 6400-75; prior: 1925 ex.s. c 131 § 9; RRS § 6837-9.]

47.32.090 Sureties on bond—Hearing on claim. The sureties on such bond shall justify as in other cases if the sheriff requires it and in case they do not so justify when required, the sheriff shall retain and sell or dispose of the property; and if the sheriff does not require the sureties to justify, he shall stand good for their sufficiency. He shall date and indorse his acceptance upon the bond, and shall return the affidavit, bond and justification, if any, to the office of the clerk of such superior court, whereupon such clerk shall set the hearing thereof as a separate case for trial, in which such claimant shall be the plaintiff and the sheriff and the state of Washington defendants: PROVIDED, That no costs shall, in such case, be assessed against the sheriff or the state of Washington in the event the plaintiff should prevail. [1961 c 13 § 47.32.090. Prior: 1937 c 53 § 76; RRS § 6400-76; prior: 1925 ex.s. c 131 § 10; RRS § 6837-10.]

47.32.100 Procedure when claimant wins or loses. If the claimant makes good the claimant's title to or right to possession of the property, upon payment into the registry of the court of the costs of service or posting of original notice issued by the department with respect to the property, the cost of posting notice of hearing in the court and such proportion of the cost of publication of the notice as the court may fix and direct to be entered and the clerk's fees of filing the affidavit and bond as a separate action and of entry of judgment therein at the amounts provided for in civil actions, judgment shall be entered restoring the property to the claimant without any confirmation of title as to any other claimant thereto, relieving the sheriff from necessity of selling the property and making return thereon, and continuing the effect of the bond for a period of six years thereafter for the benefit of such adverse claimants to the property, if any, as may thereafter make claim to the property. If the claimant does not make good such claim of title to or right to possession of the property, judgment shall be rendered against the claimant and the sureties of the claimant for the value of the property as finally shown by the affidavit as above provided for, together with such fees for filing the affidavit and bond as a separate action and for entry of judgment therein and other costs and disbursements as taxed in any civil action including the statutory attorney fee as part thereof, for all of which execution may accordingly issue, and relieving the sheriff from the necessity of selling the property or making return thereon. [1984 c 7 § 181; 1961 c 13 § 47.32.100. Prior: 1937 c 53 § 77; RRS § 6400-77; prior: 1925 ex.s. c 131 § 11; RRS § 6837-11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.110 Merchandising structures—Permit—Removal. It is unlawful for any person to build, erect, establish, operate, maintain, or conduct along and upon the right-of-way of any state highway any platform, box, stand, or any

other temporary or permanent device or structure used or to be used for the purpose of receiving, vending, or delivering any milk, milk cans, vegetables, fruits, merchandise, produce, or any other thing or commodity of any nature unless a permit therefor has first been obtained from the department. The department shall in each instance determine where any platform, box, stand, or any other temporary or permanent device or structure shall be permitted. Upon the existence of any such device or structure without a permit having been first obtained, it shall be considered an obstruction unlawfully upon the right-of-way of the state highway, and the department may proceed to effect its removal. [1984 c 7 § 182; 1961 c 13 § 47.32.110. Prior: 1937 c 53 § 78; RRS § 6400-78; 1927 c 309 § 48; RRS § 6362-48; 1923 c 181 § 10; RRS § 6358-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.120 Business places along highway. Except as provided in RCW 47.04.270, it is unlawful for any person to erect a structure or establishment or maintain a business, the nature of which requires the use by patrons or customers of property adjoining the structure or establishment unless the structure or establishment is located at a distance from the right-of-way of any state highway so that none of the right-of-way thereof is required for the use of the patrons or customers of the establishment. Any such structure erected or business maintained that makes use of or tends to invite patrons to use the right-of-way or any portion thereof of any state highway by occupying it while a patron is a public nuisance, and the department may fence the right-of-way of the state highway to prevent such unauthorized use thereof. [2006 c 324 § 2; 1984 c 7 § 183; 1961 c 13 § 47.32.120. Prior: 1937 c 53 § 79; RRS § 6400-79.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.130 Dangerous objects and structures as nuisances—Logs—Abatement—Removal. (1) Whenever there exists upon the right-of-way of any state highway or off the right-of-way thereof in sufficiently close proximity thereto, any structure, device, or natural or artificial thing that threatens or endangers the state highway or portion thereof, or that tends to endanger persons traveling thereon, or obstructs or tends to obstruct or constitutes a hazard to vehicles or persons traveling thereon, the structure, device, or natural or artificial thing is declared to be a public nuisance, and the department is empowered to take such action as may be necessary to effect its abatement. Any such structure, device, or natural or artificial thing considered by the department to be immediately or eminently dangerous to travel upon a state highway may be forthwith removed, and the removal in no event constitutes a breach of the peace or trespass.

(2) Logs dumped on any state highway roadway or in any state highway drainage ditch due to equipment failure or for any other reason shall be removed immediately. Logs remaining within the state highway right-of-way for a period of thirty days shall be confiscated and removed or disposed of as directed by the department. [1984 c 7 § 184; 1961 c 13 § 47.32.130. Prior: 1947 c 206 § 3; 1937 c 53 § 80; Rem. Supp. 1947 § 6400-80.]

Severability—1984 c 7: See note following RCW 47.01.141.

Obstructing highway, public nuisance: RCW 9.66.010.

Placing dangerous substances or devices on highway: RCW 9.66.050, 46.61.645, 70.93.060.

47.32.140 Railroad crossings, obstructions—Hearing. Each railroad company shall keep its right-of-way clear of all brush and timber in the vicinity of a railroad grade crossing with a state highway for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train. The department shall cause brush and timber to be cleared from the right-of-way of a state highway in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train. It is unlawful to erect or maintain a sign, signboard, or billboard, except official highway signs and traffic devices and railroad warning or operating signs, outside the corporate limits of any city or town within a distance of one hundred feet from the point of intersection of the highway and railroad grade crossing unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the department determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a state highway or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the department or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. However, nothing in this section prevents the posting or maintaining of any legal notice or sign, signal, or traffic device required or permitted to be posted or maintained, or the placing and maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs are approved by the department. The department shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [1983 c 19 § 2; 1961 c 13 § 47.32.140. Prior: 1955 c 310 § 7; 1937 c 53 § 81; RRS § 6400-81; prior: 1923 c 129 §§ 1-6; RRS §§ 10510-1—10510-6.]

Railroad grade crossings, obstructions: RCW 36.86.100.

47.32.150 Approach roads, other appurtenances—Permit. No person, firm, or corporation may be permitted to build or construct on state highway rights-of-way any approach road or any other facility, thing, or appurtenance not heretofore permitted by law, without first obtaining written permission from the department. [1984 c 7 § 185; 1961 c

13 § 47.32.150. Prior: 1947 c 201 § 1; Rem. Supp. 1947 § 6402-50.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.160 Approach roads, other appurtenances—Rules—Construction, maintenance of approach roads. The department is hereby authorized and empowered at its discretion to adopt reasonable rules governing the issuance of permits under RCW 47.32.150 for the construction of any approach road, facility, thing, or appurtenance, upon state highway rights-of-way. The rules shall be designed to achieve and preserve reasonable standards of highway safety and the operational integrity of the state highway facility. Any permit issued may contain such terms and conditions as may be prescribed. All such construction shall be under the supervision of the department and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing, or appurtenance, it shall be maintained at the expense of the applicant and in accordance with the directions of the department. [1987 c 227 § 1; 1984 c 7 § 186; 1961 c 13 § 47.32.160. Prior: 1947 c 201 § 2; Rem. Supp. 1947 § 6402-51.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.32.170 Approach roads, other appurtenances—Removal of installations from right-of-way for default. Upon failure of the applicant to construct or maintain the particular approach road, facility, thing, or appurtenance in accordance with the conditions of the permit and in accordance with the rules of the department, the department may, after the expiration of thirty days following transmittal of a written notice to the applicant, remove all installations upon the right-of-way at the expense of the applicant, which expense may be recovered from the applicant by the department for the state in any court of competent jurisdiction. [1984 c 7 § 187; 1961 c 13 § 47.32.170. Prior: 1947 c 201 § 3; Rem. Supp. 1947 § 6402-52.]

Severability—1984 c 7: See note following RCW 47.01.141.

Chapter 47.36 RCW

TRAFFIC CONTROL DEVICES

Sections

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- 47.36.330 Motorist information signs—Maximum number and distance.
- 47.36.340 Motorist information signs—Lodging.
- 47.36.350 Motorist information signs—Installation time.
- 47.36.360 Motorist information signs—"RV" logo.
- 47.36.400 Adopt-a-highway signs.

County roads, signs, signals, guideposts—Standards: RCW 36.86.040.

Range areas, signs: RCW 16.24.060.

Rules of the road: Chapter 46.61 RCW.

47.36.005 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(2) "Interstate system" means a state highway that is or becomes part of the national system of interstate and defense highways as described in section 103(d) of Title 23, United States Code.

(3) "Maintain" means to allow to exist.

(4) "Primary system" means a state highway that is or becomes part of the federal-aid primary system as described in section 103(b) of Title 23, United States Code.

(5) "Scenic system" means (a) a state highway within a public park, federal forest area, public beach, public recreation area, or national monument, (b) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic system, or (c) a state highway or portion of a highway outside the boundaries of an incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025.

(6) "Motorist information sign panel" means a panel, rectangular in shape, located in the same manner as other official traffic signs readable from the main traveled ways, and consisting of:

(a) The words "GAS," "FOOD," "LODGING," "CAMPING," "RECREATION," or "TOURIST ACTIVITIES" and directional information; and

(b) One or more individual business signs mounted on the panel.

(7) "Business sign" means a separately attached sign mounted on the motorist information sign panel or roadside area information panel to show the brand or trademark and name, or both, of the motorist service available on the crossroad at or near the interchange. Nationally, regionally, or locally known commercial symbols or trademarks for service stations, restaurants, and motels shall be used when applicable. The brand or trademark identification symbol used on the business sign shall be reproduced with the colors and general shape consistent with customary use. Messages, trademarks, or brand symbols that interfere with, imitate, or resemble an

official warning or regulatory traffic sign, signal, or device are prohibited.

(8) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(9) "Tourist-oriented directional sign" means a sign on a motorist information sign panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

(10) "Qualified tourist-oriented business" means a lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

(11) "Adopt-a-highway sign" means a sign on a state highway right-of-way referring to the departments' adopt-a-highway litter control program. [1999 c 201 § 1; 1991 c 94 § 3.]

47.36.010 Restoration of United States survey markers. The department shall fix permanent monuments at the original positions of all United States government monuments at township corners, section corners, quarter section corners, meander corners, and witness markers, as originally established by the United States government survey whenever any such original monuments or markers fall within the right-of-way of any state highway, and aid in the reestablishment of any such corners, monuments, or markers destroyed or obliterated by the construction of any state highway by permitting inspection of the records in the department's office. [1984 c 7 § 188; 1961 c 13 § 47.36.010. Prior: 1937 c 53 § 42; RRS § 6400-42; 1931 c 117 § 1; RRS § 6830-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.020 Traffic control signals. The secretary of transportation shall adopt specifications for a uniform system of traffic control signals consistent with the provisions of this title for use upon public highways within this state. Such uniform system shall correlate with and so far as possible conform to the system current as approved by the American Association of State Highway Officials and as set out in the manual of uniform traffic control devices for streets and highways. [1977 ex.s. c 151 § 60; 1961 c 13 § 47.36.020. Prior: 1937 c 53 § 50; RRS § 6400-50; prior: 1927 c 309 § 6; RRS § 6362-6.]

47.36.030 Traffic control devices—Specifications to counties and cities—Signs, banners over highways. (1) The secretary of transportation shall have the power and it shall be its duty to adopt and designate a uniform state standard for the manufacture, display, erection, and location of all signs, signals, signboards, guideposts, and other traffic devices erected or to be erected upon the state highways of the state of Washington for the purpose of furnishing information to persons traveling upon such state highways regarding traffic regulations, directions, distances, points of danger, and conditions requiring caution, and for the purpose of

imposing restrictions upon persons operating vehicles thereon. Such signs shall conform as nearly as practicable to the manual of specifications for the manufacture, display, and erection of uniform traffic control devices for streets and highways and all amendments, corrections, and additions thereto.

(2) The department of transportation shall prepare plans and specifications of the uniform state standard of traffic devices so adopted and designated, showing the materials, colors, and designs thereof, and shall upon the issuance of any such plans and specifications or revisions thereof and upon request, furnish to the boards of county commissioners and the governing body of any incorporated city or town, a copy thereof. Signs, signals, signboards, guideposts, and other traffic devices erected on county roads shall conform in all respects to the specifications of color, design, and location approved by the secretary. Traffic devices hereafter erected within incorporated cities and towns shall conform to such uniform state standard of traffic devices so far as is practicable. The uniform system must allow local transit authority bus shelters located within the right-of-way of the state highway system to display and maintain commercial advertisements subject to applicable federal regulations, if any.

(3) The uniform system adopted by the secretary under this section may allow signs, banners, or decorations over a highway that:

- (a) Are in unincorporated areas;
- (b) Are at least twenty vertical feet above a highway; and
- (c) Do not interfere with or obstruct the view of any traffic control device.

The department shall adopt rules regulating signs, banners, or decorations installed under this subsection (3). [2005 c 398 § 1; 2003 c 198 § 3; 1977 ex.s. c 151 § 61; 1961 c 13 § 47.36.030. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

47.36.040 Furnished by department, paid for by counties and cities. The department, upon written request, shall cause to be manufactured, painted, and printed, and shall furnish to any county legislative authority or the governing body of any incorporated city or town, directional signboards, guide boards, and posts of the uniform state standard of color, shape, and design for the erection and maintenance thereof by the county legislative authority or the governing body of any incorporated city or town upon the roads and streets within their respective jurisdictions. The directional signboards, guide boards, and posts shall be manufactured and furnished, as aforesaid, pursuant to written request showing the number of signs desired and the directional or guide information to be printed thereon. The department shall fix a charge for each signboard, guide board, and post manufactured and furnished as aforesaid, based upon the ultimate cost of the operations to the department, and the county legislative authority, from the county road fund, and the governing body of any incorporated city or town, from the street fund, shall pay the charges so fixed for all signboards, guide boards, and posts so received from the department. [1984 c 7 § 189; 1961 c 13 § 47.36.040. Prior: 1945 c 178 § 1, part; 1937 c 53 § 48, part; Rem. Supp. 1945 § 6400-48, part; prior:

1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; 1917 c 78 § 1, part; RRS § 6303, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.050 Duty to erect traffic devices on state highways and railroad crossings. The department shall erect and maintain upon every state highway in the state of Washington suitable and proper signs, signals, signboards, guideposts, and other traffic devices according to the adopted and designated state standard of design, erection, and location, and in the manner required by law. The department shall erect and maintain upon all state highways appropriate stop signs, warning signs, and school signs. Any person, firm, corporation, or municipal corporation, building, owning, controlling, or operating a railroad that crosses any state highway at grade shall construct, erect, and maintain at or near each point of crossing, or at such point or points as will meet the approval of the department, a sign of the type known as the saw buck crossing sign with the lettering "railroad crossing" inscribed thereon and also a suitable inscription indicating the number of tracks. The sign must be of standard design that will comply with the plans and specifications furnished by the department. Additional safety devices and signs may be installed at any time when required by the utilities and transportation commission as provided by laws regulating railroad-highway grade crossings. [1984 c 7 § 190; 1961 c 13 § 47.36.050. Prior: 1937 c 53 § 49; RRS § 6400-49; prior: 1931 c 118 § 1, part; RRS § 6308-1, part; 1923 c 102 § 1, part; RRS § 6303, part; 1919 c 146 § 1; 1917 c 78 § 2; RRS § 6304. FORMER PART OF SECTION: 1937 c 53 § 51 now in RCW 47.36.053.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.053 General duty to place and maintain traffic devices on state highways and railroad crossings. The department shall place and maintain such traffic devices conforming to the manual and specifications adopted upon all state highways as it deems necessary to carry out the provisions of this title or to regulate, warn, or guide traffic. [1984 c 7 § 191; 1961 c 13 § 47.36.053. Prior: 1937 c 53 § 51; RRS § 6400-51. Formerly RCW 47.36.050, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.060 Traffic devices on county roads and city streets. Local authorities in their respective jurisdictions shall place and maintain such traffic devices upon public highways under their jurisdiction as are necessary to carry out the provisions of the law or local traffic ordinances or to regulate, warn, or guide traffic. Cities and towns, which as used in this section mean cities and towns having a population of over fifteen thousand according to the latest federal census, shall adequately equip with traffic devices, streets that are designated as forming a part of the route of a primary or secondary state highway and streets which constitute connecting roads and secondary state highways to such cities and towns. The traffic devices, signs, signals, and markers shall comply with the uniform state standard for the manufacture, display, direction, and location thereof as designated by the department. The design, location, erection, and operation of traffic devices and traffic control signals upon such city or

town streets constituting either the route of a primary or secondary state highway to the city or town or connecting streets to the primary or secondary state highways through the city or town shall be under the direction of the department, and if the city or town fails to comply with any such directions, the department shall provide for the design, location, erection, or operation thereof, and any cost incurred therefor shall be charged to and paid from any funds in the motor vehicle fund of the state that have accrued or may accrue to the credit of the city or town, and the state treasurer shall issue warrants therefor upon vouchers submitted and approved by the department. [1984 c 7 § 192; 1961 c 13 § 47.36.060. Prior: 1955 c 179 § 4; 1939 c 81 § 1; 1937 c 53 § 52; RRS § 6400-52.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.070 Failure to erect signs, procedure. Whenever any person, firm, corporation, municipal corporation, or local authorities responsible for the erection and maintenance, or either, of signs at any railroad crossing or point of danger upon any state highway fails, neglects, or refuses to erect and maintain, or either, the sign or signs as required by law at highway-railroad grade crossings, the utilities and transportation commission shall upon complaint of the department or upon complaint of any party interested, or upon its own motion, enter upon a hearing in the manner provided by law for hearings with respect to railroad-highway grade crossings and make and enforce proper orders for the erection or maintenance of the signs, or both. [1984 c 7 § 193; 1961 c 13 § 47.36.070. Prior: 1937 c 53 § 54; RRS § 6400-54.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.080 Signs at railroad crossings. Wherever it is considered necessary or convenient the department may erect approach and warning signs upon the approach of any state highway to a highway-railroad grade crossing situated at a sufficient distance therefrom to make the warning effective. The department may further provide such additional or other highway-railroad grade crossing markings as may be considered to serve the interests of highway safety. [1984 c 7 § 194; 1961 c 13 § 47.36.080. Prior: 1937 c 53 § 57; RRS § 6400-57.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.090 Cooperation with United States on road markers. Standard federal road markers shall be placed on state highways in the manner requested by the department of transportation of the United States. The department of transportation of the state of Washington is authorized and empowered to cooperate with the several states and with the federal government in promoting, formulating, and adopting a standard and uniform system of numbering or designating state highways of an interstate character and in promoting, formulating, and adopting uniform and standard specifications for the manufacture, display, erection, and location of road markers and signs, for the information, direction, and control of persons traveling upon public highways. [1984 c 7 § 195; 1961 c 13 § 47.36.090. Prior: 1937 c 53 § 55; RRS § 6400-55; prior: 1925 c 24 § 1; RRS § 6303-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.095 Highway designation system—Signs. The department is hereby authorized to establish a continuing system for the designating of state highways and branches or portions thereof, heretofore established by the legislature of the state of Washington, to give designations to such state highways and branches, or portions thereof, in accord with that system, and to install signs in accord therewith on such state highways and branches, or portions thereof. The system may be changed from time to time and shall be extended to new state highways and branches, or portions thereof, as they are hereafter established by the legislature. [1984 c 7 § 196; 1967 ex.s. c 145 § 43; 1963 c 24 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Classification of highways: RCW 47.04.020.

47.36.097 Highway designation system—Filing. Designations or redesignations assigned under the system by the department pursuant to RCW 47.36.095 as each is made, shall be filed with the secretary of state and with the auditor of each county. Thereafter such highways shall be so designated for all purposes. [1984 c 7 § 197; 1967 ex.s. c 145 § 46.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.100 Directional, caution, and stop signs. Directional signs showing distance and direction to points of importance may be placed at all crossings and intersections of primary and secondary state highways. The department may place such directional signs as it deems necessary upon any city streets designated by it as forming a part of the route of any primary or secondary state highway through any incorporated city or town. Caution and warning signs or signals shall be placed wherever practicable on all primary and secondary state highways in a manner provided by law. Stop signs shall be placed, erected, and maintained by the department as follows: Upon all county roads at the point of intersection with any arterial primary or secondary state highway; upon all primary and secondary state highways at the point of intersection with any county road that has been designated by the department as an arterial having preference over the traffic on the state highway; and upon at least one state highway at the intersection of two state highways. [1984 c 7 § 198; 1967 ex.s. c 145 § 38; 1961 c 13 § 47.36.100. Prior: 1947 c 206 § 1; 1937 c 53 § 56; Rem. Supp. 1947 § 6400-56.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.110 Stop signs, "Yield" signs—Duties of persons using highway. In order to provide safety at intersections on the state highway system, the department may require persons traveling upon any portion of such highway to stop before entering the intersection. For this purpose there may be erected a standard stop sign as prescribed in the state department of transportation's "Manual on Uniform Traffic Control Devices for Streets and Highways." All persons traveling upon the highway shall come to a complete stop at such a sign, and the appearance of any sign so located is sufficient warning to a person that he is required to stop. A person stopping at such a sign shall proceed through that portion of the

highway in a careful manner and at a reasonable rate of speed not to exceed twenty miles per hour. It is unlawful to fail to comply with the directions of any such stop sign. When the findings of a traffic engineering study show that the condition of an intersection is such that vehicles may safely enter the major artery without stopping, the department or local authorities in their respective jurisdictions shall install and maintain a "Yield" sign. [1984 c 7 § 199; 1963 ex.s. c 3 § 49; 1961 c 13 § 47.36.110. Prior: 1955 c 146 § 6; 1937 c 53 § 59; RRS § 6400-59.]

Severability—1984 c 7: See note following RCW 47.01.141.

Arterial highways designated—Stopping on entering: RCW 46.61.195.

47.36.120 City limit signs. The department shall erect wherever it deems necessary upon state highways at or near their point of entrance into cities and towns, signs of the standard design designating the city or town limits of the cities or towns. [1984 c 7 § 200; 1961 c 13 § 47.36.120. Prior: 1937 c 53 § 58; RRS § 6400-58.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.130 Meddling with signs prohibited. No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic control signal, traffic device or railroad sign or signal, or any inscription, shield, or insignia thereon, or any other part thereof. [1961 c 13 § 47.36.130. Prior: 1937 c 53 § 53; RRS § 6400-53.]

Defacing, injuring, or destroying signs: RCW 46.61.080.

Imitation of signs: RCW 46.61.075.

Structures concealing signs prohibited: RCW 46.61.075.

Unlawful erection of traffic devices: RCW 46.61.075.

47.36.141 Bus shelters—Advertising. (1) Local transit authority bus shelters within the right-of-way of the state highway system may display and maintain commercial advertisements subject to applicable federal regulations, if any. Pursuant to RCW 47.12.120, the department may lease state right-of-way air space to local transit authorities for this purpose, unless there are significant safety concerns regarding the placement of certain advertisements.

(2) Advertisements posted on a local transit authority's bus shelter may not exceed twenty-four square feet on each side of the panel. Panels may not be placed on the roof of the shelter or on the forward side of the shelter facing oncoming traffic. [2003 c 198 § 1.]

47.36.180 Forbidden devices—Penalty. (1) It is unlawful to erect or maintain at or near a city street, county road, or state highway any structure, sign, or device:

(a) Visible from a city street, county road, or state highway and simulating any directional, warning, or danger sign or light likely to be mistaken for such a sign or bearing any such words as "danger," "stop," "slow," "turn," or similar words, figures, or directions likely to be construed as giving warning to traffic;

(b) Visible from a city street, county road, or state highway and displaying any red, green, blue, or yellow light or intermittent or blinking light or rotating light identical or similar in size, shape, and color to that used on any emergency

vehicle or road equipment or any light otherwise likely to be mistaken for a warning, danger, directional, or traffic control signal or sign;

(c) Visible from a city street, county road, or state highway and displaying any lights tending to blind persons operating vehicles upon the highway, city street, or county road, or any glaring light, or any light likely to be mistaken for a vehicle upon the highway or otherwise to be so mistaken as to constitute a danger; or

(d) Visible from a city street, county road, or state highway and flooding or intending to flood or directed across the roadway of the highway with a directed beam or diffused light, whether or not the flood light is shielded against directing its flood beam toward approaching traffic on the highway, city street, or county road.

(2) Any structure or device erected or maintained contrary to the provisions of this section is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the owner thereof that it constitutes a public nuisance and must be removed, and if the owner fails to do so, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town may abate the nuisance.

(3) If the owner fails to remove any structure or device within fifteen days after being notified to remove the structure or device as provided in this section, he or she is guilty of a misdemeanor. [2003 c 53 § 257; 1984 c 7 § 201; 1961 c 13 § 47.36.180. Prior: 1957 c 204 § 1; 1937 c 53 § 62; RRS § 6400-62.]

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

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.200 Signs or flagmen at thoroughfare work sites—Penalty. (1) When construction, repair, or maintenance work is conducted on or adjacent to a public highway, county road, street, bridge, or other thoroughfare commonly traveled and when the work interferes with the normal and established mode of travel on the highway, county road, street, bridge, or thoroughfare, the location shall be properly posted by prominently displayed signs or flagmen or both. Signs used for posting in such an area shall be consistent with the provisions found in the state of Washington "Manual on Uniform Traffic Control Devices for Streets and Highways" obtainable from the department of transportation.

(2) If the construction, repair, or maintenance work includes or uses grooved pavement, abrupt lane edges, steel plates, or gravel or earth surfaces, the construction, repair, or maintenance zone must be posted with signs stating the condition, as required by current law, and in addition, must warn motorcyclists of the potential hazard only if the hazard or condition exists on a paved public highway, county road, street, bridge, or other thoroughfare commonly traveled. For the purposes of this subsection, the department shall adopt by rule a uniform sign or signs for this purpose, including at least the following language, "MOTORCYCLES USE EXTREME CAUTION."

(3) Any contractor, firm, corporation, political subdivision, or other agency performing such work shall comply with this section.

(2008 Ed.)

(4) Each driver of a motor vehicle used in connection with such construction, repair, or maintenance work shall obey traffic signs posted for, and flaggers stationed at such location in the same manner and under the same restrictions as is required for the driver of any other vehicle.

(5) A violation of or a failure to comply with this section is a misdemeanor. Each day upon which there is a violation, or there is a failure to comply, constitutes a separate violation. [2006 c 331 § 1. Prior: 2003 c 355 § 1; 2003 c 53 § 258; 1984 c 7 § 202; 1961 c 13 § 47.36.200; prior: 1957 c 95 § 1.]

Effective date—2003 c 355: "This act takes effect January 1, 2004." [2003 c 355 § 3.]

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

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.250 Dangerous road conditions requiring special tires, chains, or traction equipment—Signs or devices—Penalty. (1) If the department or its delegate determines at any time for any part of the public highway system that the unsafe conditions of the roadway require particular tires, tire chains, or traction equipment in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of such equipment for all persons using such public highway:

(a) Traction advisory - oversize vehicles prohibited.

(b) Traction advisory - oversize vehicles prohibited. Vehicles over 10,000 GVW - chains required.

(c) Traction advisory - oversize vehicles prohibited. All vehicles - chains required, except all wheel drive.

(2) Any equipment that may be required by this section shall be approved by the state patrol as authorized under RCW 46.37.420.

(3) The department shall place and maintain signs and other traffic control devices on the public highways that indicate the tire, tire chain, or traction equipment recommendation or requirement determined under this section. Such signs or traffic control devices shall in no event prohibit the use of studded tires from November 1st to April 1st, but when the department determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to all types of tires including studded tires. The Washington state patrol or the department may specify different recommendations or requirements for four wheel drive vehicles in gear.

(4) Failure to obey a requirement indicated under this section is a traffic infraction under chapter 46.63 RCW subject to a penalty of five hundred dollars including all statutory assessments. [2003 c 356 § 1; 2003 c 53 § 259; 1987 c 330 § 747; 1984 c 7 § 203; 1975 1st ex.s. c 255 § 1; 1969 ex.s. c 7 § 2.]

Reviser's note: This section was amended by 2003 c 53 § 259 and by 2003 c 356 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Severability—1984 c 7: See note following RCW 47.01.141.

Restrictions as to tire equipment, metal studs: RCW 46.37.420.

47.36.260 Signs indicating proper lane usage. The department shall erect signs on multilane highways indicating proper lane usage. [1986 c 93 § 6.]

Keep right except when passing, etc: RCW 46.61.100.

47.36.270 Regional shopping center directional signs. Regional shopping center directional signs shall be erected and maintained on state highway right-of-way if they meet each of the following criteria:

(1) There shall be at least five hundred thousand square feet of retail floor space available for lease at the regional shopping center;

(2) The regional shopping center shall contain at least three major department stores that are owned by a national or regional retail chain organization;

(3) The shopping center shall be located within one mile of the roadway;

(4) The center shall generate at least nine thousand daily one-way vehicle trips to the center;

(5) There is sufficient space available for installation of the directional sign as specified in the Manual On Uniform Traffic Control Devices;

(6) Supplemental follow-through directional signing is required at key decision points to direct motorists to the shopping center if it is not clearly visible from the point of exit from the main traveled way.

The department shall collect from the regional shopping center a reasonable fee based upon the cost of erection and maintenance of the directional sign. [1987 c 469 § 1.]

47.36.280 Pavement marking standards. The department of transportation shall, by January 1, 1992, adopt minimum pavement marking standards for the area designating the limits of the vehicle driving lane along the right edge for arterials that do not have curbs or sidewalks and are inside urbanized areas. In preparing the standards, the department of transportation shall take into consideration all types of pavement markings, including flat, raised, and recessed markings, and their effect on pedestrians, bicycle, and motor vehicle safety.

The standards shall provide that a jurisdiction shall conform to these requirements, at such time thereafter that it undertakes to (1) renew or install permanent markings on the existing or new roadway, and (2) remove existing nonconforming raised pavement markers at the time the jurisdiction prepares to resurface the roadway, or earlier, at its option. These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a variance to the standard.

For the purposes of this section, "urbanized area" means an area designated as such by the United States bureau of census and having a population of more than fifty thousand. Other jurisdictions that install pavement marking material on the right edge of the roadway shall do so in a manner not in conflict with the minimum state standard. [1991 c 214 § 4.]

47.36.290 State park directional signs. Directional signs for state parks within fifteen miles of an interstate highway shall be erected and maintained on the interstate highway by the department despite the existence of additional directional signs on primary or scenic system highways in closer proximity to such state parks. [1985 c 376 § 7. Formerly RCW 47.42.160.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.36.300 Supplemental directional signs—Erection by local governments. (1) The legislative authority of any county, city, or town may erect, or permit the erection of, supplemental directional signs directing motorists to motorist service businesses qualified for motorist information sign panels pursuant to RCW 47.36.310 or 47.36.320 in any location on, or adjacent to, the right-of-way of any roads or streets within their jurisdiction.

(2) Appropriate fees may be charged to cover the cost of issuing permits, installation, or maintenance of such signs.

(3) Supplemental signs and their locations shall comply with all applicable provisions of this chapter, the Manual on Uniform Traffic Control Devices, and such rules as may be adopted by the department. [1999 c 201 § 2; 1986 c 114 § 3. Formerly RCW 47.42.052.]

47.36.310 Motorist information signs—Interstate highways—Contents, placement, fees. The department is authorized to erect and maintain motorist information sign panels within the right-of-way of the interstate highway system to give the traveling public specific information as to gas, food, lodging, camping, or tourist-oriented business available on a crossroad at or near an interchange. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ACTIVITIES" and the letters "RV" next to a gas, food, lodging, camping, or tourist activity sign if the business or destination accommodates recreational vehicles, and directional information. Directional information may contain one or more individual business signs maintained on the panel. The "RV" logo for businesses or destinations that accommodate recreational vehicles shall be placed in the lower right corner of the gas, food, lodging, camping, or tourist activity sign and shall be in the form of a small yellow circle with the letters "RV" in black. In managing the number of individual business signs to be displayed, the department must ensure the use of available space on a panel is maximized. Motorist information sign panels are authorized within the corporate limits of cities and towns and areas zoned for commercial or industrial uses at locations where there is adequate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. The erection and maintenance of motorist information sign panels shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of an interstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to

the bottom of the on-premise sign. The restriction for on-premise signs does not apply if the sign is not visible from the highway. The department may, on a case-by-case basis, waive the height restriction when an on-premise sign is visible from the rural interstate system. The department shall charge sufficient fees for the display of individual business signs to recover the costs of their installation and maintenance, and shall charge sufficient fees to recover costs for the erection and maintenance of the motorist information sign panels. [2005 c 407 § 1; 1999 c 201 § 3; 1987 c 469 § 3; 1986 c 114 § 1; 1985 c 142 § 1; 1984 c 7 § 223; 1974 ex.s. c 80 § 2. Formerly RCW 47.42.046.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.320 Motorist information signs, tourist-oriented directional signs—Primary and scenic roads—Contents, placement, fees. The department is authorized to erect and maintain motorist information sign panels within the right-of-way of noninterstate highways to give the traveling public specific information as to gas, food, lodging, recreation, or tourist-oriented businesses accessible by way of highways intersecting the noninterstate highway. The motorist information sign panels are permitted only at locations within the corporate limits of cities and towns and areas zoned for commercial or industrial uses where there is adequate distance between interchanges to ensure compliance with the Manual on Uniform Traffic Control Devices. Motorist information sign panels shall include the words "GAS," "FOOD," "LODGING," "RECREATION," or "TOURIST ACTIVITIES" and the letters "RV" next to a gas, food, lodging, camping, or tourist activity sign if the business or destination accommodates recreational vehicles, and directional information. Directional information may contain one or more individual business signs maintained on the panel. The "RV" logo for businesses or destinations that accommodate recreational vehicles shall be placed in the lower right corner of the gas, food, lodging, camping, or tourist activity sign and shall be in the form of a small yellow circle with the letters "RV" in black. In managing the number of individual business signs to be displayed, the department must ensure the use of available space on a panel is maximized. The erection and maintenance of motorist information sign panels along noninterstate highways shall also conform to the Manual on Uniform Traffic Control Devices and rules adopted by the state department of transportation. A motorist service or tourist-oriented business located within one mile of a noninterstate highway shall not be permitted to display its name, brand, or trademark on a motorist information sign panel unless its owner has first entered into an agreement with the department limiting the height of its on-premise signs at the site of its service installation to not more than fifteen feet higher than the roof of its main building measured to the bottom of the on-premise sign.

The department shall adopt rules for the erection and maintenance of tourist-oriented directional signs with the following restrictions:

(1) Where installed, they shall be placed in advance of the "GAS," "FOOD," "LODGING," "RECREATION," or "RV" motorist information sign panels previously described in this section;

(2008 Ed.)

(2) Signs shall not be placed to direct a motorist to an activity visible from the main traveled roadway;

(3) Premises on which the qualified tourist-oriented business is located must be within fifteen miles of the state highway except as provided in RCW 47.36.330(3) (b) and (c), and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway.

The department shall charge sufficient fees for the display of individual business signs to recover the costs of their installation and maintenance, and shall charge sufficient fees to recover the costs for the erection and maintenance of the motorist information sign panels. [2005 c 407 § 2. Prior: 1999 c 213 § 1; 1999 c 201 § 4; 1986 c 114 § 2; 1985 c 376 § 4; 1985 c 142 § 2; 1984 c 7 § 224; 1974 ex.s. c 80 § 4. Formerly RCW 47.42.047.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.36.330 Motorist information signs—Maximum number and distance. (1) Not more than six business signs may be permitted on motorist information sign panels authorized by RCW 47.36.310 and 47.36.320.

(2) The maximum distance that eligible service facilities may be located on either side of an interchange or intersection to qualify for a business sign are as follows:

(a) On interstate highways, gas, food, or lodging activities shall be located within three miles. Camping or tourist-oriented activities shall be within five miles.

(b) On noninterstate highways, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles.

(3)(a) If no eligible services are located within the distance limits prescribed in subsection (2) of this section, the distance limits shall be increased until an eligible service of a type being considered is reached, up to a maximum of fifteen miles.

(b) The department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible service.

(c) The department may erect and maintain signs on a route up to a maximum of twenty miles if it qualifies as an eligible service and is within a distressed area as defined in RCW 43.168.020. [2005 c 136 § 16; 1999 c 213 § 2; 1999 c 201 § 5; 1985 c 142 § 3. Formerly RCW 47.42.0475.]

Reviser's note: This section was amended by 1999 c 201 § 5 and by 1999 c 213 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Savings—Effective date—2005 c 136: See notes following RCW 43.168.020.

47.36.340 Motorist information signs—Lodging. To be eligible for placement of a business sign on a motorist information sign panel a lodging activity shall:

(1) Be licensed or approved by the department of social and health services or county health authority;

(2) Provide adequate sleeping and bathroom accommodations available for rental on a daily basis; and

(3) Provide public telephone facilities. [1999 c 201 § 6; 1985 c 376 § 8. Formerly RCW 47.42.170.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.36.350 Motorist information signs—Installation time. The department shall ensure that motorist information sign panels are installed within nine months of receiving the request for installation. [1999 c 201 § 7; 1991 c 94 § 5.]

47.36.360 Motorist information signs—"RV" logo. (1) The department of transportation shall not include the logo "RV" under RCW 47.36.310 and 47.36.320 unless a business or destination requests an "RV" logo and the department determines that the gas, food, or lodging business or the camping or tourist activity destination provides parking spaces, overhang clearances, and entrances and exits designed to accommodate recreational or other large vehicles.

(2) The department may charge a reasonable fee in accordance with RCW 47.36.310 or 47.36.320 to defray the costs associated with the installation and maintenance of signs with "RV" logos.

(3) The department may adopt rules necessary to administer this section. [2005 c 407 § 3.]

47.36.400 Adopt-a-highway signs. The department may install adopt-a-highway signs, with the following restrictions:

(1) Signs shall be designed by the department and may only include the words "adopt-a-highway litter control facility" or "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the sign message. Trademarks or business logos may be displayed;

(2) Signs may be placed along interstate, primary, and scenic system highways;

(3) Signs may be erected at other state-owned transportation facilities in accordance with RCW 47.40.100(1);

(4) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;

(5) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;

(6) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;

(7) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs. [1998 c 180 § 1; 1991 c 94 § 4.]

Chapter 47.38 RCW

ROADSIDE AREAS—SAFETY REST AREAS

Sections

47.38.010	Rules governing use and control of rest areas, historic sites, viewpoints, etc.—Penalties.
47.38.020	Limitations on use of rest areas.
47.38.040	Information centers.
47.38.050	Recreational vehicle sanitary disposal systems.
47.38.060	Dedication of memorial signs at rest areas.

Acquisition of property for safety rest areas, buffers, viewpoints, historic sites: RCW 47.12.250.

47.38.010 Rules governing use and control of rest areas, historic sites, viewpoints, etc.—Penalties. (1) Pursuant to chapter 34.05 RCW, the department and the Washington state patrol shall jointly adopt rules governing the conduct and the safety of the traveling public relating to the use and control of rest areas and other areas as designated in RCW 47.12.250. Nothing herein may be construed as limiting the powers of the department as provided by law.

(2) Except as otherwise provided in this section, any person violating this section or any rule or regulation adopted pursuant to this section is guilty of a misdemeanor.

(3)(a) Except as provided in (b) of this subsection, violation of such a rule or regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction.

(b) Violation of such a rule or regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor. [2003 c 53 § 260; 1993 c 116 § 1; 1984 c 7 § 204; 1967 ex.s. c 145 § 29.]

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

Severability—1984 c 7: See note following RCW 47.01.141.

Roadside areas—Safety rest areas, provisions of scenic and recreational highway act concerning: Chapter 47.39 RCW.

47.38.020 Limitations on use of rest areas. Except where specifically authorized by the department, it is unlawful for any person or persons to stop, stand, or park any vehicle, including but not limited to trailers, campers, and motorcycles, for more than eight hours, or for any person or persons to camp or to maintain a camp, tent, or other sleeping accommodation or facility, in any rest area or safety rest area within the limits of the right-of-way of interstate highways or other state highways or in other areas of state or interstate highways as designated in RCW 47.12.250. This section does not apply to disabled vehicles. [1984 c 7 § 205; 1967 ex.s. c 145 § 30.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.38.040 Information centers. In order to provide information in the specific interest of the traveling public, the department may establish information centers at safety rest areas and permit maps, informational directories, and advertising pamphlets to be made available there for the purpose of informing the public of places of interest within the state and providing such other information as the department deems desirable. [1984 c 7 § 206; 1967 ex.s. c 145 § 32.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.38.050 Recreational vehicle sanitary disposal systems. The department of transportation shall construct and maintain recreational vehicle sanitary disposal systems in the following safety rest areas lying along highways which are a part of the interstate highway system:

(1) Gee Creek safety rest area, northbound and southbound on Interstate 5 in Clark county;

(2) Sea-Tac safety rest area, northbound on Interstate 5 in King county;

- (3) Silver Lake safety rest area, southbound on Interstate 5 in Snohomish county;
- (4) Winchester Wasteway safety rest area, eastbound and westbound on Interstate 90 in Grant county;
- (5) Sprague safety rest area, eastbound on Interstate 90 in Lincoln county;
- (6) Selah Creek safety rest area, northbound and southbound on Interstate 82 in Yakima county;
- (7) Indian John Hill safety rest area, eastbound and westbound on Interstate 90 in Kittitas county;
- (8) Smokey Point safety rest area, northbound and southbound on Interstate 5 in Snohomish county;
- (9) Schrag safety rest area, westbound on Interstate 90 in Adams county. [1996 c 237 § 3; 1980 c 60 § 1.]

Effective date—1980 c 60: "This act shall take effect July 1, 1980." [1980 c 60 § 4.]

47.38.060 Dedication of memorial signs at rest areas.

The department may designate interstate safety rest areas, as appropriate, as locations for memorial signs to prisoners of war and those missing in action. The department shall adopt policies for the placement of memorial signs on interstate safety rest areas and may disapprove any memorial sign that it determines to be inappropriate or inconsistent with the policies. The policies shall include, but are not limited to, guidelines for the size and location of and inscriptions on memorial signs. The secretary shall adopt rules for administering this program. Nonprofit associations may have their name identified on a memorial sign if the association bears the cost of supplying and maintaining the memorial sign. [2006 c 334 § 24; 1996 c 172 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

Chapter 47.39 RCW

SCENIC AND RECREATIONAL HIGHWAY ACT OF 1967

Sections

47.39.010	System created—Standards.
47.39.020	Designation of portions of existing highways as part of system.
47.39.030	Development and maintenance of system by department of transportation and parks and recreation commission—Allocation of costs.
47.39.040	Planning and design standards established by department of community, trade, and economic development.
47.39.050	Planning and design standards—Facilities and factors considered.
47.39.060	Designation of system on maps or other descriptive material.
47.39.069	Designation and removal criteria.
47.39.075	Corridor management plan.
47.39.080	Funding priorities—Signage.
47.39.090	Consultation with other agencies and parties—Identification of tourist routes.
47.39.100	Removal of designation.
47.39.900	Short title.
47.39.910	Severability—1967 ex.s. c 85.

47.39.010 System created—Standards. There is hereby created a scenic and recreational highway system. Highways in this system shall be developed and maintained in accordance with general standards for state highways of comparable classification and usage.

Recognizing that the Transportation Equity Act for the 21st Century establishes a national "scenic byway" program that could benefit state and local roadways, the Washington

state scenic byway designation program is revised to address state and local transportation routes. Byways in this program must be designated and maintained in accordance with the criteria developed by the department under this chapter. However, a highway so designated under RCW 47.39.069 does not become part of the scenic and recreational highway system unless approved by the legislature. [1999 c 218 § 1; 1967 ex.s. c 85 § 1.]

Effective date—1999 c 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 218 § 9.]

47.39.020 Designation of portions of existing highways as part of system. The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(5) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(6) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(7) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(8) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(9) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(10) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(11) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(12) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(13) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(14) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(15) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(16) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(17) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Tekoa;

(18) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(19) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(20) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

(21) State route number 97, beginning at the Oregon border, in a northerly direction through Toppenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the

vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

(22) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

(23) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

(24) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

(25) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(26) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

(27) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(28) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(29) State route number 119, beginning at the junction with state route number 101 at Hoodspport, thence northwesterly to the Mount Rose development intersection;

(30) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(31) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(32) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(33) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(34) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(35) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(36) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

(37) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(38) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

(39) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(40) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(41) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

(42) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(43) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(44) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

(45) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

(46) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(47) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

(48) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(49) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(50) State route number 410, beginning 4.0 miles east of Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

(51) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(52) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(53) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

(54) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

(55) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(56) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

(57) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

(58) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(59) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(60) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(61) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road. [2003 c 55 § 1; 1993 c 430 § 7; 1992 c 26 § 2; 1991 c 342 § 54; 1990 c 240 § 3; 1975 c 63 § 8; 1973 1st ex.s. c 151 § 10; 1971 ex.s. c 73 § 29; 1970 ex.s. c 51 § 177; 1969 ex.s. c 281 § 6; 1967 ex.s. c 85 § 2.]

Effective dates—1991 c 342: See note following RCW 47.26.167.

Legislative finding—1990 c 240: "The legislature finds that scenic and recreational highways are designated because of a need to develop management plans that will protect and preserve the scenic and recreational resources from loss through inappropriate development. Protection of scenic and recreational resources includes managing land use outside normal highway rights-of-way. The legislature recognizes that scenic and recreational highways are typically located in areas that are natural in character, along watercourses or through mountainous areas, or in areas with a view of such scenery." [1990 c 240 § 1.]

47.39.030 Development and maintenance of system by department of transportation and parks and recreation commission—Allocation of costs. (1) The department shall pay from motor vehicle funds appropriated for construction of state highways, the following costs of developing and constructing scenic and recreational highways: (a) Acquisition of the right-of-way necessary for state highway purposes; (b) construction of the portion of the highway designed primarily for motor vehicle travel; (c) exit and entrance roadways providing access to scenic observation points; (d) safety rest areas; (e) roadside landscaping within the portion of the highway right-of-way acquired by the department for state highway purposes; (f) the uniform signs and markers designating the various features and facilities of the scenic and recreational highways; and (g) any additional costs of constructing and developing the scenic and recreational highways, including property acquisition adjacent to highways as authorized by RCW 47.12.250, for which the

department shall receive reimbursement from the federal government or any other source.

(2) The parks and recreation commission shall pay the costs of developing and constructing the scenic and recreational highways not provided for in subsection (1) of this section from any funds appropriated for such purposes.

(3) The costs of maintaining the scenic and recreational highway system shall be allocated between the department and the parks and recreation commission in the same manner that costs of developing and constructing such highways are allocated in subsections (1) and (2) of this section.

(4) The city, town, county, regional transportation planning organization, federal agency, federally recognized tribe, or any other such party that nominates a roadway not located on a state-owned right-of-way for designation as a scenic byway shall bear all costs relating to the nomination and designation of the byway, such as costs for developing, maintaining, planning, designing, and constructing the scenic byway. [1999 c 218 § 2; 1984 c 7 § 207; 1967 ex.s. c 85 § 3.]

Effective date—1999 c 218: See note following RCW 47.39.010.

Severability—1984 c 7: See note following RCW 47.01.141.

Safety rest areas: Chapter 47.38 RCW.

47.39.040 Planning and design standards established by department of community, trade, and economic development. The establishment of planning and design standards for items provided for in RCW 47.39.050 shall be coordinated by the department of community, trade, and economic development. The department of transportation, parks and recreation commission, and any other departments or commissions whose interests are affected shall prepare, submit, and file with the department of community, trade, and economic development standards relating to the scenic and recreational highway system. If varying planning and design standards are filed, the department of community, trade, and economic development shall consult with the submitting agencies on the merits of the several proposals and, based upon such consultation, establish a set of standards. Pursuant to the planning and design standards so established, the department of transportation and the parks and recreation commission shall develop the highways and areas adjacent thereto to accomplish the purposes of this chapter, but the department shall retain exclusive authority over the highway right-of-way.

Responsibility for construction and maintenance is hereby established between the department and the parks and recreation commission with the department responsible for activities financed with funds provided for under RCW 47.39.030(1) and the parks and recreation commission responsible for activities financed from other sources of funds. By mutual consent, responsibility for development and/or maintenance may be transferred between the two agencies. [1995 c 399 § 122; 1985 c 6 § 16; 1984 c 7 § 208; 1967 ex.s. c 85 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Department of community, trade, and economic development: Chapter 43.330 RCW.

47.39.050 Planning and design standards—Facilities and factors considered. Planning and design standards

established for highways falling within the scenic and recreational highways system may include, but shall not be limited to, provision for the following:

- (1) Hiking, bicycle, and bridle trails, including regulations for their use;
- (2) Campsites and shelters;
- (3) Boat launching sites;
- (4) Access trails to lakes, rivers and streams, and easements along their shores;
- (5) Safety rest areas;
- (6) Historic and geologic interpretative facilities;
- (7) Scenic observation facilities;
- (8) Roadside landscaping, restoration and aesthetic enhancement;
- (9) Specifically delineated highway corridors and means for the preservation of natural beauty, historic sites, or viewpoints;
- (10) A uniform system of signs and markers designating the various features and facilities of the scenic and recreational highway systems. [1967 ex.s. c 85 § 5.]

47.39.060 Designation of system on maps or other descriptive material. The department and the parks and recreation commission may include, where appropriate, on any maps, or in any relevant descriptive material they may prepare at state expense, references to those portions of highways designated in RCW 47.39.020, and may include those designated byways by appropriate color or code designation. [1999 c 218 § 3; 1984 c 7 § 209; 1967 ex.s. c 85 § 6.]

Effective date—1999 c 218: See note following RCW 47.39.010.

Severability—1984 c 7: See note following RCW 47.01.141.

47.39.069 Designation and removal criteria. (1) The department, in consultation with the department of community, trade, and economic development, the department of natural resources, the parks and recreation commission, affected cities, towns, and counties, federally recognized tribes, regional transportation planning organizations, Washington-based automobile clubs, statewide bicycling organizations, and other interested parties, shall develop by December 31, 1999, criteria for assessing scenic byways and heritage tour routes and an appropriate method of nomination and application for the designation and removal of the designation of the byways. Factors the department may take into consideration, but is not limited by, are: (a) Scenic quality of the byway; (b) natural aspects, such as geological formations, water bodies, vegetation, and wildlife; (c) historic elements; (d) cultural features such as the arts, crafts, music, customs, or traditions of a distinct group of people; (e) archaeological features; (f) recreational activities; (g) roadway safety including accommodations for bicycle and pedestrian travel, tour buses, and automobiles; (h) scenic byway and local and regional byway management plans; and (i) local public involvement and support for the byway.

(2) The criteria developed in subsection (1) of this section must not impose nor require regulation of privately owned lands or property rights.

(3) Any person may nominate a roadway, path, or trail for inclusion in the scenic byway program. The department shall assess nominations in accordance with the criteria

developed under subsection (1) of this section. The department shall submit its recommendations for scenic byway and heritage tour route designations to the commission for its approval and official designation of the roadway, path, or trail as a scenic byway or a heritage tour route. All decisions made by the commission relating to scenic byway and heritage tour route designations are final.

(4) The department shall apply the criteria in subsection (1) of this section to state highways that are currently not a part of the designated scenic and recreational highway system. The department shall respond to local requests for route evaluation as defined in subsection (3) of this section.

(5) Once the commission has designated a roadway as a scenic byway, the department may submit an individual nomination to the Federal Highway Administration for its consideration of whether the roadway qualifies to be designated as a national scenic byway or an All-American Roadway. [1999 c 218 § 4.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.075 Corridor management plan. The department shall participate with local communities to develop a corridor management plan for a state highway nominated to be part of the scenic byway program. Local, regional, or other governmental bodies shall develop a corridor management plan for nominated routes that are under their jurisdiction. [1999 c 218 § 5.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.080 Funding priorities—Signage. Recognizing that the Transportation Equity Act for the 21st Century establishes a national "Scenic Byways" grant program and a new apportionment program called "Transportation Enhancement Activities," the department of transportation shall place high priority on obtaining funds from those sources for further development of a scenic and recreational highways program, including enhancement projects on the designated scenic and recreational highway system. The department shall consider the use of the designated system by bicyclists and pedestrians in connection with nonmotorized routes in the state trail plan, and the state bicycle plan which are also eligible for TEA-21 funding. Appropriate signage may be used at intersections of nonmotorized and motorized systems to demonstrate the access, location, and the interconnectivity of various modes of travel for transportation and recreation. For the purposes of leveraging national scenic byway planning grant funds, the commission may designate eligible state highways as scenic byways on an interim basis. [1999 c 218 § 6; 1993 c 430 § 8.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.090 Consultation with other agencies and parties—Identification of tourist routes. In developing the scenic and recreational highways program, the department shall consult with the department of community, trade, and economic development, the department of natural resources, the parks and recreation commission, affected cities, towns, and counties, regional transportation planning organizations, statewide bicycling organizations, and other interested parties. The scenic and recreational highways program may identify entire highway loops or similar tourist routes that

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could be developed to promote tourist activity and provide concurrent economic growth while protecting the scenic and recreational quality surrounding state highways. [1995 c 399 § 123; 1993 c 430 § 9.]

47.39.100 Removal of designation. (1) The commission may remove the designation of a route if it no longer possesses the intrinsic qualities or fails to meet the criteria that supported its designation.

(2) The department shall determine whether a roadway designated as a national scenic byway or an All-American Roadway is being properly maintained in accordance with the roadway's byway management plan, including preserving the intrinsic qualities that originally supported the designation. When the department determines that the intrinsic qualities of a national scenic byway or All-American Roadway have not been maintained sufficiently to retain its designation, the department shall notify the party responsible for maintaining the designation of the finding and allow the party an opportunity, under federal regulations, for corrective action before formal removal of the designation of the roadway.

(3) Local, regional, or other governmental bodies may notify the commission of the removal of a designated route if they determine it no longer meets the designation criteria, or community support for the designation no longer exists, or it no longer possesses the intrinsic qualities that supported its original designation.

(4) State or local removal of a designated route will result in discontinued state support of the designated route and can include, but is not limited to, state matching assistance for grant applications, the removal of signs directly related to the byway, free promotional information in the state-owned safety rest areas, and inclusion in maps, brochures, and electronic media. [1999 c 218 § 7.]

Effective date—1999 c 218: See note following RCW 47.39.010.

47.39.900 Short title. RCW 47.39.010 through 47.39.910 shall constitute a new chapter in Title 47 RCW and shall be known and may be cited as the "Scenic and Recreational Highway Act of 1967." [1967 ex.s. c 85 § 7.]

47.39.910 Severability—1967 ex.s. c 85. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 85 § 8.]

Chapter 47.40 RCW

ROADSIDE IMPROVEMENT AND BEAUTIFICATION

Sections

47.40.010	Improvement and beautification a highway purpose.
47.40.020	Use of funds authorized.
47.40.030	Permit to private persons.
47.40.040	Application for permit, contents.
47.40.050	Survey—Report—Permit.
47.40.060	Agreement to maintain project.
47.40.070	Damaging project unlawful.
47.40.080	Penalty for destroying native flora on state lands, highways, parks.
47.40.090	Glass bottles along highways—Collection and removal.

47.40.100 State adopt-a-highway program.
47.40.105 Local adopt-a-highway programs.

City streets, parkways, boulevards, etc.: Title 35 RCW.

State parks and recreation commission may plant trees along highway: RCW 79A.05.030.

Withdrawal of public lands abutting highway: RCW 79A.05.105.

47.40.010 Improvement and beautification a highway purpose. The planting and cultivating of any shrubs, trees, hedges or other domestic or native ornamental growth, the improvement of roadside facilities and view points, and the correction of unsightly conditions, upon the right-of-way of any state highway is hereby declared to be a proper state highway purpose. [1961 c 13 § 47.40.010. Prior: 1937 c 53 § 88; RRS § 6400-88.]

47.40.020 Use of funds authorized. Whenever funds are available for the planting or cultivation of any shrubs, trees, hedges, or other domestic or native ornamental growth, the improvement of roadside facilities and view points, the correction of unsightly conditions upon the right-of-way of any state highway, and for roadside development and beautification, the department is empowered to expend such funds, either independently or in conjunction with the funds of any county, political subdivision, or any person, firm, corporation, association, or organization. [1984 c 7 § 210; 1961 c 13 § 47.40.020. Prior: 1937 c 53 § 89; RRS § 6400-89.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.030 Permit to private persons. Any person, firm, corporation, association, or organization owning lands abutting upon any state highway and desiring to plant, cultivate, and grow any hedge, shade trees, or ornamental trees or shrubs along the right-of-way thereof, or to clear and cultivate a portion of the state highway right-of-way for the purpose of growing crops and destroying noxious weeds, or any person, firm, corporation, association, or organization interested in public improvement and desiring to improve and beautify any state highway right-of-way or any portion thereof by planting, cultivating, or growing any hedge or shade or ornamental trees or cultivate along or upon the right-of-way thereof, may upon application to the department, be granted a permit therefor as provided by law. [1984 c 7 § 211; 1961 c 13 § 47.40.030. Prior: 1937 c 53 § 90; RRS § 6400-90; prior: 1927 c 242 § 1; RRS § 6437-1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.040 Application for permit, contents. Each application for a permit to plant, cultivate and grow any hedge, shade or ornamental trees or shrubbery along or upon the right-of-way of any state highway or improve such right-of-way shall be in writing, signed by the applicant, and shall describe the state highway or portion thereof along or upon the right-of-way of which permit to plant, cultivate, grow or improve is sought, by name, number, or other reasonable description, and the lands bordering thereon by governmental subdivisions, and shall state the names, places or residence and post office addresses of the applicant or applicants owning the land abutting upon such state highway or the name of the person, firm, corporation, association or organization applying for the permit and the names of its officers and their

places of residence and their post office addresses, and shall state definitely the purpose for which the permit is sought, giving a description of the kind of hedge, or variety of shrubbery or trees desired to be planted or the kinds of crops to be grown, or improvement to be made, with a diagram illustrating the location and number of hedges, trees or shrubs or the area of cultivation desired or plans of the improvement proposed to be made. [1961 c 13 § 47.40.040. Prior: 1937 c 53 § 91; RRS § 6400-91; prior: 1927 c 242 § 2; RRS § 6437-2.]

47.40.050 Survey—Report—Permit. Upon the filing of such application, the department shall cause a survey of the state highway to be made with reference to the application and a report of the findings and recommendations as to the granting of the permit, and if it appears to the satisfaction of the department that the use of a portion of the state highway for the purpose set out in the application will not interfere with the use of the state highway for public travel and will beautify and improve the state highway, a permit may be granted and issued to the applicant to plant, cultivate, and grow any hedge, shade or ornamental trees, shrubbery, or crops, or make such improvement along or upon the right-of-way of such portion of the state highway as is definitely described in the permit, and to construct and maintain such temporary and substantial fence on and along the portion of the right-of-way of the state highway described in the permit as is specified in the permit. The permit shall specify the exact location of all hedges, shade or ornamental trees, or shrubbery to be planted and grown, or the area to be cultivated under the permit, or the area to be improved to which specified location the person, firm, corporation, association, or organization receiving the permit shall specifically conform. The department may in its discretion refuse to issue the permit, and any such permit that is granted is revocable at the will of the department and nothing in this title may be construed as in anywise affecting the title of the state to the lands included in the state highway, or the right to use the lands for state highway purposes, or to remove or destroy any of such hedges, trees, shrubbery, or crops for the purpose of construction, alteration, repair, improvement, or maintenance of the state highway, or for any other purpose and at any time. [1984 c 7 § 212; 1961 c 13 § 47.40.050. Prior: 1937 c 53 § 92; RRS § 6400-92; prior: 1927 c 242 § 3, part; RRS § 6437, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.060 Agreement to maintain project. If any such permit is granted, the department shall enter into an agreement with the person, firm, corporation, association, or organization agreeing that such roadside development or beautification shall be maintained and kept up by the state through the department or by the person, firm, corporation, association, or organization. If any such person, firm, corporation, association, or organization so agreeing fails or neglects to maintain the roadside development or beautification, the department is empowered to do so, and the expense thereof shall be a charge against the person, firm, corporation, association, or organization. [1984 c 7 § 213; 1961 c 13 § 47.40.060. Prior: 1937 c 53 § 93; RRS § 6400-93; prior: 1927 c 242 § 3, part; RRS § 6437-3, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.070 Damaging project unlawful. It is unlawful for any person to injure, destroy, or remove any hedge, shade or ornamental trees, shrubbery, or crops, planted, cultivated, and grown or improvement made upon or along any portion of any state highway under permit from the department or otherwise, or to injure, destroy, or remove any fence erected under any such permit or otherwise. However, nothing in this section may be construed to prevent any person with the department to do so or the officers of the state charged with the duty of constructing and maintaining any such state highway, from removing any hedges, trees, shrubbery, or crops planted or improvements or fences built under permit, where in their judgment they interfere with or are detrimental to, the use of the state highway for public travel, or such removal is necessary for the construction, alteration, repair, improvement, or maintenance of the state highway. [1984 c 7 § 214; 1961 c 13 § 47.40.070. Prior: 1937 c 53 § 94; RRS § 6400-94; prior: 1927 c 242 § 4; RRS § 6437-4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.40.080 Penalty for destroying native flora on state lands, highways, parks. Any person who shall break or cut from any lands owned by the state of Washington or shall cut down, remove, destroy or uproot any rhododendron, evergreen, huckleberry, native dogwood or any other native tree, shrub, fern, herb, bulb or wild plants, or any part thereof, within three hundred feet of the center line of any state or county road, or who shall cut down, remove or destroy any flowering or ornamental tree or shrub, or any native flowering plant, fern, herb or bulb, either perennial or annual, situate, growing or being on any public street or highway, state or city park, in the state of Washington, unless such person be engaged in the work of constructing or repairing such highway or street under authority and direction of the legally constituted public officials being charged by law with the duty of constructing or repairing such highways or streets, state or city parks, shall be guilty of a misdemeanor. [1961 c 13 § 47.40.080. Prior: 1933 c 133 § 1; 1925 ex.s. c 59 § 1; RRS § 2787-1.]

47.40.090 Glass bottles along highways—Collection and removal. The department and any other governmental subdivision shall, with the staff, equipment, and material under their control, or by contract with others, take all necessary actions to collect and remove any or all glass bottles or glass containers along the right-of-way of any public road or public highway. [1984 c 7 § 215; 1969 ex.s. c 281 § 48.]

Severability—1984 c 7: See note following RCW 47.01.141.

Deposit of unwholesome substance: RCW 9.66.050.

Removal of glass after accident: RCW 46.61.645.

Throwing glass on highway: RCW 46.61.645, 70.93.060.

47.40.100 State adopt-a-highway program. (1) The department of transportation shall establish a statewide adopt-a-highway program. The purpose of the program is to provide volunteers and businesses an opportunity to contribute to a cleaner environment, enhanced roadsides, and protection of wildlife habitats. Participating volunteers and busi-

nesses shall adopt department-designated sections of state highways, rest areas, park and ride lots, intermodal facilities, and any other facilities the department deems appropriate, in accordance with rules adopted by the department. The department may elect to coordinate a consortium of participants for adopt-a-highway projects.

The adopt-a-highway program shall include, at a minimum, litter control for the adopted section, and may include additional responsibilities such as planting and maintaining vegetation, controlling weeds, graffiti removal, and any other roadside improvement or clean-up activities the department deems appropriate. The department shall not accept adopt-a-highway proposals that would have the effect of terminating classified employees or classified employee positions.

(2) A volunteer group or business choosing to participate in the adopt-a-highway program must submit a proposal to the department. The department shall review the proposal for consistency with departmental policy and rules. The department may accept, reject, or modify an applicant's proposal.

(3) The department shall seek partnerships with volunteer groups and businesses to facilitate the goals of this section. The department may solicit funding for the adopt-a-highway program that allows private entities to undertake all or a portion of financing for the initiatives. The department shall develop guidelines regarding the cash, labor, and in-kind contributions to be performed by the participants.

(4) An organization whose name: (a) Endorses or opposes a particular candidate for public office, (b) advocates a position on a specific political issue, initiative, referendum, or piece of legislation, or (c) includes a reference to a political party shall not be eligible to participate in the adopt-a-highway program.

(5) In administering the adopt-a-highway program, the department shall:

(a) Provide a standardized application form, registration form, and contractual agreement for all participating groups. The forms shall notify the prospective participants of the risks and responsibilities to be assumed by the department and the participants;

(b) Require all participants to be at least fifteen years of age;

(c) Require parental consent for all minors;

(d) Require at least one adult supervisor for every eight minors;

(e) Require one designated leader for each participating organization, unless the department chooses to coordinate a consortium of participants;

(f) Assign each participating organization a section or sections of state highway, or other state-owned transportation facilities, for a specified period of time;

(g) Recognize the efforts of a participating organization by erecting and maintaining signs with the organization's name on both ends of the organization's section of highway;

(h) Provide appropriate safety equipment. Safety equipment issued to participating groups must be returned to the department upon termination of the applicable adopt-a-highway agreement;

(i) Provide safety training for all participants;

(j) Pay any and all premiums or assessments required under RCW 51.12.035 to secure medical aid benefits under

chapter 51.36 RCW for all volunteers participating in the program;

(k) Require participating businesses to pay all employer premiums or assessments required to secure medical aid benefits under chapter 51.36 RCW for all employees or agents participating in the program;

(l) Maintain records of all injuries and accidents that occur;

(m) Adopt rules that establish a process to resolve any question of an organization's eligibility to participate in the adopt-a-highway program;

(n) Obtain permission from property owners who lease right-of-way before allowing an organization to adopt a section of highway on such leased property; and

(o) Establish procedures and guidelines for the adopt-a-highway program.

(6) Nothing in this section affects the rights or activities of, or agreements with, adjacent landowners, including the use of rights-of-way and crossings, nor impairs these rights and uses by the placement of signs. [1995 c 106 § 1; 1990 c 258 § 5.]

Legislative findings and intent—1990 c 258: "The legislature finds that despite the efforts of the department of transportation, the department of ecology, and the ecology youth corps to pick up litter along state highways, roadside litter in Washington state has increased by thirty-six percent since 1983. The legislature further finds that in twenty-seven states, volunteer organizations are able to give of their time and energy, demonstrate commitment to a clean environment, and discourage would-be litterers by keeping sections of highway litter free because those states have established programs to encourage and recognize such voluntary efforts. Therefore, it is the legislature's intent to establish an "adopt-a-highway" litter control program as a partnership between citizen volunteers and the state to reduce roadside litter and build civic pride in a litter-free Washington." [1990 c 258 § 4.]

47.40.105 Local adopt-a-highway programs. Local government legislative authorities may enact local "adopt-a-highway sign" programs which are not inconsistent with state or federal law. [1990 c 258 § 3.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Chapter 47.41 RCW

JUNKYARDS ADJACENT TO INTERSTATE AND PRIMARY HIGHWAYS

Sections

47.41.010	Legislative declaration—Purpose.
47.41.020	Definitions.
47.41.030	Junkyards adjacent to highways prohibited—Exceptions.
47.41.040	Screening or removal of junkyard.
47.41.050	Administrative rules—Review of action.
47.41.060	Other laws not affected.
47.41.070	Violations—Penalty—Abatement as public nuisance.
47.41.080	Agreements with United States secretary of transportation.
47.41.900	Severability—1971 ex.s. c 101.

Vehicle wreckers: Chapter 46.80 RCW.

47.41.010 Legislative declaration—Purpose. For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and fed-

eral-aid primary systems within this state. The legislature hereby finds and declares that junkyards which do not conform to the requirements of this chapter are public nuisances. [1971 ex.s. c 101 § 1.]

47.41.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(2) "Automobile graveyard" means any establishment or place of business that is maintained, used, or operated by storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(3) "Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and the term includes garbage dumps and sanitary fills.

(4) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated or as may hereafter be so designated by the department and approved by the United States secretary of transportation under Title 23 United States Code.

(5) "Federal-aid primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the department and approved by the United States secretary of transportation as the federal-aid primary system pursuant to the provisions of Title 23 United States Code.

(6) "Department" means the Washington state department of transportation. [1984 c 7 § 216; 1971 ex.s. c 101 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.030 Junkyards adjacent to highways prohibited—Exceptions. No person may establish, operate, or maintain a junkyard any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate or federal-aid primary highway, except the following:

(1) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the system or otherwise removed from sight;

(2) Those located within areas which are zoned for industrial use under authority of law;

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by rules adopted by the department and approved by the United States secretary of transportation; and

(4) Those which are not visible from the main-traveled way of the system. [1984 c 7 § 217; 1971 ex.s. c 101 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.040 Screening or removal of junkyard. Before July 1, 1971, the department shall determine whether or not the topography of the land adjoining the highway will permit adequate screening of any junkyard lawfully in existence located outside of a zoned industrial area or an unzoned

industrial area as defined under RCW 47.41.030 on August 9, 1971, that is within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of any highway on the interstate and primary system and whether screening of the junkyard would be economically feasible. Within thirty days thereafter the department shall notify by certified mail the record owner of the land upon which the junkyard is located, or the operator thereof, of its determination.

If it is economically feasible to screen the junkyard, the department shall screen the junkyard so that it will not be visible from the main-traveled way of the highway. The department is authorized to acquire by gift, purchase, exchange, or condemnation such lands or interest in lands as may be required for these purposes.

If it is not economically feasible to screen the junkyard, the department shall acquire by purchase, gift, or condemnation an interest in the real property used for junkyard purposes that is visible from the main traveled way of the highway, restricting any owner of the remaining interest to use of the real estate for purposes other than a junkyard. In addition to compensation for the real property interest, the operator of a junkyard shall receive the actual reasonable expenses in moving his business personal property to a location within the same general area where a junkyard may be lawfully established, operated, and maintained. This section shall be interpreted as being in addition to all other rights and remedies of a junkyard owner or operator and shall not be interpreted as a limitation on or alteration of the law of compensation in eminent domain. [1984 c 7 § 218; 1971 ex.s. c 101 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.050 Administrative rules—Review of action.

The department shall adopt rules for the administration of this chapter consistent with the policy of this chapter and the national policy set forth in 23 U.S.C. Sec. 136, and the regulations promulgated thereunder by the United States secretary of transportation. Proceedings for review of any action taken by the department pursuant to this chapter shall be instituted by filing a petition only in the superior court of Thurston county. [1984 c 7 § 219; 1971 ex.s. c 101 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.060 Other laws not affected. Nothing in this chapter shall be construed to permit a person to maintain any junkyard that is otherwise prohibited by statute or by the resolution or ordinance of any county, city, or town, nor to abrogate or affect the lawful provisions of any statute, ordinance, regulation, or resolution which are more restrictive than the provisions of this chapter. [1971 ex.s. c 101 § 6.]

47.41.070 Violations—Penalty—Abatement as public nuisance. (1) If the owner of the land upon which any such junkyard is located, or the operator thereof, as the case may be, fails to comply with the notice or remove any such junk within the time provided in this chapter after being so notified, he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling compliance with this chapter. Each

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day the junkyard is maintained in a manner so as not to comply with this chapter constitutes a separate offense.

(2) If the operator of the junkyard or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the property upon which it is located with a notice that the junkyard constitutes a public nuisance and that the junk thereon must be removed as provided in this chapter. If the notice is not complied with, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and remove the junk, and for that purpose may enter upon private property without incurring liability for doing so. [2003 c 53 § 261; 1984 c 7 § 220; 1971 ex.s. c 101 § 7.]

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

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.080 Agreements with United States secretary of transportation.

The department is authorized to enter into agreements with the United States secretary of transportation as provided in Title 23 United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the state to comply with the terms of the agreement. [1984 c 7 § 221; 1971 ex.s. c 101 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.41.900 Severability—1971 ex.s. c 101. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 101 § 9.]

Chapter 47.42 RCW

**HIGHWAY ADVERTISING CONTROL ACT—
SCENIC VISTAS ACT**

Sections

- 47.42.010 Declaration of purpose.
- 47.42.020 Definitions.
- 47.42.025 Exclusions from scenic system.
- 47.42.030 Signs visible from interstate, primary, or scenic systems restricted.
- 47.42.040 Permissible signs classified.
- 47.42.045 Number of signs—Spacing—Tourist facility, business or agricultural signs.
- 47.42.048 State and local prohibitions.
- 47.42.050 Information signs by governmental units.
- 47.42.055 Roadside area information panels or displays.
- 47.42.060 Rules for signs visible from interstate and scenic systems—Judicial review.
- 47.42.062 Signs visible from primary system in commercial and industrial areas—Requirements, restrictions, and prohibitions.
- 47.42.063 Signs visible from primary system in commercial and industrial areas—Preexisting signs—Permissible signs—Spacing.
- 47.42.065 Signs viewable from other highways or streets—Requirements.
- 47.42.070 State and local prohibitions.
- 47.42.080 Public nuisance—Abatement—Penalty.
- 47.42.090 Revocation of permit.
- 47.42.100 Preexisting signs—Moratorium.
- 47.42.102 Compensation for removal of signs—Authorized—Applicability.

47.42.103	Compensation for removal—Action determining amount—Payment—State's share.
47.42.104	Compensation for removal—Federal share—Acceptance.
47.42.105	Unavailability of federal share.
47.42.107	Compensation for removal under local authority.
47.42.110	Agreements for federal aid.
47.42.120	Permits—Fees—Renewal—Permissible acts—Revocation.
47.42.130	Permit identification number.
47.42.140	Scenic areas designated.
47.42.900	Severability—1961 c 96.
47.42.901	Severability—1963 ex.s. c 3.
47.42.902	Severability—1971 ex.s. c 62.
47.42.910	Short title—1961 c 96.
47.42.911	Short title—1971 ex.s. c 62.
47.42.920	Federal requirements—Conflict and accord.

47.42.010 Declaration of purpose. The control of signs in areas adjacent to state highways of this state is hereby declared to be necessary to promote the public health, safety, welfare, convenience and enjoyment of public travel, to protect the public investment in the interstate system and other state highways, and to attract visitors to this state by conserving the natural beauty of areas adjacent to the interstate system, and of scenic areas adjacent to state highways upon which they travel in great numbers, and to insure that information in the specific interest of the traveling public is presented safely and effectively. [1961 c 96 § 1.]

47.42.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the Washington state department of transportation.

(2) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(3) "Interstate system" means any state highway which is or does become part of the national system of interstate and defense highways as described in section 103(d) of title 23, United States Code.

(4) "Maintain" means to allow to exist.

(5) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual or individuals.

(6) "Primary system" means any state highway which is or does become part of the federal-aid primary system as described in section 103(b) of title 23, United States Code.

(7) "Scenic system" means (a) any state highway within any public park, federal forest area, public beach, public recreation area, or national monument, (b) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic system, or (c) any state highway or portion thereof outside the boundaries of any incorporated city or town designated by the legislature as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway, as determined by the department.

(8) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway. "Sign" does not

include a display authorized under RCW 47.36.030(3) promoting a local agency sponsored event that does not include advertising.

(9) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code, or if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial or industrial activities, or any combination thereof, within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, or storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which the activities are located. Measurements shall be along or parallel to the edge of the main traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right-of-way;

(f) Activities conducted in a building principally used as a residence.

If any commercial or industrial activity that has been used in defining or delineating an unzoned area ceases to operate for a period of six continuous months, any signs located within the former unzoned area become nonconforming and shall not be maintained by any person.

(10) "Roadside area information panel or display" means a panel or display located so as not to be readable from the main traveled way, erected in a safety rest area, scenic overlook, or similar roadside area, for providing motorists with information in the specific interest of the traveling public.

(11) "Temporary agricultural directional sign" means a sign on private property adjacent to state highway right-of-way to provide directional information to places of business offering for sale seasonal agricultural products on the property where the sale is taking place. [2005 c 398 § 2; 1993 c 430 § 10; 1991 c 94 § 1; 1990 c 258 § 1; 1987 c 469 § 2; 1985 c 376 § 2; 1984 c 7 § 222; 1977 ex.s. c 258 § 1; 1974 ex.s. c 80 § 1; 1971 ex.s. c 62 § 1; 1961 c 96 § 2.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Legislative intent—1985 c 376: "It is the intent of the legislature that state highway information and directional signs provide appropriate guidance to all motorists traveling throughout the state. Such guidance should include the identity, location, and types of recreational, cultural, educational, entertainment, or unique or unusual commercial activities whose principle source of visitation is derived from motorists not residing in the immediate locale of the activity. Such informational and directional signs shall comply with Title 23, United States Code and the rules adopted by the department under RCW 47.42.060." [1985 c 376 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.025 Exclusions from scenic system. The following sections of the scenic and recreational highway system

are excluded from the scenic system as defined in subsection (7) of RCW 47.42.020:

(1) Beginning on state route number 101 at the junction with Airport Road north of Shelton, thence north to a point two thousand feet north of Airport Road.

(2) Beginning on state route number 101 at the junction with Mill Creek Road south of Forks, thence north two and four-tenths miles to the Calawah River bridge.

(3) Beginning on state route number 105 at a point one-half mile southwest of the boundary of Aberdeen, thence northeast to the boundary of Aberdeen.

(4) Beginning on state route number 17 at a point nine-tenths of a mile west of Grape Drive in the vicinity of Moses Lake, thence easterly to a junction of Grape Drive.

(5) Beginning on state route number 12 at a point one-half mile south of the south boundary of Dayton, thence northerly to the south boundary of Dayton.

(6) Beginning on state route number 14 one-half mile west of the west boundary of Bingen, thence east to a point one-half mile east of the east boundary of Bingen. [1971 ex.s. c 62 § 2.]

47.42.030 Signs visible from interstate, primary, or scenic systems restricted. Except as permitted under this chapter, no person shall erect or maintain a sign which is visible from the main traveled way of the interstate system, the primary system, or the scenic system. In case a highway or a section of highway is both a part of the primary system and the scenic system, only those signs permitted along the scenic system shall be erected or maintained. [1971 ex.s. c 62 § 3; 1961 c 96 § 3.]

47.42.040 Permissible signs classified. It is declared to be the policy of the state that no signs which are visible from the main traveled way of the interstate system, primary system, or scenic system shall be erected or maintained except the following types:

(1) Directional or other official signs or notices that are required or authorized by law including signs with the Crime Stoppers name, logo, and telephone number;

(2) Signs advertising the sale or lease of the property upon which they are located;

(3) Signs advertising activities conducted on the property on which they are located;

(4) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, and the national standards promulgated thereunder by the secretary of commerce or the secretary of transportation, advertising activities being conducted at a location within twelve miles of the point at which such signs are located: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(5) Signs, not inconsistent with the policy of this chapter and the national policy set forth in section 131 of title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law

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86-342, and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation, designed to give information in the specific interest of the traveling public: PROVIDED, That no sign lawfully erected pursuant to this subsection adjacent to the interstate system and outside commercial and industrial areas shall be maintained by any person after three years from May 10, 1971;

(6) Signs lawfully in existence on October 22, 1965, determined by the commission, subject to the approval of the United States secretary of transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of chapter 47.42 RCW;

(7) Public service signs, located on school bus stop shelters, which:

(a) Identify the donor, sponsor, or contributor of said shelters;

(b) Contain safety slogans or messages which occupy not less than sixty percent of the area of the sign;

(c) Contain no other message;

(d) Are located on school bus shelters which are authorized or approved by city, county, or state law, regulation, or ordinance, and at places approved by the city, county, or state agency controlling the highway involved; and

(e) Do not exceed thirty-two square feet in area. Not more than one sign on each shelter may face in any one direction.

Subsection (7) of this section notwithstanding, the department of transportation shall adopt regulations relating to the appearance of school bus shelters, the placement, size, and public service content of public service signs located thereon, and the prominence of the identification of the donors, sponsors, or contributors of the shelters;

(8) Temporary agricultural directional signs, with the following restrictions:

(a) Signs shall be posted only during the period of time the seasonal agricultural product is being sold;

(b) Signs shall not be placed adjacent to the interstate highway system unless the sign qualifies as an on-premise sign;

(c) Signs shall not be placed within an incorporated city or town;

(d) Premises on which the seasonal agricultural products are sold must be within fifteen miles of the state highway, and necessary supplemental signing on local roads must be provided before the installation of the signs on the state highway;

(e) Signs must be located so as not to restrict sight distances on approaches to intersections;

(f) The department shall establish a permit system and fee schedule and rules for the manufacturing, installation, and maintenance of these signs in accordance with the policy of this chapter;

(g) Signs in violation of these provisions shall be removed in accordance with the procedures in RCW 47.42.080;

Only signs of types 1, 2, 3, 7, and 8 may be erected or maintained within view of the scenic system. Signs of types 7 and 8 may also be erected or maintained within view of the federal aid primary system. [2001 c 107 § 1; 1991 c 94 § 2;

1990 c 258 § 2; 1985 c 376 § 3; 1979 c 69 § 1; 1975 1st ex.s. c 271 § 1; 1971 ex.s. c 62 § 4; 1961 c 96 § 4.]

Legislative findings and intent—1990 c 258: See note following RCW 47.40.100.

Legislative intent—1985 c 376: See note following RCW 47.42.020.

47.42.045 Number of signs—Spacing—Tourist facility, business or agricultural signs. (1) Not more than one type 3 sign visible to traffic proceeding in any one direction on an interstate system, primary system outside an incorporated city or town or commercial or industrial area, or scenic system highway may be permitted more than fifty feet from the advertised activity;

(2) A type 3 sign, other than one along any portion of the primary system within an incorporated city or town or within any commercial or industrial area, permitted more than fifty feet from the advertised activity pursuant to subsection (1) of this section shall not be erected or maintained a greater distance from the advertised activity than one of the following options selected by the owner of the business being advertised:

(a) One hundred fifty feet measured along the edge of the protected highway from the main entrance to the activity advertised (when applicable);

(b) One hundred fifty feet from the main building of the advertised activity; or

(c) Fifty feet from a regularly used parking lot maintained by and contiguous to the advertised activity.

(3) In addition to signs permitted by subsections (1) and (2) of this section, the commission may adopt regulations permitting one type 3 sign visible to traffic proceeding in any one direction on an interstate, primary or scenic system highway on premises which, on June 25, 1976, are used wholly or in part as an operating business, farm, ranch or orchard which sign bears only the name of the business, farm, ranch or orchard and a directional arrow or short directional message. Regulations adopted under this subsection shall prohibit the erection or maintenance of such type 3 signs on narrow strips of land a substantial distance from but connected with a business, farm, ranch or orchard. Signs permitted under this subsection shall not exceed fifty square feet in area.

(4) The commission with advice from the parks and recreation commission shall adopt specifications for a uniform system of official tourist facility directional signs to be used on the scenic system highways. Official directional signs shall be posted by the commission to inform motorists of types of tourist and recreational facilities available off the scenic system which are accessible by way of public or private roads intersecting scenic system highways. [1975-'76 2nd ex.s. c 55 § 2; 1974 ex.s. c 154 § 1; 1974 ex.s. c 138 § 1; 1971 ex.s. c 62 § 5.]

47.42.048 State and local prohibitions. Nothing in this chapter shall be construed to permit a person to erect or maintain a sign that is otherwise prohibited by statute or by the resolution or ordinance of any county, city or town of the state of Washington. [1974 ex.s. c 80 § 3.]

47.42.050 Information signs by governmental units. Information signs may be erected and maintained by the state, any county, city, or town. [1961 c 96 § 5.]

47.42.055 Roadside area information panels or displays. The department is authorized to erect roadside area information panels or displays adjacent to the state highway system within this state. The department may contract with private persons for the erection and operation of the information panels or displays. Compensation to the contractors shall be derived solely from the reasonable fees that the contractors will be permitted to charge participating businesses for making and exhibiting business signs and displays and for rendering services to tourists. [1985 c 376 § 5; 1984 c 7 § 225; 1977 ex.s. c 258 § 2.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.060 Rules for signs visible from interstate and scenic systems—Judicial review. The department shall adopt rules for the erection and maintenance of signs that are visible from the main traveled way of the interstate system and the scenic system and that are permitted by this chapter and other rules for the administration of this chapter consistent with the policy of this chapter and the national policy set forth in section 131, title 23, United States Code as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342 and the regulations promulgated thereunder by the secretary of commerce or the secretary of transportation. Proceedings for review of any action taken by the department pursuant to this chapter shall be instituted by filing a petition only in the superior court of Thurston county. [1984 c 7 § 226; 1971 ex.s. c 62 § 6; 1961 c 96 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.062 Signs visible from primary system in commercial and industrial areas—Requirements, restrictions, and prohibitions. Signs within six hundred and sixty feet of the nearest edge of the right-of-way which are visible from the main traveled way of the primary system within commercial and industrial areas and whose size, lighting, and spacing are consistent with the customary use of property for the effective display of outdoor advertising as set forth in this section may be erected and maintained: PROVIDED, That this section shall not serve to restrict type 3 signs located along any portion of the primary system within an incorporated city or town or within any commercial or industrial area.

(1) General: Signs shall not be erected or maintained which (a) imitate or resemble any official traffic sign, signal, or device; (b) are erected or maintained upon trees or painted or drawn upon rocks or other natural features and which are structurally unsafe or in disrepair; or (c) have any visible moving parts.

(2) Size of signs:

(a) The maximum area for any one sign shall be six hundred seventy-two square feet with a maximum height of twenty-five feet and maximum length of fifty feet inclusive of any border and trim but excluding the base or apron, supports and other structural members: PROVIDED, That cut-

outs and extensions may add up to twenty percent of additional sign area.

(b) For the purposes of this subsection, double-faced, back-to-back, or V-type signs shall be considered as two signs.

(c) Signs which exceed three hundred twenty-five square feet in area may not be double-faced (abutting and facing the same direction).

(3) Spacing of signs:

(a) Signs may not be located in such a manner as to obscure, or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.

(b) On limited access highways established pursuant to chapter 47.52 RCW no two signs shall be spaced less than one thousand feet apart, and no sign may be located within three thousand feet of the center of an interchange, a safety rest area, or information center, or within one thousand feet of an intersection at grade. Double-faced signs shall be prohibited. Not more than a total of five sign structures shall be permitted on both sides of the highway per mile.

(c) On noncontrolled access highways inside the boundaries of incorporated cities and towns not more than a total of four sign structures on both sides of the highway within a space of six hundred sixty feet shall be permitted with a minimum of one hundred feet between sign structures. In no event, however, shall more than four sign structures be permitted between platted intersecting streets or highways. On noncontrolled access highways outside the boundaries of incorporated cities and towns minimum spacing between sign structures on each side of the highway shall be five hundred feet.

(d) For the purposes of this subsection, a back-to-back sign and a V-type sign shall be considered one sign structure.

(e) Official signs, and signs advertising activities conducted on the property on which they are located shall not be considered in determining compliance with the above spacing requirements. The minimum space between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply to signs located on the same side of the highway.

(4) Lighting: Signs may be illuminated, subject to the following restrictions:

(a) Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.

(b) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.

(c) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(d) All such lighting shall be subject to any other provisions relating to lighting of signs presently applicable to all highways under the jurisdiction of the state. [1975 1st ex.s. c

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271 § 3; 1974 ex.s. c 154 § 2; 1974 ex.s. c 138 § 2; 1971 ex.s. c 62 § 7.]

47.42.063 Signs visible from primary system in commercial and industrial areas—Preexisting signs—Permissible signs—Spacing. (1) Signs within six hundred and sixty feet of the nearest edge of the right-of-way lawfully erected and maintained which are visible from the main traveled way of the primary system within commercial and industrial areas on June 1, 1971 shall be permitted to remain and be maintained.

(2) Signs within six hundred and sixty feet of the nearest edge of the right-of-way which are visible from the main traveled way of the primary system within commercial and industrial areas whose size, lighting, and spacing are consistent with customary use as set forth in RCW 47.42.062 may be erected and maintained. Signs lawfully erected and maintained on June 1, 1971 shall be included in the determination of spacing requirements for additional signs. [1975 1st ex.s. c 271 § 4; 1971 ex.s. c 62 § 8.]

47.42.065 Signs viewable from other highways or streets—Requirements. Notwithstanding any other provision of chapter 47.42 RCW, signs may be erected and maintained more than six hundred and sixty feet from the nearest edge of the right-of-way which are visible from the main traveled way of the interstate system, primary system, or scenic system when designed and oriented to be viewed from highways or streets other than the interstate system, primary system, or the scenic system and the advertising or informative contents of which may not be clearly comprehended by motorists using the main traveled way of the interstate system, primary system or scenic system. [1975 1st ex.s. c 271 § 5; 1971 ex.s. c 62 § 9.]

47.42.070 State and local prohibitions. Nothing in this chapter shall be construed to permit a person to erect or maintain any sign that is otherwise prohibited by statute or by the resolution or ordinance of any county, city, or town of the state of Washington. [1961 c 96 § 7.]

47.42.080 Public nuisance—Abatement—Penalty. (1) Any sign erected or maintained contrary to the provisions of this chapter or rules adopted hereunder that is designed to be viewed from the interstate system, the primary system, or the scenic system is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the permittee or, if there is no permittee, the owner of the property on which the sign is located, by certified mail at his last known address, that it constitutes a public nuisance and must comply with the chapter or be removed.

(2) If the permittee or owner, as the case may be, fails to comply with the chapter or remove any such sign within fifteen days after being notified to remove the sign he is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

(3) If the permittee or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the sign and property upon which it is located with a notice that the sign constitutes a public nuisance and must be removed. If the sign is not removed within fifteen days after such posting, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and destroy the sign, and for that purpose may enter upon private property without incurring liability for doing so.

(4) Nothing in this section may be construed to affect the provisions contained in RCW 47.42.102 requiring the payment of compensation upon the removal of any signs compensable under state law.

(5) Any sign erected or maintained on state highway right-of-way contrary to this chapter or rules adopted under it is a public nuisance, and the department is authorized to remove any such sign without notice. [1985 c 376 § 6; 1984 c 7 § 227; 1975-'76 2nd ex.s. c 55 § 1; 1971 ex.s. c 62 § 10; 1961 c 96 § 8.]

Legislative intent—1985 c 376: See note following RCW 47.42.020.

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.090 Revocation of permit. If any person is convicted of a violation of this chapter, or any rule adopted hereunder, the department may revoke any permit issued to that person under this chapter. [1984 c 7 § 228; 1961 c 96 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.100 Preexisting signs—Moratorium. (1) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, within a commercial or industrial zone within the boundaries of any city or town, as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after March 11, 1965.

(2) No sign lawfully erected in a protected area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to March 11, 1961, other than within a commercial or industrial zone within the boundaries of a city or town as such boundaries existed on September 21, 1959, wherein the use of real property adjacent to the interstate system is subject to municipal regulation or control but which does not comply with the provisions of this chapter or any regulations promulgated hereunder, shall be maintained by any person after three years from March 11, 1961.

(3) No sign lawfully erected in a scenic area as defined by section 2, chapter 96, Laws of 1961 (before the amendment thereof), prior to the effective date of the designation of such area as a scenic area shall be maintained by any person after three years from the effective date of the designation of any such area as a scenic area.

(4) No sign visible from the main traveled way of the interstate system, the primary system (other than type 3 signs

along any portion of the primary system within an incorporated city or town or within a commercial or industrial area), or the scenic system which was there lawfully maintained immediately prior to May 10, 1971, but which does not comply with the provisions of chapter 47.42 RCW as now or hereafter amended, shall be maintained by any person (a) after three years from May 10, 1971, or (b) with respect to any highway hereafter designated by the legislature as a part of the scenic system, after three years from the effective date of the designation. Signs located in areas zoned by the governing county for predominantly commercial or industrial uses, that do not have development visible to the highway, as determined by the department, and that were lawfully installed after May 10, 1971, visible to any highway now or hereafter designated by the legislature as part of the scenic system, shall be allowed to be maintained. [1993 c 430 § 11; 1974 ex.s. c 154 § 3; 1974 ex.s. c 138 § 3; 1971 ex.s. c 62 § 11; 1963 ex.s. c 3 § 55; 1961 c 96 § 10.]

47.42.102 Compensation for removal of signs—Authorized—Applicability. (1) Except as otherwise provided in subsection (3) of this section, just compensation shall be paid upon the removal of any sign (pursuant to the provisions of chapter 47.42 RCW), lawfully erected under state law, which is visible from the main traveled way of the interstate system or the primary system.

(2) Such compensation shall be paid for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(3) In no event, however, shall compensation be paid for the taking or removal of signs adjacent to the interstate system and the scenic system which became subject to removal pursuant to chapter 96, Laws of 1961 as amended by section 55, chapter 3, Laws of 1963 ex. sess. prior to May 10, 1971. [1975 1st ex.s. c 271 § 2; 1971 ex.s. c 62 § 12.]

47.42.103 Compensation for removal—Action determining amount—Payment—State's share. (1) Compensation as required by RCW 47.42.102 shall be paid to the person or persons entitled thereto for the removal of such signs. If no agreement is reached on the amount of compensation to be paid, the department may institute an action by summons and complaint in the superior court for the county in which the sign is located to obtain a determination of the compensation to be paid. If the owner of the sign is unknown and cannot be ascertained after diligent efforts to do so, the department may remove the sign upon the payment of compensation only to the owner of the real property on which the sign is located. Thereafter the owner of the sign may file an action at any time within one year after the removal of the sign to obtain a determination of the amount of compensation he should receive for the loss of the sign. If either the owner of the sign or the owner of the real property on which the sign is located cannot be found within the state, service of the summons and complaint on such person for the purpose of obtaining a determination of the amount of compensation to be paid

may be by publication in the manner provided by RCW 4.28.100.

(2) If compensation is determined by judicial proceedings, the sum so determined shall be paid into the registry of the court to be disbursed upon removal of the sign by its owner or by the owner of the real property on which the sign is located. If the amount of compensation is agreed upon, the department may pay the agreed sum into escrow to be released upon the removal of the sign by its owner or the owner of the real property on which the sign is located.

(3) The state's share of compensation shall be paid from the motor vehicle fund, or if a court having jurisdiction enters a final judgment declaring that motor vehicle funds may not be used, then from the general fund. [1984 c 7 § 229; 1971 ex.s. c 62 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.104 Compensation for removal—Federal share—Acceptance. The department may accept any allotment of funds by the United States, or any agency thereof, appropriated to carry out the purposes of section 131 of title 23, United States Code, as now or hereafter amended. The department shall take such steps as may be necessary from time to time to obtain from the United States, or the appropriate agency thereof, funds allotted and appropriated, pursuant to section 131, for the purpose of paying the federal share of the just compensation to be paid to sign owners and owners of real property under the terms of subsection (g) of section 131 and RCW 47.42.102, 47.42.103, and 47.42.104. [1984 c 7 § 230; 1971 ex.s. c 62 § 14.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.105 Unavailability of federal share. No sign, display, or device shall be required to be removed if the federal share of the just compensation to be paid upon the removal of such sign, display, or device is not available to make such payment. [1971 ex.s. c 62 § 15.]

47.42.107 Compensation for removal under local authority. (1) Just compensation shall be paid upon the removal of any existing sign pursuant to the provisions of any resolution or ordinance of any county, city, or town of the state of Washington by such county, city, or town if:

(a) Such sign was lawfully in existence on May 10, 1971 (the effective date of the Scenic Vistas Act of 1971); or

(b) Such sign was erected subsequent to May 10, 1971 (the effective date of the Scenic Vistas Act of 1971), in compliance with existing state and local law.

(2) Such compensation shall be paid in the same manner as specified in RCW 47.42.102(2) for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon. [1977 ex.s. c 141 § 1.]

Severability—1977 ex.s. c 141: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 141 § 2.]

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47.42.110 Agreements for federal aid. The department is authorized to enter into agreements (and such supplementary agreements as may be necessary) consistent with this chapter, with the secretary of commerce or the secretary of transportation authorized under section 131(b) of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, in order that the state may become eligible for increased federal aid as provided for in section 131 of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342. [1984 c 7 § 231; 1971 ex.s. c 62 § 16; 1961 c 96 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.120 Permits—Fees—Renewal—Permissible acts—Revocation. Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a statement that the owner or lessee of the land in question has consented thereto. The application shall be accompanied by a fee established by department rule to be deposited with the state treasurer to the credit of the motor vehicle fund. Permits shall be for the remainder of the calendar year in which they are issued, and accompanying fees shall not be prorated for fractions of the year. Permits must be renewed annually through a certification process established by department rule. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application or annual certification process was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter or rules adopted under it within thirty days after written notification. [1999 c 276 § 1; 1984 c 7 § 232; 1971 ex.s. c 62 § 17; 1961 c 96 § 12.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.130 Permit identification number. Every permit issued by the department shall be assigned a separate identification number, and each permittee shall fasten to each sign a weatherproof label, not larger than sixteen square inches, that shall be furnished by the department and on which shall be plainly visible the permit number. The permittee shall also place his or her name in a conspicuous position on the front or back of each sign. The failure of a sign to have such a label affixed to it is prima facie evidence that it is not in compliance with the provisions of this chapter. [1999 c 276 § 2; 1984 c 7 § 233; 1961 c 96 § 13.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.42.140 Scenic areas designated. The following portions of state highways are designated as a part of the scenic system:

(1) State route number 2 beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin.

(2) State route number 7 beginning at a junction with state route number 706 at Elbe, thence in a northerly direction to a junction with state route number 507 south of Spanaway.

(3) State route number 11 beginning at the Blanchard overcrossing, thence in a northerly direction to the limits of Larabee state park (north line of section 36, township 37 north, range 2 east).

(4) State route number 12 beginning at Kosmos southeast of Morton, thence in an easterly direction across White pass to the Oak Flat junction with state route number 410 northwest of Yakima.

(5) State route number 90 beginning at the westerly junction with West Lake Sammamish parkway in the vicinity of Issaquah, thence in an easterly direction by way of North Bend and Snoqualmie pass to a junction with state route number 970 at Cle Elum.

(6) State route number 97 beginning at a junction with state route number 970 at Virden, thence via Blewett pass to a junction with state route number 2 in the vicinity of Peshastin.

(7) State route number 106 beginning at the junction with state route number 101 in the vicinity of Union, thence northeasterly to the junction with state route number 3 in the vicinity of Belfair.

(8) State route number 123 beginning at a junction with state route number 12 at Ohanapecosh junction in the vicinity west of White pass, thence in a northerly direction to a junction with state route number 410 at Cayuse junction in the vicinity west of Chinook pass.

(9) State route number 165 beginning at the northwest entrance to Mount Rainier national park, thence in a northerly direction to a junction with state route number 162 east of the town of South Prairie.

(10) State route number 206, Mt. Spokane Park Drive, beginning at the junction with state route number 2 near the north line section 3, township 26 N, range 43 E, thence northeasterly to a point in section 28, township 28 N, range 45 E at the entrance to Mt. Spokane state park.

(11) State route number 305, beginning at the ferry slip at Winslow on Bainbridge Island, thence northwesterly by way of Agate Pass bridge to a junction with state route number 3 approximately four miles northwest of Poulsbo.

(12) State route number 410 beginning at the crossing of Scatter creek approximately six miles east of Enumclaw, thence in an easterly direction by way of Chinook pass to a junction of state route number 12 and state route number 410.

(13) State route number 706 beginning at a junction with state route number 7 at Elbe thence in an easterly direction to the southwest entrance to Mount Rainier national park.

(14) State route number 970 beginning at a junction with state route number 90 in the vicinity of Cle Elum thence via Teanaway to a junction with state route number 97 in the vicinity of Virden. [1993 c 430 § 12; 1992 c 26 § 3; 1975 c

63 § 9; 1974 ex.s. c 138 § 4. Prior: 1971 ex.s. c 73 § 28; 1971 ex.s. c 62 § 18; 1961 c 96 § 14. Cf. 1974 ex.s. c 154 § 4.]

47.42.900 Severability—1961 c 96. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 96 § 16.]

47.42.901 Severability—1963 ex.s. c 3. If any provision of *section 55 of this amendatory act shall be held to be invalid or shall be held to invalidate any provision of chapter 96, Laws of 1961 (chapter 47.42 RCW), then that provision of this amendatory act shall be of no force and effect and the provisions of chapter 96, Laws of 1961 (chapter 47.42 RCW) shall continue in effect. [1963 ex.s. c 3 § 56.]

***Reviser's note:** The reference to "section 55 of this amendatory act" is to the 1963 amendment of RCW 47.42.100.

47.42.902 Severability—1971 ex.s. c 62. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 62 § 20.]

47.42.910 Short title—1961 c 96. This chapter shall be known and may be cited as the highway advertising control act of 1961. [1961 c 96 § 17.]

47.42.911 Short title—1971 ex.s. c 62. This chapter may be cited as the "Scenic Vistas Act." [1999 c 276 § 3; 1971 ex.s. c 62 § 19.]

47.42.920 Federal requirements—Conflict and accord. If the secretary of the United States department of transportation finds any part of this chapter to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1985 c 142 § 4.]

Chapter 47.44 RCW

FRANCHISES ON STATE HIGHWAYS

Sections

47.44.010	Wire and pipe line and tram and railway franchises—Application—Rules on hearing and notice.
47.44.020	Grant of franchise—Conditions—Hearing.
47.44.030	Removal of facilities—Notice—Reimbursement, when.
47.44.031	Removal of facilities—Limitation.
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47.44.050	Permit for short distances.
47.44.060	Penalties.
47.44.070	Franchises to use toll facility property.
47.44.081	Exception—Leases for deployment of personal wireless service facilities.
47.44.150	Measure of damages.

47.44.010 Wire and pipe line and tram and railway franchises—Application—Rules on hearing and notice.

(1) The department of transportation may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any state highway for the construction and maintenance of water pipes, flume, gas, oil or coal pipes, telephone, telegraph and electric light and power lines and conduits, trams or railways, and any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department of transportation, and any other such facilities. In order to minimize the disruption to traffic and damage to the roadway, the department is encouraged to develop a joint trenching policy with other affected jurisdictions so that all permittees and franchisees requiring access to ground under the roadway may do so at one time.

(2) All applications for the franchise must be made in writing and subscribed by the applicant, and describe the state highway or portion thereof over which franchise is desired and the nature of the franchise. The application must also include the identification of all jurisdictions affected by the franchise and the names of other possible franchisees who should receive notice of the application for a franchise.

(3) The department of transportation shall adopt rules providing for a hearing or an opportunity for a hearing with reasonable public notice thereof with respect to any franchise application involving the construction and maintenance of utilities or other facilities within the highway right-of-way which the department determines may (a) during construction, significantly disrupt the flow of traffic or use of driveways or other facilities within the right-of-way, or (b) during or following construction, cause a significant and adverse effect upon the surrounding environment. [2001 c 201 § 5; 1980 c 28 § 1; 1975 1st ex.s. c 46 § 1; 1967 c 108 § 7; 1963 c 70 § 1; 1961 ex.s. c 21 § 26; 1961 c 13 § 47.44.010. Prior: 1943 c 265 § 2; 1937 c 53 § 83; Rem. Supp. 1943 § 6400-83.]

Urban public transportation system defined: RCW 47.04.082.

47.44.020 Grant of franchise—Conditions—Hearing.

(1) If the department of transportation deems it to be for the public interest, the franchise may be granted in whole or in part, with or without hearing under such regulations and conditions as the department may prescribe, with or without compensation, but not in excess of the reasonable cost for investigating, handling, and granting the franchise. The department may require that the utility and appurtenances be so placed on the highway that they will, in its opinion, least interfere with other uses of the highway.

(2) If a hearing is held, it must be conducted by the department, and may be adjourned from time to time until completed. The applicant may be required to produce all facts pertaining to the franchise, and evidence may be taken for and against granting it.

(3) The facility must be made subject to removal when necessary for the construction, alteration, repair, or improvement of the highway and at the expense of the franchise holder, except that the state shall pay the cost of the removal whenever the state is entitled to receive proportionate reimbursement therefor from the United States in the cases and in

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the manner set forth in RCW 47.44.030. Renewal upon expiration of a franchise must be by application.

(4) A person constructing or operating such a utility on a state highway is liable to any person injured thereby for any damages incident to the work of installation or the continuation of the occupancy of the highway by the utility, and except as provided above, is liable to the state for all necessary expenses incurred in restoring the highway to a permanent suitable condition for travel. A person constructing or operating such a utility on a state highway is also liable to the state for all necessary expenses incurred in inspecting the construction and restoring the pavement or other related transportation equipment or facilities to a permanent condition suitable for travel and operation in accordance with requirements set by the department. Permit and franchise holders are also financially responsible to the department for trenching work not completed within the contractual period and for compensating for the loss of useful pavement life caused by trenching. No franchise may be granted for a longer period than fifty years, and no exclusive franchise or privilege may be granted.

(5) The holder of a franchise granted under this section is financially responsible to the department for trenching work not completed within the period of the permit and for compensating for the loss of useful pavement life caused by trenching. In the case of common trenching operations, liability under this subsection will be assessed equally between the franchisees. The assessed parties may thereafter pursue claims of contribution or indemnity in accord with such fault as may be determined by arbitration or other legal action. [2001 c 201 § 6; 1980 c 28 § 2; 1975 1st ex.s. c 46 § 2; 1961 c 13 § 47.44.020. Prior: 1959 c 330 § 1; 1937 c 53 § 84; RRS § 6400-84.]

47.44.030 Removal of facilities—Notice—Reimbursement, when.

If the department deems it necessary that a facility be removed from the highway for the safety of persons traveling thereon or for construction, alteration, improvement, or maintenance purposes, it shall give notice to the franchise holder to remove the facility at his or her expense and as the department orders. However, notwithstanding any contrary provision of law or of any existing or future franchise held by a public utility, the department shall pay or reimburse the owner for relocation or removal of any publicly, privately, or cooperatively owned public utility facilities when necessitated by the construction, reconstruction, relocation, or improvement of a highway that is part of the national system of interstate and defense highways for each item of cost for which the state is entitled to be reimbursed by the United States in an amount equal to at least ninety percent thereof under the provisions of section 123 of the federal aid highway act of 1958 and any other subsequent act of congress under which the state is entitled to be reimbursed by the United States in an amount equal to at least ninety percent of the cost of relocation of utility facilities on the national system of interstate and defense highways. [1984 c 7 § 234; 1961 c 13 § 47.44.030. Prior: 1959 c 330 § 2; 1937 c 53 § 85; RRS § 6400-85.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.44.031 Removal of facilities—Limitation. The provisions of RCW 47.44.030 authorizing the department to pay or reimburse the owner of a utility apply only to relocation or removal of utility facilities required by state construction contracts which are advertised for bids by the department after June 30, 1959. [1984 c 7 § 235; 1961 c 13 § 47.44.031. Prior: 1959 c 330 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.44.040 Franchises across joint bridges. Whenever any bridge exists on the route of any state highway and crosses any stream, body of water, gulch, navigable water, swamp, or other topographical formation constituting the boundary of this state or the boundary of a county, city, or town of this state and the bridge is owned or operated by this state jointly with any such county, city, or town, or with any municipal corporation of this state, or with such other state or with any county, city, or town of such other state, the department is empowered to join with the proper officials of the county, city, or town, or the municipal corporation of this state or of such other state or of such county, city, or town of such other state in granting franchises to persons or private or municipal corporations for the construction and maintenance on the bridge of water pipes, flumes, gas pipes, telephone, telegraph, and electric light and power lines and conduits, trams and railways, and any structures or facilities that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department, or any other such facilities. All such franchises shall be granted in the same manner as provided for the granting of like franchises on state highways. Any revenue accruing to the state of Washington from the franchises shall be paid to the state treasurer and deposited to the credit of the fund from which this state's share of the cost of joint operation of the bridge is paid. [1984 c 7 § 236; 1967 c 108 § 8; 1961 c 13 § 47.44.040. Prior: 1937 c 53 § 86; RRS § 6400-86.]

Severability—1984 c 7: See note following RCW 47.01.141.

Urban public transportation system defined: RCW 47.04.082.

47.44.050 Permit for short distances. (1) The department may grant a permit to construct or maintain on, over, across, or along any state highway any water, gas, telephone, telegraph, light, power, or other such facilities when they do not extend along the state highway for a distance greater than three hundred feet. The department may require such information as it deems necessary in the application for any such permit, and may grant or withhold the permit within its discretion. Any permit granted may be canceled at any time, and any facilities remaining upon the right-of-way of the state highway after thirty days written notice of the cancellation are an unlawful obstruction and may be removed in the manner provided by law.

(2) The holder of a permit granted under this section is financially responsible to the department for trenching work not completed within the period of the permit and for compensating for the loss of useful pavement life caused by trenching. In the case of common trenching operations, liability under this subsection will be assessed equally between the permit holders. The assessed parties may thereafter pursue

claims of contribution or indemnity in accord with such fault as may be determined by arbitration or other legal action. [2001 c 201 § 7; 1984 c 7 § 237; 1961 c 13 § 47.44.050. Prior: 1943 c 265 § 3; 1937 c 53 § 87; Rem. Supp. 1943 § 6400-87.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.44.060 Penalties. (1) Any person, firm, or corporation who constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light, or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law is guilty of a misdemeanor. Each day of violation is a separate and distinct offense.

(2) Any person, firm, or corporation who constructs or maintains on, over, across, or along any state highway any water pipe, flume, gas pipe, telegraph, telephone, electric light or power lines, or tram or railway, or any other such facilities, without having first obtained and having at all times in full force and effect a franchise or permit to do so in the manner provided by law is liable for a civil penalty of one hundred dollars per calendar day beginning forty-five days from the date notice is given and until application is made for a franchise or permit or until the facility is removed as required by notice. The state shall give notice by certified mail that a franchise or permit is required or the facility must be removed and shall include in the notice sufficient information to identify the portion of right-of-way in question. Notice is effective upon delivery.

(3) If a person, firm or corporation does not apply for a permit or franchise within forty-five days of notice given in accordance with subsection (2) of this section or the state determines that the facility constructed or maintained without a permit or franchise would not be granted a permit or franchise, the state may order the facility to be removed within such time period as the state may specify. If the facility is not removed, the state, in addition to any other remedy, may remove the facility at the expense of the owner. [1989 c 224 § 1; 1961 c 13 § 47.44.060. Prior: 1943 c 265 § 1; 1937 c 53 § 82; Rem. Supp. 1943 § 6400-82.]

47.44.070 Franchises to use toll facility property. See RCW 47.56.256.

47.44.081 Exception—Leases for deployment of personal wireless service facilities. This chapter does not apply to leases issued for the deployment of personal wireless service facilities as provided in RCW 47.04.045. [2003 c 244 § 3.]

47.44.150 Measure of damages. In any action for damages against the state of Washington, its agents, contractors, or employees by reason of damages to a utility or other facility located on a state highway, the damages are limited to the cost of repair of the utility or facility and are recoverable only in those instances where the utility or facility is authorized to be located on the state highway. However, the state is subject to the penalties provided in RCW 19.122.070 (1) and (2) only if the state has failed to give a notice meeting the require-

ments of RCW 19.122.030 to utilities or facilities that are authorized to be located on the state highway. [1989 c 196 § 1.]

Chapter 47.46 RCW
PUBLIC-PRIVATE
TRANSPORTATION INITIATIVES

Sections

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47.46.010 Finding. The legislature finds and declares:

It is essential for the economic, social, and environmental well-being of the state and the maintenance of a high quality of life that the people of the state have an efficient transportation system.

The ability of the state to provide an efficient transportation system will be enhanced by a public-private sector program providing for private entities to undertake all or a portion of the study, planning, design, development, financing, acquisition, installation, construction or improvement, operation, and maintenance of transportation systems and facility projects.

A public-private initiatives program will provide benefits to both the public and private sectors. Public-private initiatives provide a sound economic investment opportunity for the private sector. Such initiatives will provide the state with increased access to property development and project opportunities, financial and development expertise, and will supplement state transportation revenues, allowing the state to use its limited resources for other needed projects.

The public-private initiatives program, to the fullest extent possible, should encourage and promote business and employment opportunities for Washington state citizens.

The public-private initiatives program shall be implemented in cooperation, consultation, and with the support of the affected communities and local jurisdictions.

The secretary of transportation should be permitted and encouraged to test the feasibility of building privately funded transportation systems and facilities or segments thereof through the use of innovative agreements with the private sector. The secretary of transportation should be vested with the authority to solicit, evaluate, negotiate, and administer public-private agreements with the private sector relating to

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the planning, construction, upgrading, or reconstruction of transportation systems and facilities.

Agreements negotiated under a public-private initiatives program will not bestow on private entities an immediate right to construct and operate the proposed transportation facilities. Rather, agreements will grant to private entities the opportunity to design the proposed facilities, demonstrate public support for proposed facilities, and complete the planning processes required in order to obtain a future decision by the department of transportation and other state and local lead agencies on whether the facilities should be permitted and built.

Agreements negotiated under the public-private initiatives program should establish the conditions under which the private developer may secure the approval necessary to develop and operate the proposed transportation facilities; create a framework to attract the private capital necessary to finance their development; ensure that the transportation facilities will be designed, constructed, and operated in accordance with applicable local, regional, state, and federal laws and the applicable standards and policies of the department of transportation; and require a demonstration that the proposed transportation facility has the support of the affected communities and local jurisdictions.

The legislature finds that the Puget Sound congestion pricing project, selected under this chapter, raises major transportation policy, economic, and equity concerns. These relate to the integrity of the state's high occupancy vehicle program; the cost-effective movement of freight and goods; the diversion of traffic to local streets and arterials; and possible financial hardship to commuters. The legislature further finds that these potential economic and social impacts require comprehensive legislative review prior to advancement of the project and directs that the secretary not proceed with the implementation of the project without prior approval of the legislature.

The department of transportation should be encouraged to take advantage of new opportunities provided by federal legislation under section 1012 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). That section establishes a new program authorizing federal participation in construction or improvement or improvement of publicly or privately owned toll roads, bridges, and tunnels, and allows states to leverage available federal funds as a means for attracting private sector capital. [1995 2nd sp.s. c 19 § 1; 1993 c 370 § 1.]

Effective date—1995 2nd sp.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 16, 1995]." [1995 2nd sp.s. c 19 § 5.]

47.46.011 Finding—Intent—2002 c 114. The legislature finds that greater flexibility to provide state financing for projects developed under chapter 47.46 RCW will result in better use of public resources, lower financing costs, and potential savings to taxpayers. The legislature intends to: Clarify the ability of the department of transportation to use public and private financing for projects selected and developed under chapter 47.46 RCW; provide the department with specific means of state financing where that financing is in the public's best interest; provide citizens living in the

impacted areas a statutory mechanism to review proposed toll rates and provide input before adoption of toll schedules by the toll authority; and prevent unreasonable delay of critical transportation projects that are essential for public safety and welfare. [2002 c 114 § 1.]

Captions not law—2002 c 114: "Captions used in this act do not constitute any part of the law." [2002 c 114 § 26.]

47.46.020 Definition. As used in this chapter, "transportation systems and facilities" means capital-related improvements and additions to the state's transportation infrastructure, including but not limited to highways, roads, bridges, vehicles, and equipment, marine-related facilities, vehicles, and equipment, park and ride lots, transit stations and equipment, transportation management systems, and other transportation-related investments. [1993 c 370 § 2.]

47.46.030 Demonstration projects—Selection—Public involvement. (1) The secretary or a designee shall solicit proposals from, and negotiate and enter into agreements with, private entities to undertake as appropriate, together with the department and other public entities, all or a portion of the study, planning, design, construction, operation, and maintenance of transportation systems and facilities, using in whole or in part public or private sources of financing.

The public-private initiatives program may develop up to six demonstration projects. Each proposal shall be weighed on its own merits, and each of the six agreements shall be negotiated individually, and as a stand-alone project.

(2) If project proposals selected prior to September 1, 1994, are terminated by the public or private sectors, the department shall not select any new projects, including project proposals submitted to the department prior to September 1, 1994, and designated by the transportation commission as placeholder projects, after June 16, 1995, until June 30, 1997.

The department, in consultation with the legislative transportation committee, shall conduct a program and fiscal audit of the public-private initiatives program for the biennium ending June 30, 1997. The department shall submit a progress report to the legislative transportation committee on the program and fiscal audit by June 30, 1996, with preliminary and final audit reports due December 1, 1996, and June 30, 1997, respectively.

The department shall develop and submit a proposed public involvement plan to the 1997 legislature to identify the process for selecting new potential projects and the associated costs of implementing the plan. The legislature must adopt the public involvement plan before the department may proceed with any activity related to project identification and selection. Following legislative adoption of the public involvement plan, the department is authorized to implement the plan and to identify potential new projects.

The public involvement plan for projects selected after June 30, 1997, shall, at a minimum, identify projects that: (a) Have the potential of achieving overall public support among users of the projects, residents of communities in the vicinity of the projects, and residents of communities impacted by the projects; (b) meet a state transportation need; (c) provide a significant state benefit; and (d) provide competition among proposers and maximum cost benefits to users. Prospective

projects may include projects identified by the department or submitted by the private sector.

Projects that meet the minimum criteria established under this section and the requirements of the public involvement plan developed by the department and approved by the legislature shall be submitted to the Washington state transportation commission for its review. Forty-five days after the submission to the commission of the list of eligible projects, the secretary is authorized to solicit proposals for the eligible project.

(3) Prior to entering into agreements with private entities under the requirements of RCW 47.46.040 for any project proposal selected before September 1, 1994, or after June 30, 1997, except as provided for in subsections (11) and (12) of this section, the department shall require an advisory vote as provided under subsections (5) through (9) of this section.

(4) The advisory vote shall apply to project proposals selected prior to September 1, 1994, or after June 30, 1997, that receive public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project collected and submitted in accordance with the dates established in subsections (11) and (12) of this section. The advisory vote shall be on the preferred alternative identified under the requirements of chapter 43.21C RCW and, if applicable, the national environmental policy act, 42 U.S.C. 4321 et seq. The execution by the department of the advisory vote process established in this section is subject to the prior appropriation of funds by the legislature for the purpose of conducting environmental impact studies, a public involvement program, local involvement committee activities, traffic and economic impact analyses, engineering and technical studies, and the advisory vote.

(5) In preparing for the advisory vote, the department shall conduct a comprehensive analysis of traffic patterns and economic impact to define the geographical boundary of the project area that is affected by the imposition of tolls or user fees authorized under this chapter. The area so defined is referred to in this section as the affected project area. In defining the affected project area, the department shall, at a minimum, undertake: (a) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (b) an analysis of the anticipated traffic diversion patterns; (c) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (d) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (e) an analysis of the relationship of the project to state transportation needs and benefits.

(6)(a) After determining the definition of the affected project area, the department shall establish a committee comprised of individuals who represent cities and counties in the affected project area; organizations formed to support or oppose the project; and users of the project. The committee shall be named the public-private local involvement committee, and be known as the local involvement committee.

(b) The members of the local involvement committee shall be: (i) An elected official from each city within the affected project area; (ii) an elected official from each county within the affected project area; (iii) two persons from each county within the affected project area who represent an organization formed in support of the project, if the organization exists; (iv) two persons from each county within the affected project area who represent an organization formed to oppose the project, if the organization exists; and (v) four public members active in a statewide transportation organization. If the committee makeup results in an even number of committee members, there shall be an additional appointment of an elected official from the county in which all, or the greatest portion of the project is located.

(c) City and county elected officials shall be appointed by a majority of the members of the city or county legislative authorities of each city or county within the affected project area, respectively. The county legislative authority of each county within the affected project area shall identify and validate organizations officially formed in support of or in opposition to the project and shall make the appointments required under this section from a list submitted by the chair of the organizations. Public members shall be appointed by the governor. All appointments to the local involvement committee shall be made and submitted to the department of transportation no later than January 1, 1996, for projects selected prior to September 1, 1994, and no later than thirty days after the affected project area is defined for projects selected after June 30, 1997. Vacancies in the membership of the local involvement committee shall be filled by the appointing authority under (b)(i) through (v) of this subsection for each position on the committee.

(d) The local involvement committee shall serve in an advisory capacity to the department on all matters related to the execution of the advisory vote.

(e) Members of the local involvement committee serve without compensation and may not receive subsistence, lodging expenses, or travel expenses.

(7) The department shall conduct a minimum thirty-day public comment period on the definition of the geographical boundary of the project area. The department, in consultation with the local involvement committee, shall make adjustments, if required, to the definition of the geographical boundary of the affected project area, based on comments received from the public. Within fourteen calendar days after the public comment period, the department shall set the boundaries of the affected project area in units no smaller than a precinct as defined in RCW 29A.04.121.

(8) The department, in consultation with the local involvement committee, shall develop a description for selected project proposals. After developing the description of the project proposal, the department shall publish the project proposal description in newspapers of general circulation for seven calendar days in the affected project area. Within fourteen calendar days after the last day of the publication of the project proposal description, the department shall transmit a copy of the map depicting the affected project area and the description of the project proposal to the county auditor of the county in which any portion of the affected project area is located.

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(9) Upon receipt of the map and the description of the project proposal, the county auditor shall, within thirty days, verify the precincts that are located within the affected project area. The county auditor shall prepare the text identifying and describing the affected project area and the project proposal using the definition of the geographical boundary of the affected project area and the project description submitted by the department and shall set an election date for the submission of a ballot proposition authorizing the imposition of tolls or user fees to implement the proposed project within the affected project area, which date may be the next succeeding general election to be held in the state, or at a special election, if requested by the department. The text of the project proposal must appear in a voter's pamphlet for the affected project area. The department shall pay the costs of publication and distribution. The special election date must be the next date for a special election provided under RCW 29A.04.330 that is at least sixty days but, if authorized under RCW 29A.04.330, no more than ninety days after the receipt of the final map and project description by the auditor. The department shall pay the cost of an election held under this section.

(10) Notwithstanding any other provision of law, the department may contract with a private developer of a selected project proposal to conduct environmental impact studies, a public involvement program, and engineering and technical studies funded by the legislature. For projects subject to this subsection, the department shall not enter into an agreement under RCW 47.46.040 prior to the advisory vote on the preferred alternative.

(11) Subsections (5) through (9) of this section shall not apply to project proposals selected prior to September 1, 1994, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted after September 1, 1994, and by thirty calendar days after June 16, 1995.

(12) Subsections (5) through (9) of this section shall not apply to project proposals selected after June 30, 1997, that have no organized public opposition as demonstrated by the submission to the department of original petitions bearing at least five thousand signatures of individuals opposing the project, collected and submitted by ninety calendar days after project selection. [2005 c 319 § 132; 2002 c 114 § 3; 1996 c 280 § 1; 1995 2nd sp.s. c 19 § 2; 1993 c 370 § 3.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1996 c 280: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 280 § 2.]

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.040 Demonstration projects—Terms of agreements—Public participation. (1) The secretary or a designee shall consult with legal, financial, and other experts within and outside state government in the negotiation and development of the agreements.

(2) Agreements may provide for private ownership of the projects during the construction period. After completion and final acceptance of each project or discrete segment thereof, the agreement may provide for state ownership of the transportation systems and facilities and lease to the private entity unless the state elects to provide for ownership of the facility by the private entity during the term of the agreement.

The state may lease each of the demonstration projects, or applicable project segments, to the private entities for operating purposes for up to fifty years.

(3) The department may exercise any power possessed by it to facilitate the development, construction, financing operation, and maintenance of transportation projects under this section. Agreements for maintenance services entered into under this section shall provide for full reimbursement for services rendered by the department or other state agencies. Agreements for police services for projects, involving state highway routes, developed under agreements shall be entered into with the Washington state patrol. The agreement for police services shall provide that the state patrol will be reimbursed for costs on a comparable basis with the costs incurred for comparable service on other state highway routes. The department may provide services for which it is reimbursed, including but not limited to preliminary planning, environmental certification, and preliminary design of the demonstration projects.

(4) The plans and specifications for each project constructed under this section shall comply with the department's standards for state projects. A facility constructed by and leased to a private entity is deemed to be a part of the state highway system for purposes of identification, maintenance, and enforcement of traffic laws and for the purposes of applicable sections of this title. Upon reversion of the facility to the state, the project must meet all applicable state standards. Agreements shall address responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable state standards upon reversion of the facility to the state.

(5) For the purpose of facilitating these projects and to assist the private entity in the financing, development, construction, and operation of the transportation systems and facilities, the agreements may include provisions for the department to exercise its authority, including the lease of facilities, rights-of-way, and airspace, exercise of the power of eminent domain, granting of development rights and opportunities, granting of necessary easements and rights of access, issuance of permits and other authorizations, protection from competition, remedies in the event of default of either of the parties, granting of contractual and real property rights, liability during construction and the term of the lease, authority to negotiate acquisition of rights-of-way in excess of appraised value, and any other provision deemed necessary by the secretary.

(6) The agreements entered into under this section may include provisions authorizing the state to grant necessary easements and lease to a private entity existing rights-of-way or rights-of-way subsequently acquired with public or private financing. The agreements may also include provisions to lease to the entity airspace above or below the right-of-way associated or to be associated with the private entity's transportation facility. In consideration for the reversion rights in

these privately constructed facilities, the department may negotiate a charge for the lease of airspace rights during the term of the agreement for a period not to exceed fifty years. If, after the expiration of this period, the department continues to lease these airspace rights to the private entity, it shall do so only at fair market value. The agreement may also provide the private entity the right of first refusal to undertake projects utilizing airspace owned by the state in the vicinity of the public-private project.

(7) Agreements under this section may include any contractual provision that is necessary to protect the project revenues required to repay the costs incurred to study, plan, design, finance, acquire, build, install, operate, enforce laws, and maintain toll highways, bridges, and tunnels and which will not unreasonably inhibit or prohibit the development of additional public transportation systems and facilities. Agreements under this section must secure and maintain liability insurance coverage in amounts appropriate to protect the project's viability and may address state indemnification of the private entity for design and construction liability where the state has approved relevant design and construction plans.

(8) Agreements entered into under this section shall include a process that provides for public involvement in decision making with respect to the development of the projects.

(9)(a) In carrying out the public involvement process required in subsection (8) of this section, the private entity shall proactively seek public participation through a process appropriate to the characteristics of the project that assesses and demonstrates public support among: Users of the project, residents of communities in the vicinity of the project, and residents of communities impacted by the project.

(b) The private entity shall conduct a comprehensive public involvement process that provides, periodically throughout the development and implementation of the project, users and residents of communities in the affected project area an opportunity to comment upon key issues regarding the project including, but not limited to: (i) Alternative sizes and scopes; (ii) design; (iii) environmental assessment; (iv) right-of-way and access plans; (v) traffic impacts; (vi) tolling or user fee strategies and tolling or user fee ranges; (vii) project cost; (viii) construction impacts; (ix) facility operation; and (x) any other salient characteristics.

(c) If the affected project area has not been defined, the private entity shall define the affected project area by conducting, at a minimum: (i) A comparison of the estimated percentage of residents of communities in the vicinity of the project and in other communities impacted by the project who could be subject to tolls or user fees and the estimated percentage of other users and transient traffic that could be subject to tolls or user fees; (ii) an analysis of the anticipated traffic diversion patterns; (iii) an analysis of the potential economic impact resulting from proposed toll rates or user fee rates imposed on residents, commercial traffic, and commercial entities in communities in the vicinity of and impacted by the project; (iv) an analysis of the economic impact of tolls or user fees on the price of goods and services generally; and (v) an analysis of the relationship of the project to state transportation needs and benefits.

The agreement may require an advisory vote by users of and residents in the affected project area.

(d) In seeking public participation, the private entity shall establish a local involvement committee or committees comprised of residents of the affected project area, individuals who represent cities and counties in the affected project area, organizations formed to support or oppose the project, if such organizations exist, and users of the project. The private entity shall, at a minimum, establish a committee as required under the specifications of RCW 47.46.030(6)(b) (ii) and (iii) and appointments to such committee shall be made no later than thirty days after the project area is defined.

(e) Local involvement committees shall act in an advisory capacity to the department and the private entity on all issues related to the development and implementation of the public involvement process established under this section.

(f) The department and the private entity shall provide the local involvement committees with progress reports on the status of the public involvement process including the results of an advisory vote, if any occurs.

(10) Nothing in this chapter limits the right of the secretary and his or her agents to render such advice and to make such recommendations as they deem to be in the best interests of the state and the public. [2005 c 319 § 133; 2002 c 114 § 16; 2001 c 64 § 14; 1995 2nd sp.s. c 19 § 3; 1993 c 370 § 4.]

Findings—Intent—Part headings—Effective dates—2005 c 319: See notes following RCW 43.17.020.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.050 Financial arrangements. (1) The department may enter into agreements using federal, state, and local financing in connection with the projects, including without limitation, grants, loans, and other measures authorized by section 1012 of ISTEA, and to do such things as necessary and desirable to maximize the funding and financing, including the formation of a revolving loan fund to implement this section.

(2) Agreements entered into under this section may authorize the private entity to lease the facilities within a designated area or areas from the state and to impose user fees or tolls within the designated area to allow a reasonable rate of return on investment, as established through a negotiated agreement between the state and the private entity. The negotiated agreement shall determine a maximum development fee and, where appropriate, a maximum rate of return on investment, based on project and financing characteristics. If the negotiated rate of return on investment or development fee is not affected, the private entity may establish and modify toll rates and user fees.

(3) Agreements that include a maximum rate of return may establish "incentive" rates of return beyond the negotiated maximum rate of return on investment. The incentive rates of return shall be designed to provide financial benefits to the affected public jurisdictions and the private entity, given the attainment of various safety, performance, or transportation demand management goals. The incentive rates of return shall be negotiated in the agreement.

(4) Agreements shall require that over the term of the ownership or lease the user fees or toll revenues be applied only to payment of:

(a) The capital outlay costs for the project, including the costs associated with planning, design, development, financing, construction, improvement, operations, toll collection, maintenance, and administration of the project;

(b) The reimbursement to the state for all costs associated with an election as required under RCW 47.46.030, the costs of project review and oversight, and technical and law enforcement services;

(c) The establishment of a fund to assure the adequacy of maintenance expenditures; and

(d) A reasonable return on investment to the private entity. A negotiated agreement shall not extend the term of the ownership or lease beyond the period of time required for payment of the private entity's capital outlay costs for the project under this subsection. [2002 c 114 § 17; 1995 2nd sp.s. c 19 § 4; 1993 c 370 § 5.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1995 2nd sp.s. c 19: See note following RCW 47.46.010.

47.46.060 Deferral of taxes—Application—Repayment. (1) Any person, including the department of transportation and any private entity or entities, may apply for deferral of taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment which will become a part of, and the rental of equipment for use in the state route number 16 corridor improvements project under this chapter. Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application shall contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on the project.

(3) The department of transportation or a private entity granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax. The project is operationally complete under this section when the collection of tolls is commenced for the state route number 16 improvements covered by the deferral.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of the department of transportation or a private entity granted a deferral under this section.

(5) Interest shall not be charged on any taxes deferred under this section for the period of deferral, although all other

penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this section. The debt for deferred taxes is not extinguished by insolvency or other failure of the private entity. Transfer of ownership does not terminate the deferral.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section. [2002 c 114 § 18; 1998 c 179 § 4.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Finding—1998 c 179: See note following RCW 35.21.718.

47.46.070 Use of state bonds on certain projects. (1)

To the extent that the legislature specifically appropriates funding for a project developed under this chapter using the proceeds of bonds issued by the state, an agreement for the design or construction of the project entered into by the secretary must incorporate provisions that are consistent with the use of the state financing provided by the appropriation.

(2) The secretary shall amend existing agreements or execute new agreements to comply with subsection (1) of this section.

(3) If the secretary is unable to reach agreement with other parties on contractual provisions providing for state financing, the secretary shall not enter into an agreement, or shall take no action with respect to an agreement, or shall exercise termination provisions, whichever option in the secretary's determination will result in the lowest net cost to the state. [2002 c 114 § 4.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.080 State toll facilities authorized for projects.

The department may provide for the establishment and construction of state toll bridge facilities upon any public highways of this state together with approaches to them under agreements entered into under this chapter to develop such facilities. A state toll bridge facility authorized under this section includes, but is not limited to, the construction of an additional toll bridge, including approaches, adjacent to and within two miles of an existing bridge, the imposition of tolls on both bridges, and the operation of both bridges as one toll facility. [2002 c 114 § 5.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.090 Citizen advisory committee—Tolls. (1) A

citizen advisory committee must be created for any project developed under this chapter that imposes toll charges for use of a transportation facility. The governor shall appoint nine members to the committee, all of whom must be permanent residents of the affected project area as defined for each project. Members of the committee shall serve without compensation.

(2) The citizen advisory committee shall serve in an advisory capacity to the commission on all matters related to the imposition of tolls including, but not limited to, (a) the feasibility of providing discounts to frequent users, electronic

transponder users, senior citizens, or students; (b) the tradeoff of lower tolls versus the early retirement of debt; and (c) a consideration of variable, or time of day pricing.

(3) No toll charge may be imposed or modified unless the citizen advisory committee has been given at least twenty days to review and comment on any proposed toll charge schedule. In setting toll rates, the commission shall give consideration to any recommendations of the citizen advisory committee. [2005 c 329 § 1; 2002 c 114 § 6.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.091 Tacoma Narrows bridge citizen advisory committee.

The Tacoma Narrows bridge citizen advisory committee is hereby created as directed under RCW 47.46.090. The advisory committee members shall be appointed proportionately, to the extent practicable, from those areas from which the majority of the trips originate on the bridge according to the latest traffic analysis by the department. [2005 c 329 § 2.]

47.46.100 Tolls—Setting—Lien on. (1) The commission shall fix the rates of toll and other charges for all toll bridges built under this chapter that are financed primarily by bonds issued by the state. Subject to RCW 47.46.090, the commission may impose and modify toll charges from time to time as conditions warrant.

(2) In establishing toll charges, the commission shall give due consideration to any required costs for operating and maintaining the toll bridge or toll bridges, including the cost of insurance, and to any amount required by law to meet the redemption of bonds and interest payments on them.

(3) The toll charges must be imposed in amounts sufficient to:

(a) Provide annual revenue sufficient to provide for annual operating and maintenance expenses, except as provided in RCW 47.56.245;

(b) Make payments required under RCW 47.56.165 and 47.46.140, including insurance costs and the payment of principal and interest on bonds issued for any particular toll bridge or toll bridges; and

(c) Repay the motor vehicle fund under RCW 47.46.110, 47.56.165, and 47.46.140.

(4) The bond principal and interest payments, including repayment of the motor vehicle fund for amounts transferred from that fund to provide for such principal and interest payments, constitute a first direct and exclusive charge and lien on all tolls and other revenues from the toll bridge concerned, subject to operating and maintenance expenses. [2002 c 114 § 7.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.105 Tolls—Collection. (1) Tolls may be collected by any system that identifies the correct toll and collects the payment. Systems may include manual cash collection, electronic toll collection, and photo monitoring systems.

(a) "Electronic toll collection system" means a system of collecting tolls or charges that is capable of charging the account of the toll patron the appropriate toll or charge by

electronic transmission from the motor vehicle to the toll collection system, which information is used to charge the appropriate toll or charge to the patron's account. The department shall adopt rules that allow an open standard for automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits. The rules must also allow for multiple vendors providing electronic payment devices or transponders as technology permits.

(b) "Photo monitoring system" means a vehicle sensor installed to work in conjunction with an electronic toll collection system in a toll facility that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated within a toll facility.

(c) No photograph, digital photograph, microphotograph, videotape, or other recorded image may be used for any purpose other than toll enforcement, nor retained longer than necessary to verify that tolls are paid, or to enforce toll evasion violations.

(2) The department shall adopt rules to govern toll collection. [2004 c 230 § 2.]

47.46.110 Tolls—Term, use. (1) The commission shall retain toll charges on any existing and future facilities constructed under this chapter and financed primarily by bonds issued by the state until:

(a) All costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund have been fully repaid, except as provided in subsection (2)(b) of this section;

(b) Obligations incurred in constructing that facility have been fully paid; and

(c) The motor vehicle fund is fully repaid under RCW 47.46.140.

(2) This section does not:

(a) Prohibit the use of toll revenues to fund maintenance, operations, or management of facilities constructed under this chapter except as prohibited by RCW 47.56.245;

(b) Require repayment of funds specifically appropriated as a nonreimbursable state financial contribution to a project.

(3) Notwithstanding the provisions of subsection (2)(a) of this section, upon satisfaction of the conditions enumerated in subsection (1) of this section:

(a) The facility must be operated as a toll-free facility; and

(b) The operation, maintenance, upkeep, and repair of the facility must be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington. [2002 c 114 § 8.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.120 Toll increases in excess of fiscal growth factor. Pursuant to RCW 43.135.055, the legislature authorizes (2008 Ed.)

the transportation commission to increase bridge tolls in excess of the fiscal growth factor. [2002 c 114 § 9.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.130 Use of state bond proceeds. Proceeds of the sale of bonds issued by the state for projects constructed under this chapter must be deposited in the state treasury to the credit of a special account designated for those purposes. Those proceeds must be expended only for the purposes enumerated in this chapter, for payment of the expense incurred in the issuance and sale of any such bonds, and to repay the motor vehicle fund for any sums advanced to pay the cost of surveys, location, design, development, right-of-way, and other activities related to the financing and construction of the bridge and its approaches. [2002 c 114 § 10.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.140 Repayment of motor vehicle fund from toll charges. Toll charges must be used to repay the motor vehicle fund consistent with RCW 47.56.165 for any amounts transferred from the motor vehicle fund to the highway bond retirement fund under RCW 47.10.847 to provide for bond retirement and interest on bonds issued for the Tacoma Narrows public-private initiative project. Toll charges must remain on any facility financed by bonds issued by the state for a length of time necessary to repay the motor vehicle fund for any amounts expended from that fund for the design, development, right-of-way, financing, construction, maintenance, repair, or operation of the toll facility or for amounts transferred from the motor vehicle fund to the highway bond retirement fund under RCW 47.10.847 to provide for bond retirement and interest on bonds issued for the Tacoma Narrows public-private initiative project. Funds specifically appropriated as a nonreimbursable state financial contribution to the project do not require repayment. [2002 c 114 § 12.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.150 Alteration not a new proposal. If a proposal is or has been selected for the design, development, construction, maintenance, or operation of transportation systems or facilities under this chapter, subsequent agreements may be made to implement portions of the proposal that modify the proposal or that do not incorporate all the features of the proposal. Any such modified agreement does not require the solicitation or consideration of additional proposals for all or any portion of the services rendered under that modified agreement. Modified agreements may provide for the reimbursement of expenses and fees incurred under earlier agreements. [2002 c 114 § 13.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.160 Applicable rules and statutes. All projects designed, constructed, and operated under this chapter must comply with all applicable rules and statutes in existence at the time the agreement is executed, including but not limited

to the following provisions: Chapter 39.12 RCW, this title, *RCW 41.06.380, chapter 47.64 RCW, RCW 49.60.180, and 49 C.F.R. Part 21. [2002 c 114 § 14.]

*Reviser's note: RCW 41.06.380 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.170 Application of RCW 47.46.040 and 47.46.050. RCW 47.46.040 and 47.46.050 apply only to those agreements that include private sources of financing in whole or in part. [2002 c 114 § 15.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.180 Legislative oversight committee. A legislative oversight committee is established to monitor and report on the progress, execution, and efficiency of design-build contracts issued under this chapter. The legislative oversight committee will be comprised of one legislator from each caucus of each chamber of the legislature. The leadership of each caucus shall appoint one member from his or her respective caucus to serve on the legislative oversight committee authorized by this section. [2002 c 114 § 25.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.46.900 Effective date—1993 c 370. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 370 § 7.]

Chapter 47.48 RCW

CLOSING HIGHWAYS AND RESTRICTING TRAFFIC

Sections

47.48.010	Closure or restriction authorized—Restriction for urban public transportation system use.
47.48.020	Notice of closure or restriction—Emergency closure.
47.48.031	Emergency closures by state patrol.
47.48.040	Penalty.
47.48.050	Transportation of radioactive or hazardous cargo—Definition—Violation, penalty.
47.48.060	Registry of persons allowed access to property to conduct fire prevention despite closures—Liability.

Closure of Camas slough: RCW 88.28.055.

47.48.010 Closure or restriction authorized—Restriction for urban public transportation system use. Whenever the condition of any state highway, county road, or city street, either newly or previously constructed, altered, repaired, or improved, or any part thereof is such that for any reason its unrestricted use or continued use by vehicles or by any class of vehicles will greatly damage that state highway, county road, or city street, or will be dangerous to traffic, or it is being constructed, altered, repaired, improved, or maintained in such a manner as to require that use of the state highway, county road, or city street, or any portion thereof be closed or restricted as to all vehicles or any class of vehicles for any period of time, the secretary, if it is a state highway,

the county legislative authority, if it is a county road, or the governing body of any city or town, if it is a city street, is authorized to close the state highway, county road, or city street, as the case may be, to travel by all vehicles or by any class of vehicles, or may declare a lower maximum speed for any class of vehicles, for such a definite period as it shall determine. Nothing in the law of this state prevents the secretary, county legislative authority, or governing body of any city or town from classifying vehicles according to gross weight, axle weight, height, width, length, braking area, performance, vehicle combinations, or tire equipment for the purposes of this section, or from restricting the use of any portion of any state highway, county road, or city street, as the case may be, to its use by an urban public transportation system. [1984 c 7 § 238; 1977 ex.s. c 216 § 1; 1967 c 108 § 9; 1961 c 13 § 47.48.010. Prior: 1937 c 53 § 65; RRS § 6400-65; prior: 1929 c 214 § 1; 1927 c 232 § 1; 1921 c 21 § 1; RRS § 6839.]

Severability—1984 c 7: See note following RCW 47.01.141.

Restrictions on public highways to prevent damage: RCW 46.44.080.

Urban public transportation system defined: RCW 47.04.082.

47.48.020 Notice of closure or restriction—Emergency closure. Before any state highway, county road, or city street is closed to, or the maximum speed limit thereon reduced for, all vehicles or any class of vehicles, a notice thereof including the effective date shall be published in one issue of a newspaper of general circulation in the county or city or town in which such state highway, county road, or city street or any portion thereof to be closed is located; and a like notice shall be posted on or prior to the date of publication of such notice in a conspicuous place at each end of the state highway, county road, or city street or portion thereof to be closed or restricted: PROVIDED, That no such state highway, county road, or city street or portion thereof may be closed sooner than three days after the publication and the posting of the notice herein provided for: PROVIDED, HOWEVER, That in cases of emergency or conditions in which the maximum time the closure will be in effect is twelve hours or less the proper officers may, without publication or delay, close state highways, county roads, and city streets temporarily by posting notices at each end of the closed portion thereof and at all intersecting state highways if the closing be of a portion of a state highway, at all intersecting state highways and county roads if the closing be a portion of a county road, and at all intersecting city streets if the closing be of a city street. In all emergency cases or conditions in which the maximum time the closure will be in effect is twelve hours or less, as herein provided, the orders of the proper authorities shall be immediately effective. [1982 c 145 § 5; 1977 ex.s. c 216 § 2; 1961 c 13 § 47.48.020. Prior: 1937 c 53 § 66, part; RRS § 6400-66, part; prior: 1921 c 21 § 2, part; RRS § 6840, part. Formerly RCW 47.48.020 and 47.48.030.]

47.48.031 Emergency closures by state patrol. (1) Whenever the chief or another officer of the state patrol determines on the basis of a traffic investigation that an emergency exists or less than safe road conditions exist due to human-caused or natural disasters or extreme weather condi-

tions upon any state highway, or any part thereof, state patrol officers may determine and declare closures and temporarily reroute traffic from any such affected highway.

(2) Any alteration of vehicular traffic on any state highway due to closure in emergency conditions is effective until such alteration has been approved or altered by the secretary of transportation or other department of transportation authorities in their local respective jurisdictions.

(3) All state highway closures by officers of the state patrol shall be immediately reported to the secretary of transportation and to other authorities in their local jurisdictions. [1981 c 197 § 1.]

47.48.040 Penalty. Except as provided under RCW 47.48.060, when any state highway, county road, or city street or portion thereof shall have been closed, or when the maximum speed limit thereon shall have been reduced, for all vehicles or any class of vehicles, as by law provided, any person, firm, or corporation disregarding such closing or reduced speed limit shall be guilty of a misdemeanor, and shall in addition to any penalty for violation of the provisions of this section, be liable in any civil action instituted in the name of the state of Washington or the county or city or town having jurisdiction for any damages occasioned to such state highway, county road, or city street, as the case may be, as the result of disregarding such closing or reduced speed limit. [2007 c 252 § 3; 1977 ex.s. c 216 § 3; 1961 c 13 § 47.48.040. Prior: 1937 c 53 § 67; RRS § 6400-67; prior: 1921 c 21 § 3; RRS § 6841.]

47.48.050 Transportation of radioactive or hazardous cargo—Definition—Violation, penalty. The chief or other officer of the Washington state patrol may prohibit the transportation of placarded radioactive or hazardous cargo over the highways of the state, or a portion thereof, if weather or other conditions create a substantial risk to public safety. For the purposes of this section hazardous cargo shall mean hazardous materials as defined in RCW 70.136.020(1). Violation of an order issued under this section constitutes a misdemeanor. [1983 c 205 § 1.]

Regulations on notice of prohibition on radioactive or hazardous cargo: RCW 47.01.270.

47.48.060 Registry of persons allowed access to property to conduct fire prevention despite closures—Liability. (1) Each county sheriff may, until a model policy pursuant to RCW 36.28A.140 is developed and implemented in the sheriff's county, establish and maintain a registry of persons authorized to access their land during a forest [fire] or wild-fire. Upon request, the sheriff must include in the registry persons who demonstrate ownership of agriculture land or forest land within the county and who possess equipment that may be used for fire prevention or suppression activities. Persons included in the registry must be allowed to access their property to conduct fire prevention or suppression activities despite the closure of any state highway, county road, or city street under this chapter.

(2)(a) Residents, landowners, and others in lawful possession and control of land in the state are not liable for unin-

tentional injuries or loss suffered by persons entering upon, or passing through, their land pursuant to this section.

(b) Federal, state, and local agencies, and their employees, are not liable for any action, or failure to act, when facilitating the access described in this section. [2007 c 252 § 2.]

Chapter 47.50 RCW

HIGHWAY ACCESS MANAGEMENT

Sections

47.50.010	Findings—Access.
47.50.020	Definitions—Access.
47.50.030	Regulating connections.
47.50.040	Access permits.
47.50.050	Permit fee.
47.50.060	Permit review process.
47.50.070	Permit conditions.
47.50.080	Permit removal.
47.50.090	Access management standards.

47.50.010 Findings—Access. (1) The legislature finds that:

(a) Regulation of access to the state highway system is necessary in order to protect the public health, safety, and welfare, to preserve the functional integrity of the state highway system, and to promote the safe and efficient movement of people and goods within the state;

(b) The development of an access management program, in accordance with this chapter, which coordinates land use planning decisions by local governments and investments in the state highway system, will serve to control the proliferation of connections and other access approaches to and from the state highway system. Without such a program, the health, safety, and welfare of the residents of this state are at risk, due to the fact that uncontrolled access to the state highway system is a significant contributing factor to the congestion and functional deterioration of the system; and

(c) The development of an access management program in accordance with this chapter will enhance the development of an effective transportation system and increase the traffic-carrying capacity of the state highway system and thereby reduce the incidences of traffic accidents, personal injury, and property damage or loss; mitigate environmental degradation; promote sound economic growth and the growth management goals of the state; reduce highway maintenance costs and the necessity for costly traffic operations measures; lengthen the effective life of transportation facilities in the state, thus preserving the public investment in such facilities; and shorten response time for emergency vehicles.

(2) In furtherance of these findings, all state highways are hereby declared to be controlled access facilities as defined in RCW 47.50.020, except those highways that are defined as limited access facilities in chapter 47.52 RCW.

(3) It is the policy of the legislature that:

(a) The access rights of an owner of property abutting the state highway system are subordinate to the public's right and interest in a safe and efficient highway system; and

(b) Every owner of property which abuts a state highway has a right to reasonable access to that highway, unless such access has been acquired pursuant to chapter 47.52 RCW, but may not have the right of a particular means of access. The right of access to the state highway may be restricted if, pur-

suant to local regulation, reasonable access can be provided to another public road which abuts the property.

(4) The legislature declares that it is the purpose of this chapter to provide a coordinated planning process for the permitting of access points on the state highway system to effectuate the findings and policies under this section.

(5) Nothing in this chapter shall affect the right to full compensation under section 16, Article I of the state Constitution. [1991 c 202 § 1.]

Captions not law—Effective date—Severability—1991 c 202: "Section captions and part headings as used in this act do not constitute any part of the law." [1991 c 202 § 22.]

Effective date—1991 c 202: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 202 § 24.]

Severability—1991 c 202: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 202 § 25.]

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

(1) "Controlled access facility" means a transportation facility to which access is regulated by the governmental entity having jurisdiction over the facility. Owners or occupants of abutting lands and other persons have a right of access to or from such facility at such points only and in such manner as may be determined by the governmental entity.

(2) "Connection" means approaches, driveways, turn-outs, or other means of providing for the right of access to or from controlled access facilities on the state highway system.

(3) "Permitting authority" means the department for connections in unincorporated areas or a city or town within incorporated areas which are authorized to regulate access to state highways pursuant to chapter 47.24 RCW. [1991 c 202 § 2.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.030 Regulating connections. (1) Vehicular access and connections to or from the state highway system shall be regulated by the permitting authority in accordance with the provisions of this chapter in order to protect the public health, safety, and welfare.

(2) The department shall by July 1, 1992, adopt administrative procedures pursuant to chapter 34.05 RCW which establish state highway access standards and rules for its issuance and modification of access permits, closing of unpermitted connections, revocation of permits, and waiver provisions in accordance with this chapter. The department shall consult with the association of Washington cities and obtain concurrence of the city design standards committee as established by RCW 35.78.030 in the development and adoption of rules for access standards for city streets designated as state highways under chapter 47.24 RCW.

(3) Cities and towns shall, no later than July 1, 1993, adopt standards for access permitting on streets designated as state highways which meet or exceed the department's standards, provided that such standards may not be inconsistent with standards adopted by the department. [1991 c 202 § 3.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.040 Access permits. (1) No connection to a state highway shall be constructed or altered without obtaining an access permit in accordance with this chapter in advance of such action. A permitting authority has the authority to deny access to the state highway system at the location specified in the permit until the permittee constructs or alters the connection in accordance with the permit requirements.

(2) The cost of construction or alteration of a connection shall be borne by the permittee, except for alterations which are not required by law or administrative rule, but are made at the request of and for the convenience of the permitting authority. The permittee, however, shall bear the cost of alteration of any connection which is required by the permitting authority due to increased or altered traffic flows generated by changes in the permittee's facilities or nature of business conducted at the location specified in the permit.

(3) Except as otherwise provided in this chapter, an unpermitted connection is subject to closure by the appropriate permitting authority which shall have the right to install barriers across or remove the connection. When the permitting authority determines that a connection is unpermitted and subject to closure, it shall provide reasonable notice of its impending action to the owner of property served by the connection. The permitting authority's procedures for providing notice and preventing the operation of unpermitted connections shall be adopted by rule. [1991 c 202 § 4.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.050 Permit fee. The department shall establish by rule a schedule of fees for permit applications made to the department. The fee shall be nonrefundable and shall be used only to offset the costs of administering the access permit review process and the costs associated with administering the provisions of this chapter. [1991 c 202 § 5.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.060 Permit review process. The review process for access permit applications made by the department shall be as follows: Any person seeking an access permit shall file an application with the department. The department by rule shall establish application form and content requirements. The fee required by RCW 47.50.050 must accompany the applications. [1991 c 202 § 6.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.070 Permit conditions. The permitting authority may issue a permit subject to any conditions necessary to carry out the provisions of this chapter, including, but not limited to, requiring the use of a joint-use connection. The permitting authority may revoke a permit if the applicant fails to comply with the conditions upon which the issuance of the permit was predicated. [1991 c 202 § 7.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.080 Permit removal. (1) Unpermitted connections to the state highway system in existence on July 1, 1990, shall not require the issuance of a permit and may continue to provide access to the state highway system, unless the permitting authority determines that such a connection does not meet minimum acceptable standards of highway safety. However, a permitting authority may require that a permit be obtained for such a connection if a significant change occurs in the use, design, or traffic flow of the connection or of the state highway to which it provides access. If a permit is not obtained, the connection may be closed pursuant to RCW 47.50.040.

(2) Access permits granted prior to adoption of the permitting authorities' standards shall remain valid until modified or revoked. Access connections to state highways identified on plats and subdivisions approved prior to July 1, 1991, shall be deemed to be permitted pursuant to chapter 202, Laws of 1991. The permitting authority may, after written notification, under rules adopted in accordance with RCW 47.50.030, modify or revoke an access permit granted prior to adoption of the standards by requiring relocation, alteration, or closure of the connection if a significant change occurs in the use, design, or traffic flow of the connection.

(3) The permitting authority may issue a nonconforming access permit after finding that to deny an access permit would leave the property without a reasonable means of access to the public roads of this state. Every nonconforming access permit shall specify limits on the maximum vehicular use of the connection and shall be conditioned on the availability of future alternative means of access for which access permits can be obtained. [1991 c 202 § 8.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

47.50.090 Access management standards. (1) The department shall develop, adopt, and maintain an access control classification system for all routes on the state highway system, the purpose of which shall be to provide for the implementation and continuing applications of the provision of this chapter.

(2) The principal component of the access control classification system shall be access management standards, the purpose of which shall be to provide specific minimum standards to be adhered to in the planning for and approval of access to state highways.

(3) The control classification system shall be developed consistent with the following:

(a) The department shall, no later than January 1, 1993, adopt rules setting forth procedures governing the implementation of the access control classification system required by this chapter. The rule shall provide for input from the entities described in (b) of this subsection as well as for public meetings to discuss the access control classification system. Nothing in this chapter shall affect the validity of the department's existing or subsequently adopted rules concerning access to the state highway system. Such rules shall remain in effect until repealed or replaced by the rules required by this chapter.

(b) The access control classification system shall be developed in cooperation with counties, cities and towns, the department of community, trade, and economic development,

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regional transportation planning organizations, and other local governmental entities, and for city streets designated as state highways pursuant to chapter 47.24 RCW, adopted with the concurrence of the city design standards committee.

(c) The rule required by this section shall provide that assignment of a road segment to a specific access category be made in consideration of the following criteria:

(i) Local land use plans and zoning, as set forth in comprehensive plans;

(ii) The current functional classification as well as potential future functional classification of each road on the state highway system;

(iii) Existing and projected traffic volumes;

(iv) Existing and projected state, local, and metropolitan planning organization transportation plans and needs;

(v) Drainage requirements;

(vi) The character of lands adjoining the highway;

(vii) The type and volume of traffic requiring access;

(viii) Other operational aspects of access;

(ix) The availability of reasonable access by way of county roads and city streets to a state highway; and

(x) The cumulative effect of existing and projected connections on the state highway system's ability to provide for the safe and efficient movement of people and goods within the state.

(d) Access management standards shall include, but not be limited to, connection location standards, safety factors, design and construction standards, desired levels of service, traffic control devices, and effective maintenance of the roads. The standards shall also contain minimum requirements for the spacing of connections, intersecting streets, roads, and highways.

(e) An access control category shall be assigned to each segment of the state highway system by July 1, 1993. [1995 c 399 § 124; 1991 c 202 § 9.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

Chapter 47.52 RCW

LIMITED ACCESS FACILITIES

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47.52.001 Declaration of policy. (1) Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed.

(2) Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

(3) It is, therefore, the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities, and to assure that the use of rights-of-way of limited access facilities accommodate the deployment of personal wireless service facilities consistent with these interests. [2004 c 131 § 1; 1961 c 13 § 47.52.001. Prior: 1951 c 167 § 1.]

47.52.010 "Limited access facility" defined. For the purposes of this chapter, a "limited access facility" is defined as a highway or street especially designed or designated for through traffic, and over, from, or to which owners or occupants of abutting land, or other persons, have no right or easement, or only a limited right or easement of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility, or for any other reason to accomplish the purpose of a limited access facility. Such highways or streets may be parkways, from which vehicles forming part of an urban public transportation system, trucks, buses, or other commercial vehicles may be excluded; or they may be freeways open to use by all customary forms of street and highway traffic, including vehicles forming a part of an urban

public transportation system. [1967 c 108 § 10; 1961 c 13 § 47.52.010. Prior: 1951 c 167 § 2; 1947 c 202 § 1; Rem. Supp. 1947 § 6402-60.]

Urban public transportation system defined: RCW 47.04.082.

47.52.011 "Existing highway" defined. For the purposes of this chapter, the term "existing highway" shall include all highways, roads and streets duly established, constructed, and in use. It shall not include new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated. [1961 c 13 § 47.52.011. Prior: 1951 c 167 § 3.]

47.52.020 Powers of highway authorities—State facility, county road crossings. The highway authorities of the state, counties, and incorporated cities and towns, acting alone or in cooperation with each other, or with any federal, state, or local agency, or any other state having authority to participate in the construction and maintenance of highways, may plan, designate, establish, regulate, vacate, alter, improve, construct, maintain, and provide limited access facilities for public use wherever the authority or authorities are of the opinion that traffic conditions, present or future, will justify the special facilities. However, upon county roads within counties, the state or county authorities are subject to the consent of the county legislative authority, except that where a state limited access facility crosses a county road the department may, without the consent of the county legislative authority, close off the county road so that it will not intersect such limited access facility.

The department may, in constructing or relocating any state highway, cross any county road at grade without obtaining the consent of the county legislative authority, and in so doing may revise the alignment of the county road to the extent that the department finds necessary for reasons of traffic safety or practical engineering considerations. [1984 c 7 § 239; 1961 c 13 § 47.52.020. Prior: 1957 c 235 § 2; prior: 1953 c 30 § 1; 1951 c 167 § 4; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.025 Additional powers—Controlling use of limited access facilities—High occupancy vehicle lanes. Highway authorities of the state, counties, and incorporated cities and towns, in addition to the specific powers granted in this chapter, shall also have, and may exercise, relative to limited access facilities, any and all additional authority, now or hereafter vested in them relative to highways or streets within their respective jurisdictions, and may regulate, restrict, or prohibit the use of such limited access facilities by various classes of vehicles or traffic. Such highway authorities may reserve any limited access facility or portions thereof, including designated lanes or ramps for the exclusive or preferential use of public transportation vehicles, privately owned buses, or private motor vehicles carrying not less than a specified number of passengers when such limitation will increase the efficient utilization of the highway facility or will aid in the conservation of energy resources. Regulations authorizing such exclusive or preferential use of a highway facility may be declared to be effective at all time or at spec-

ified times of day or on specified days. [1974 ex.s. c 133 § 1; 1961 c 13 § 47.52.025. Prior: 1957 c 235 § 3; prior: 1951 c 167 § 5; 1947 c 202 § 2, part; Rem. Supp. 1947 § 6402-61, part.]

High occupancy vehicle lanes: RCW 46.61.165.

47.52.026 Rules—Control of vehicles entering—Ramp closure, metering, or restrictions—Notice. (1) The department may adopt rules for the control of vehicles entering any state limited access highway as it deems necessary (a) for the efficient or safe flow of traffic traveling upon any part of the highway or connections with it or (b) to avoid exceeding federal, state, or regional air pollution standards either along the highway corridor or within an urban area served by the highway.

(2) Rules adopted by the department pursuant to subsection (1) of this section may provide for the closure of highway ramps or the metering of vehicles entering highway ramps or the restriction of certain classes of vehicles entering highway ramps (including vehicles with less than a specified number of passengers), and any such restrictions may vary at different times as necessary to achieve the purposes mentioned in subsection (1) of this section.

(3) Vehicle restrictions authorized by rules adopted pursuant to this section are effective when proper notice is given by any police officer, or by appropriate signals, signs, or other traffic control devices. [1984 c 7 § 240; 1974 ex.s. c 133 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.027 Standards and rules for interstate and defense highways—Construction, maintenance, access. The secretary of transportation may adopt design standards, rules, and regulations relating to construction, maintenance, and control of access of the national system of interstate and defense highways within this state as it deems advisable to properly control access thereto, to preserve the traffic-carrying capacity of such highways, and to provide the maximum degree of safety to users thereof. In adopting such standards, rules, and regulations the secretary shall take into account the policies, rules, and regulations of the United States secretary of commerce and the federal highway administration relating to the construction, maintenance, and operation of the system of interstate and defense highways. The standards, rules, and regulations so adopted by the secretary shall constitute the public policy of this state and shall have the force and effect of law. [1977 ex.s. c 151 § 62; 1961 c 13 § 47.52.027. Prior: 1959 c 319 § 35. Formerly RCW 47.28.160.]

Nonmotorized traffic may be prohibited: RCW 46.61.160.

47.52.040 Design—Entrance and exit restricted—Closure of intersecting roads. The highway authorities of the state, counties and incorporated cities and towns may so design any limited access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended; and the determination of design by such authority shall be conclusive and final. In this connection such highway authorities may divide and separate any limited access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical

separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person shall have any right of ingress or egress to, from, or across limited access facilities to or from abutting lands, except at designated points at which access may be permitted by the highway authorities upon such terms and conditions as may be specified from time to time: PROVIDED, That any intersecting streets, roads or highways, not made a part of such facility, shall be deemed closed at the right-of-way line by the designation and construction of said facility and without the consent of any other party or the necessity of any other legal proceeding for such closing, notwithstanding any laws to the contrary. [1961 c 13 § 47.52.040. Prior: 1955 c 75 § 1; 1947 c 202 § 3; Rem. Supp. 1947 § 6402-62.]

47.52.041 Closure of intersecting roads—Rights of abutters. No person, firm or corporation, private or municipal, shall have any claim against the state, city or county by reason of the closing of such streets, roads or highways as long as access still exists or is provided to such property abutting upon the closed streets, roads or highways. Circuity of travel shall not be a compensable item of damage. [1961 c 13 § 47.52.041. Prior: 1955 c 75 § 2.]

47.52.042 Closure of intersecting roads—Other provisions not affected. RCW 47.52.040 and 47.52.041 shall not be construed to affect provisions for establishment, notice, hearing and court review of any decision establishing a limited access facility on an existing highway pursuant to chapter 47.52 RCW. [1961 c 13 § 47.52.042. Prior: 1955 c 75 § 3.]

47.52.050 Acquisition of property. (1) For the purpose of this chapter the highway authorities of the state, counties and incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. Except as otherwise provided in subsection (2) of this section all property rights acquired under the provisions of this chapter shall be in fee simple. In the acquisition of property or property rights for any limited access facility or portion thereof, or for any service road in connection therewith, the state, county, incorporated city and town authority may, in its discretion, acquire an entire lot, block or tract of land, if by so doing the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for the limited access facility.

(2) The highway authorities of the state, counties, and incorporated cities and towns may acquire by gift, devise, purchase, or condemnation a three dimensional air space corridor in fee simple over or below the surface of the ground, together with such other property in fee simple and other property rights as are needed for the construction and opera-

tion of a limited access highway facility, but only if the acquiring authority finds that the proposal will not:

(a) impair traffic safety on the highway or interfere with the free flow of traffic; or

(b) permit occupancy or use of the air space above or below the highway which is hazardous to the operation of the highway. [1971 ex.s. c 39 § 1; 1961 c 13 § 47.52.050. Prior: 1947 c 202 § 4; Rem. Supp. 1947 § 6402-63.]

Award of costs in air space corridor acquisitions: RCW 8.25.073.

Right-of-way donations: Chapter 47.14 RCW.

47.52.060 Court process expedited. Court proceedings necessary to acquire property or property rights for purposes of this chapter shall take precedence over all other causes not involving the public interest in all courts to the end that the provision for limited access facilities may be expedited. [1961 c 13 § 47.52.060. Prior: 1947 c 202 § 5; Rem. Supp. 1947 § 6402-64.]

47.52.070 Establishment of facility—Grade separation—Service roads. The designation or establishment of a limited access facility shall, by the authority making the designation or establishment, be entered upon the records or minutes of such authority in the customary manner for the keeping of such records or minutes. The state, counties and incorporated cities and towns may provide for the elimination of intersections at grade of limited access facilities with existing state or county roads, and with city or town streets, by grade separation or service road, or by closing off such roads and streets at the right-of-way boundary line of such limited access facility; and after the establishment of any such facility, no highway or street which is not part of said facility, shall intersect the same at grade. No city or town street, county road, or state highway, or any other public or private way, shall be opened into or connect with any such limited access facility without the consent and previous approval of the highway authority of the state, county, incorporated city or town having jurisdiction over such limited access facility. Such consent and approval shall be given only if the public interest shall be served thereby. [1961 c 13 § 47.52.070. Prior: 1951 c 167 § 10; 1947 c 202 § 6; Rem. Supp. 1947 § 6402-65.]

47.52.080 Abutter's right of access protected—Compensation. No existing public highway, road, or street shall be constructed as a limited access facility except upon the waiver, purchase, or condemnation of the abutting owner's right of access thereto as herein provided. In cases involving existing highways, if the abutting property is used for business at the time the notice is given as provided in RCW 47.52.133, the owner of such property shall be entitled to compensation for the loss of adequate ingress to or egress from such property as business property in its existing condition at the time of the notice provided in RCW 47.52.133 as for the taking or damaging of property for public use. [1983 c 3 § 127; 1961 c 13 § 47.52.080. Prior: 1955 c 54 § 2; 1951 c 167 § 11; 1947 c 202 § 7; Rem. Supp. 1947 § 6402-66.]

47.52.090 Cooperative agreements—Urban public transportation systems—Title to highway—Traffic regulations—Underground utilities and overcrossings—Passenger transportation—Storm sewers—City street crossings. The highway authorities of the state, counties, incorporated cities and towns, and municipal corporations owning or operating an urban public transportation system are authorized to enter into agreements with each other, or with the federal government, respecting the financing, planning, establishment, improvement, construction, maintenance, use, regulation, or vacation of limited access facilities in their respective jurisdictions to facilitate the purposes of this chapter. Any such agreement may provide for the exclusive or nonexclusive use of a portion of the facility by streetcars, trains, or other vehicles forming a part of an urban public transportation system and for the erection, construction, and maintenance of structures and facilities of such a system including facilities for the receipt and discharge of passengers. Within incorporated cities and towns the title to every state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over the highway from the time it is declared to be operational as a limited access facility by the department, subject to the following provisions:

(1) Cities and towns shall regulate all traffic restrictions on such facilities except as provided in RCW 46.61.430, and all regulations adopted are subject to approval of the department before becoming effective. Nothing herein precludes the state patrol or any county, city, or town from enforcing any traffic regulations and restrictions prescribed by state law, county resolution, or municipal ordinance.

(2) The city, town, or franchise holder shall at its own expense maintain its underground facilities beneath the surface across the highway and has the right to construct additional facilities underground or beneath the surface of the facility or necessary overcrossings of power lines and other utilities as may be necessary insofar as the facilities do not interfere with the use of the right-of-way for limited access highway purposes. The city or town has the right to maintain any municipal utility and the right to open the surface of the highway. The construction, maintenance until permanent repair is made, and permanent repair of these facilities shall be done in a time and manner authorized by permit to be issued by the department or its authorized representative, except to meet emergency conditions for which no permit will be required, but any damage occasioned thereby shall promptly be repaired by the city or town itself, or at its direction. Where a city or town is required to relocate overhead facilities within the corporate limits of a city or town as a result of the construction of a limited access facility, the cost of the relocation shall be paid by the state.

(3) Cities and towns have the right to grant utility franchises crossing the facility underground and beneath its surface insofar as the franchises are not inconsistent with the use of the right-of-way for limited access facility purposes and the franchises are not in conflict with state laws. The department is authorized to enforce, in an action brought in the name of the state, any condition of any franchise that a city or town has granted. No franchise for transportation of passengers in motor vehicles may be granted on such highways

without the approval of the department, except cities and towns are not required to obtain a franchise for the operation of municipal vehicles or vehicles operating under franchises from the city or town operating within the corporate limits of a city or town and within a radius not exceeding eight miles outside the corporate limits for public transportation on such facilities, but these vehicles may not stop on the limited access portion of the facility to receive or to discharge passengers unless appropriate special lanes or deceleration, stopping, and acceleration space is provided for the vehicles.

Every franchise or permit granted any person by a city or town for use of any portion of a limited access facility shall require the grantee or permittee to restore, permanently repair, and replace to its original condition any portion of the highway damaged or injured by it. Except to meet emergency conditions, the construction and permanent repair of any limited access facility by the grantee of a franchise shall be in a time and manner authorized by a permit to be issued by the department or its authorized representative.

(4) The department has the right to use all storm sewers that are adequate and available for the additional quantity of run-off proposed to be passed through such storm sewers.

(5) The construction and maintenance of city streets over and under crossings and surface intersections of the limited access facility shall be in accordance with the governing policy entered into between the department and the association of Washington cities on June 21, 1956, or as such policy may be amended by agreement between the department and the association of Washington cities. [1984 c 7 § 241; 1977 ex.s. c 78 § 8; 1967 c 108 § 11; 1961 c 13 § 47.52.090. Prior: 1957 c 235 § 4; 1947 c 202 § 8; Rem. Supp. 1947 § 6402-67.]

Severability—1984 c 7: See note following RCW 47.01.141.

Urban public transportation system defined: RCW 47.04.082.

47.52.100 Existing roads and streets as service roads.

In connection with the development of any limited access facility the state, county or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, construct, maintain and vacate local service roads and streets, or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized for limited access facilities under the terms of this chapter. If, in their opinion such local service roads and streets are necessary or desirable, such local service roads or streets shall be separated from the limited access facility by such means or devices designated as necessary or desirable by the proper authority. [1961 c 13 § 47.52.100. Prior: 1947 c 202 § 9; Rem. Supp. 1947 § 6402-68.]

47.52.105 Acquisition and construction to preserve limited access or reduce required compensation. Whenever, in the opinion of the department, frontage or service roads in connection with limited access facilities are not feasible either from an engineering or economic standpoint, the department may acquire private or public property by purchase or condemnation and construct any road, street, or highway connecting to or leading into any other road, street, or highway, when by so doing, it will preserve a limited access facility or reduce compensation required to be paid to

an owner by reason of reduction in or loss of access. The department shall provide by agreement with a majority of the legislative authority of the county or city concerned as to location, future maintenance, and control of any road, street, or highway to be so constructed. The road, street, or highway need not be made a part of the state highway system or connected thereto, but may upon completion by the state be turned over to the county or city for location, maintenance, and control pursuant to the agreement as part of the system of county roads or city streets. [1984 c 7 § 242; 1967 c 117 § 1; 1961 c 13 § 47.52.105. Prior: 1955 c 63 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.110 Marking of facility with signs. After the opening of any new and additional limited access highway facility, or after the designation and establishment of any existing street or highway, as included the particular highways and streets or those portions thereof designated and established, shall be physically marked and indicated as follows: By the erection and maintenance of such signs as in the opinion of the respective authorities may be deemed proper, indicating to drivers of vehicles that they are entering a limited access area and that they are leaving a limited access area. [1961 c 13 § 47.52.110. Prior: 1947 c 202 § 10; Rem. Supp. 1947 § 6402-69.]

47.52.120 Violations specified—Exceptions—Penalty. (1) After the opening of any limited access highway facility, it shall be unlawful for any person to: (a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on limited access facilities; (b) make a left turn or semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (c) drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (d) drive any vehicle into the limited access facility from a local service road except through an opening provided for that purpose in the dividing curb, dividing section, or dividing line which separates such service road from the limited access facility proper; (e) stop or park any vehicle or equipment within the right-of-way of such facility, including the shoulders thereof, except at points specially provided therefor, and to make only such use of such specially provided stopping or parking points as is permitted by the designation thereof: PROVIDED, That this subsection (1)(e) shall not apply to authorized emergency vehicles, law enforcement vehicles, assistance vans, or to vehicles stopped for emergency causes or equipment failures; (f) travel to or from such facility at any point other than a point designated by the establishing authority as an approach to the facility or to use an approach to such facility for any use in excess of that specified by the establishing authority.

(2) For the purposes of this section, an assistance van is a vehicle rendering aid free of charge to vehicles with equipment or fuel problems. The state patrol shall establish by rule additional standards and operating procedures, as needed, for assistance vans.

(3) Any person who violates this section is guilty of a misdemeanor and upon arrest and conviction therefor shall be

punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the city or county jail for not less than five days nor more than ninety days, or by both fine and imprisonment.

(4) Nothing contained in this section prevents the highway authority from proceeding to enforce the prohibitions or limitations of access to such facilities by injunction or as otherwise provided by law. [2003 c 53 § 262; 1987 c 330 § 748; 1985 c 149 § 1; 1961 c 13 § 47.52.120. Prior: 1959 c 167 § 1; 1947 c 202 § 11; Rem. Supp. 1947 § 6402-70.]

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

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

47.52.121 Prior determinations validated. Any determinations of an authority establishing a limited access facility subsequent to March 19, 1947, and prior to March 16, 1951, in connection with new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated, and all acquisitions of property or access rights in connection therewith are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such authority, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1961 c 13 § 47.52.121. Prior: 1951 c 167 § 12.]

47.52.131 Consideration of local conditions—Report to local authorities—Conferences—Proposed plan. When the department is planning a limited access facility through a county or an incorporated city or town, the department or its staff, before any hearing, shall give careful consideration to available data as to the county or city's comprehensive plan, land use pattern, present and potential traffic volume of county roads and city streets crossing the proposed facility, origin and destination traffic surveys, existing utilities, the physical appearance the facility will present, and other pertinent surveys and, except as provided in RCW 47.52.134, shall submit to the county and city officials for study a report showing how these factors have been taken into account and how the proposed plan for a limited access facility will serve public convenience and necessity, together with the locations and access and egress plans, and over and under crossings that are under consideration. This report shall show the proposed approximate right-of-way limits and profile of the facility with relation to the existing grade, and shall discuss in a general manner plans for landscaping treatment, fencing, and illumination, and shall include sketches of typical roadway sections for the roadway itself and any necessary structures such as viaducts or bridges, subways, or tunnels.

Conferences shall be held on the merits of this state report and plans and any proposed modification or alternate proposal of the county, city, or town in order to attempt to reach an agreement between the department and the county or city officials. As a result of the conference, the proposed plan, together with any modifications, shall be prepared by the department and presented to the county or city for inspection and study. [1987 c 200 § 1; 1984 c 7 § 243; 1965 ex.s. c 75 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.133 Local public hearing—Notice. Except as provided in RCW 47.52.134, the department and the highway authorities of the counties and incorporated cities and towns, with regard to facilities under their respective jurisdictions, prior to the establishment of any limited access facility, shall hold a public hearing within the county, city, or town wherein the limited access facility is to be established to determine the desirability of the plan proposed by such authority. Notice of such hearing shall be given to the owners of property abutting the section of any existing highway, road, or street being established as a limited access facility, as indicated in the tax rolls of the county, and in the case of a state limited access facility, to the county and/or city or town. Such notice shall be by United States mail in writing, setting forth a time for the hearing, which time shall be not less than fifteen days after mailing of such notice. Notice of such hearing also shall be given by publication not less than fifteen days prior to such hearing in one or more newspapers of general circulation within the county, city, or town. Such notice by publication shall be deemed sufficient as to any owner or reputed owner or any unknown owner or owner who cannot be located. Such notice shall indicate a suitable location where plans for such proposal may be inspected. [2006 c 334 § 25; 1987 c 200 § 2; 1981 c 95 § 1; 1965 ex.s. c 75 § 2.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.52.134 When access reports and hearings not required. Access reports and hearings on the establishment of limited access facilities are not required if:

(1) The limited access facility would lie wholly within state or federal lands and the agency or agencies with jurisdiction of the land agree to the access plan; or

(2) The access rights to the affected section of roadway have previously been purchased or established by others; or

(3) The limited access facility would not significantly change local road use, and all affected local agencies and abutting property owners agree in writing to waive a formal hearing on the establishment of the facility after publication of a notice of opportunity for a limited access hearing. This notice of opportunity for a limited access hearing shall be given in the same manner as required for published notice of hearings under RCW 47.52.133. If the authority specified in the notice receives a request for a hearing from one or more abutting property owners or affected local agencies on or before the date stated in the notice, an access report shall be submitted as provided in RCW 47.52.131 and a hearing shall be held. Notice of the hearing shall be given by mail and publication as provided in RCW 47.52.133. [1987 c 200 § 3.]

47.52.135 Hearing procedure. At the hearing any representative of the county, city or town, or any other person may appear and be heard even though such official or person is not an abutting property owner. Such hearing may, at the option of the highway authority, be conducted in accordance with federal laws and regulations governing highway design public hearings. The members of such authority shall preside, or may designate some suitable person to preside as examiner. The authority shall introduce by competent evidence a summary of the proposal for the establishment of a limited access facility and any evidence that supports the adoption of the plan as being in the public interest. At the conclusion of

such evidence, any person entitled to notice who has entered a written appearance shall be deemed a party to this hearing for purposes of this chapter and may thereafter introduce, either in person or by counsel, evidence and statements or counterproposals bearing upon the reasonableness of the proposal. Any such evidence and statements or counterproposals shall receive reasonable consideration by the authority before any proposal is adopted. Such evidence must be material to the issue before the authority and shall be presented in an orderly manner. [1982 c 189 § 5; 1981 c 67 § 29; 1977 c 77 § 2; 1965 ex.s. c 75 § 3.]

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

47.52.137 Adoption of plan—Service of findings and order—Publication of resume—Finality—Review. Following the conclusion of such hearing the authority shall adopt a plan with such modifications, if any, it deems proper and necessary. Its findings and order shall be in writing and copies thereof shall be served by United States mail upon all persons having entered a written appearance at such hearing, and in the case of a state limited access facility, the county commissioners of the county affected and the mayor of the city or town affected. The authority shall also cause a resume of such plan to be published once each week for two weeks in one or more newspapers of general circulation within such county, city or town beginning not less than ten days after the mailing of such findings and order. Such determination by the authority shall become final within thirty days after such mailing unless a review is taken as hereinafter provided. In case of an appeal, the order shall be final as to all parties not appealing. [1965 ex.s. c 75 § 4.]

47.52.139 Local approval of plan—Disapproval, request for review. Upon receipt of the findings and order adopting a plan, the county, city, or town may notify the department of transportation of its approval of such plan in writing, in which event such plan shall be final.

In the event that a county, city, or town does not approve the plan, the county, city, or town shall file its disapproval in writing with the secretary of transportation within thirty days after the mailing thereof to such mayor or county commissioner. Along with the written disapproval shall be filed a written request for a hearing before a board of review, hereinafter referred to as the board. The request for hearing shall set forth the portions of the plan of the department to which the county, city, or town objects, and shall include every issue to be considered by the board. The hearing before a board of review shall be governed by RCW 47.52.150 through 47.52.190, as now or hereafter amended. [1977 ex.s. c 151 § 63; 1965 ex.s. c 75 § 5.]

47.52.145 Modification of adopted plan without further public hearings—Conditions. Whenever after the final adoption of a plan for a limited access highway by the department, an additional design public hearing with respect to the facility or any portion thereof is conducted pursuant to federal law resulting in a revision of the design of the limited access plan, the department may modify the previously

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adopted limited access plan to conform to the revised design without further public hearings providing the following conditions are met:

(1) As compared with the previously adopted limited access plan, the revised plan will not require additional or different right-of-way with respect to that section of highway for which the design has been revised, in excess of five percent by area; and

(2) If the previously adopted limited access plan was modified by a board of review convened at the request of a county, city, or town, the legislative authority of the county, city, or town shall approve any revisions of the plan which conflict with modifications ordered by the board of review. [2006 c 334 § 26; 1981 c 95 § 2; 1977 c 77 § 1.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.52.150 State facility through city or town—Board of review, composition and appointment. Upon request for a hearing before the board by any county, city, or town, a board consisting of five members shall be appointed as follows: The mayor or the county commissioners, as the case may be shall appoint two members of the board, of which one shall be a duly elected official of the city, county, or legislative district, except that of the legislative body of the county, city, or town requesting the hearing, subject to confirmation by the legislative body of the city or town; the secretary of transportation shall appoint two members of the board; and one member shall be selected by the four members thus appointed. Such fifth member shall be a licensed civil engineer or a recognized professional city or town planner, who shall be chairman of the board. In the case both the county and an included city or town request a hearing, the board shall consist of nine members appointed as follows: The mayor and the county commission shall each appoint two members from the elective officials of their respective jurisdictions, and of the four thus selected no more than two thereof may be members of a legislative body of the county, city, or town. The secretary of transportation shall appoint four members of the board. One member shall be selected by the members thus selected, and such ninth member shall be a licensed civil engineer or a recognized city or town planner, who shall be chairman of the board. Such boards as are provided by this section shall be appointed within thirty days after the receipt of such a request by the secretary. In the event the secretary or a county, city, or town shall not appoint members of the board or members thus appointed fail to appoint a fifth or ninth member of the board, as the case may be, either the secretary or the county, city, or town may apply to the superior court of the county in which the county, city, or town is situated to appoint the member or members of the board in accordance with the provisions of this chapter. [1977 ex.s. c 151 § 64; 1963 c 103 § 3; 1961 c 13 § 47.52.150. Prior: 1959 c 242 § 3; 1957 c 235 § 7.]

47.52.160 State facility through city or town—Hearing—Notice—Evidence—Determination of issues. The board shall fix a reasonable time not more than thirty days after the date of its appointment and shall indicate the time and place for the hearing, and shall give notice to the county, city, or town and to the department. At the time and place

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fixed for the hearing, the state and the county, city, or town shall present all of their evidence with respect to the objections set forth in the request for the hearing before the board, and if either the state, the county, or the city or town fails to do so, the board may determine the issues upon such evidence as may be presented to it at the hearing. [1984 c 7 § 244; 1963 c 103 § 4; 1961 c 13 § 47.52.160. Prior: 1957 c 235 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.170 State facility through city or town—Hearing—Procedure. No witness's testimony shall be received unless he shall have been duly sworn, and the board may cause all oral testimony to be stenographically reported. Members of the board, its duly authorized representatives, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do; to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of their office. [1961 c 13 § 47.52.170. Prior: 1957 c 235 § 9.]

47.52.180 State facility through city or town—Hearing—Findings of board—Modification of proposed plan by stipulation. At the conclusion of such hearing, the board shall consider the evidence taken and shall make specific findings with respect to the objections and issues within thirty days after the hearing, which findings shall approve, disapprove, or modify the proposed plan of the department of transportation. Such findings shall be final and binding upon both parties. Any modification of the proposed plan of the department of transportation made by the board of review may thereafter be modified by stipulation of the parties. [1977 ex.s. c 151 § 65; 1977 c 77 § 3; 1961 c 13 § 47.52.180. Prior: 1957 c 235 § 10.]

47.52.190 State facility through city or town—Hearing—Assistants—Costs—Reporter. The board shall employ such assistance and clerical help as is necessary to perform its duties. The costs thereby incurred and incident to the conduct of the hearing, necessary expenses, and fees, if any, of members of the board shall be borne equally by the county, city, or town requesting the hearing and the department. When oral testimony is stenographically reported, the department shall provide a reporter at its expense. [1984 c 7 § 245; 1963 c 103 § 5; 1961 c 13 § 47.52.190. Prior: 1957 c 235 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.52.195 Review and appeal on petition of abutter. An abutting property owner may petition for review in the superior court of the state of Washington in the county where the limited access facility is to be located. Such review and any appeal therefrom shall be considered and determined by said court upon the record of the authority in the manner,

under the conditions and subject to the limitations and with the effect specified in the Administrative Procedure Act, chapter 34.05 RCW, as amended. [1965 ex.s. c 75 § 6.]

47.52.200 Law enforcement jurisdiction within city or town. Whenever any limited access highway facility passes within or through any incorporated city or town the municipal police officers of such city or town, the sheriff of the county wherein such city or town is situated and officers of the Washington state patrol shall have independent and concurrent jurisdiction to enforce any violation of the laws of this state occurring thereon: PROVIDED, The Washington state patrol shall bear primary responsibility for the enforcement of laws of this state relating to motor vehicles within such limited access highway facilities. [1961 c 122 § 1.]

47.52.210 Property title designation upon construction of limited access highways. (1) Whenever the department adopts a plan for a limited access highway to be constructed within the corporate limits of a city or town which incorporates existing city or town streets, title to such streets shall remain in the city or town, and the provisions of RCW 47.24.020 as now or hereafter amended shall continue to apply to such streets until such time that the highway is operated as either a partially or fully controlled access highway. Title to and full control over that portion of the city or town street incorporated into the limited access highway shall be vested in the state upon a declaration by the secretary of transportation that such highway is operational as a limited access facility, but in no event prior to the acquisition of right-of-way for such highway including access rights, and not later than the final completion of construction of such highway.

(2) Upon the completion of construction of a state limited access highway within a city or town, the department of transportation may relinquish to the city or town streets constructed or improved as a functional part of the limited access highway, slope easements, landscaping areas, and other related improvements to be maintained and operated by the city or town in accordance with the limited access plan. Title to such property relinquished to a city or town shall be conveyed by a deed executed by the secretary of transportation and duly acknowledged. Relinquishment of such property to the city or town may be expressly conditioned upon the maintenance of access control acquired by the state and the continued operation of such property as a functional part of the limited access highway. [2006 c 334 § 27; 1981 c 95 § 3; 1977 ex.s. c 78 § 3.]

Effective date—2006 c 334: See note following RCW 47.01.051.

47.52.220 Personal wireless service facilities—Approach permit—Report. (1) The department shall authorize an off and on approach to partially controlled limited access highways for the placement and service of facilities providing personal wireless services.

(a) The approach shall be in a legal manner not to exceed thirty feet in width.

(b) The approach may be specified at a point satisfactory to the department at or between designated highway stations.

(c) The permit holder may use the approach for ingress and egress from the highway for construction or maintenance of the personal wireless service facility during nonpeak traffic hours so long as public safety is not adversely affected. The permit holder may use the approach for ingress and egress at any time for the construction of the facility if public safety is not adversely affected and if construction will not substantially interfere with traffic flow during peak traffic periods.

(2) The department shall authorize the approach by an annual permit, which may only be canceled upon one hundred eighty days' written notice to the permit holder.

(a) The department shall set the yearly cost of a permit in rule.

(b) The permit shall be assignable to the contractors and subcontractors of the permit holder. The permit shall also be transferable to a new owner following the sale or merger of the permit holder.

(3) For the purposes of this section:

(a) "Personal wireless services" means any federally licensed personal wireless service.

(b) "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures.

(4) The department shall present a report to the house of representatives technology, telecommunications, and energy committee and the senate technology and communications committee on the implementation of the permit process and the cost of permits by January 15, 2004, and by the first day of the legislative session following adoption of any rule increasing the cost of permits. [2003 c 188 § 2.]

Chapter 47.56 RCW

STATE TOLL BRIDGES, TUNNELS, AND FERRIES

Sections

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GENERAL PROVISIONS

47.56.010 Definitions. As used in this chapter:

(1) "Toll bridge" means a bridge constructed or acquired under this chapter, upon which tolls are charged, together with all appurtenances, additions, alterations, improvements, and replacements thereof, and the approaches thereto, and all lands and interests used therefor, and buildings and improvements thereon.

(2) "Toll road" means any express highway, superhighway, or motorway at such locations and between such termini as may be established by law, and constructed or to be constructed as a limited access highway under the provisions of this chapter by the department, and shall include, but not be limited to, all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service areas, service facilities, communications facilities, and administration, storage, and other buildings that the department may deem necessary for the operation of the project, together with all property, rights, easements, and interests that may be acquired by the department for the construction or the operation of the project, all of which shall be conducted in the same manner and under the same procedure as provided for the establishing, constructing, operating, and maintaining of toll bridges by the department, insofar as those procedures are reasonably consistent and applicable.

(3) "1950 Tacoma Narrows bridge" means the bridge crossing the Tacoma Narrows that was opened to vehicle travel in 1950. [2002 c 114 § 2; 1984 c 7 § 246; 1961 c 13 § 47.56.010. Prior: 1953 c 220 § 1; 1937 c 173 § 1, part; RRS § 6524-1, part.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.030 Powers and duties regarding toll facilities—Purchasing. (1) Except as permitted under chapter 47.29 or 47.46 RCW:

(a) Unless otherwise delegated, and subject to RCW 47.56.820, the department of transportation shall have full charge of the planning, analysis, and construction of all toll bridges and other toll facilities including the Washington state ferries, and the operation and maintenance thereof.

(b) The transportation commission shall determine and establish the tolls and charges thereon.

(c) Unless otherwise delegated, and subject to RCW 47.56.820, the department shall have full charge of planning, analysis, and design of all toll facilities. The department may conduct the planning, analysis, and design of toll facilities as necessary to support the legislature's consideration of toll authorization.

(d) The department shall utilize and administer toll collection systems that are simple, unified, and interoperable. To the extent practicable, the department shall avoid the use of toll booths. The department shall set the statewide standards and protocols for all toll facilities within the state, including those authorized by local authorities.

(e) Except as provided in this section, the department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is authorized to negotiate contracts for any amount without bid under (e)(i) and (ii) of this subsection:

(i) Emergency contracts, in order to make repairs to ferries or ferry terminal facilities or removal of such facilities whenever continued use of ferries or ferry terminal facilities constitutes a real or immediate danger to the traveling public or precludes prudent use of such ferries or facilities; and

(ii) Single source contracts for vessel dry dockings, when there is clearly and legitimately only one available bidder to conduct dry dock-related work for a specific class or classes of vessels. The contracts may be entered into for a single vessel dry docking or for multiple vessel dry dockings for a period not to exceed two years.

(2) The department shall proceed with the procurement of materials, supplies, services, and equipment needed for the support, maintenance, and use of a ferry, ferry terminal, or other facility operated by Washington state ferries, in accordance with chapter 43.19 RCW except as follows:

(a) When the secretary of the department of transportation determines in writing that the use of invitation for bid is either not practicable or not advantageous to the state and it may be necessary to make competitive evaluations, including technical or performance evaluations among acceptable proposals to complete the contract award, a contract may be entered into by use of a competitive sealed proposals method, and a formal request for proposals solicitation. Such formal request for proposals solicitation shall include a functional description of the needs and requirements of the state and the significant factors.

(b) When purchases are made through a formal request for proposals solicitation the contract shall be awarded to the responsible proposer whose competitive sealed proposal is determined in writing to be the most advantageous to the state taking into consideration price and other evaluation factors set forth in the request for proposals. No significant factors may be used in evaluating a proposal that are not specified in the request for proposals. Factors that may be considered in evaluating proposals include but are not limited to: Price; maintainability; reliability; commonality; performance levels; life cycle cost if applicable under this section; cost of transportation or delivery; delivery schedule offered; installation cost; cost of spare parts; availability of parts and service offered; and the following:

(i) The ability, capacity, and skill of the proposer to perform the contract or provide the service required;

(ii) The character, integrity, reputation, judgment, experience, and efficiency of the proposer;

(iii) Whether the proposer can perform the contract within the time specified;

(iv) The quality of performance of previous contracts or services;

(v) The previous and existing compliance by the proposer with laws relating to the contract or services;

(vi) Objective, measurable criteria defined in the request for proposal. These criteria may include but are not limited

to items such as discounts, delivery costs, maintenance services costs, installation costs, and transportation costs; and

(vii) Such other information as may be secured having a bearing on the decision to award the contract.

(c) When purchases are made through a request for proposal process, proposals received shall be evaluated based on the evaluation factors set forth in the request for proposal. When issuing a request for proposal for the procurement of propulsion equipment or systems that include an engine, the request for proposal must specify the use of a life cycle cost analysis that includes an evaluation of fuel efficiency. When a life cycle cost analysis is used, the life cycle cost of a proposal shall be given at least the same relative importance as the initial price element specified in the request of proposal documents. The department may reject any and all proposals received. If the proposals are not rejected, the award shall be made to the proposer whose proposal is most advantageous to the department, considering price and the other evaluation factors set forth in the request for proposal. [2008 c 122 § 8; 2002 c 114 § 19; 2001 c 59 § 1; 1995 1st sp.s. c 4 § 1; 1977 ex.s. c 151 § 66; 1969 ex.s. c 180 § 3; 1961 c 278 § 8; 1961 c 13 § 47.56.030. Prior: 1937 c 173 § 10; RRS § 6524-10.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Effective date—1995 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995]." [1995 1st sp.s. c 4 § 4.]

47.56.031 Approval of tolls. No tolls may be imposed on new or existing highways or bridges without specific legislative authorization, or upon a majority vote of the people within the boundaries of the unit of government empowered to impose tolls. This section applies to chapter 47.56 RCW and to any tolls authorized under chapter 47.29 RCW, the transportation innovative partnership act of 2005. [2005 c 335 § 2.]

47.56.032 Authority of department and commission relating to state ferries. All powers vested in the toll bridge authority as of September 21, 1977, relating to the acquiring, operating, extending, designing, constructing, repairing, and maintenance of the Washington state ferries or any part thereof and the collecting of tolls and charges for use of its facilities, shall be performed by the department. The commission shall determine all fares, tolls, and other charges for its facilities and shall directly perform all duties and exercise all powers relating to financing, refinancing, and fiscal management of the system's bonded indebtedness in the manner provided by law. [1984 c 7 § 247; 1961 c 278 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.040 Toll bridges authorized—Investigations. The department is empowered, in accordance with the provisions of this chapter, to provide for the establishment and construction of toll bridges upon any public highways of this state together with approaches thereto wherever it is considered necessary or advantageous and practicable for crossing any stream, body of water, gulch, navigable water, swamp, or other topographical formation whether that formation is within this state or constitutes a boundary between this state

and an adjoining state or country. For the purpose of obtaining information for the consideration of the department upon the construction of any toll bridge or any other matters pertaining thereto, any cognizant officer or employee of the state shall, upon the request of the department, make reasonable examination, investigation, survey, or reconnaissance for the determination of material facts pertaining thereto and report this to the department. The cost of any such examination, investigation, survey, or reconnaissance shall be borne by the department or office conducting these activities from the funds provided for that department or office for its usual functions. [2008 c 122 § 9; 1984 c 7 § 248; 1961 c 13 § 47.56.040. Prior: 1937 c 173 § 3; RRS § 6524-3; prior: 1913 c 56 § 2; RRS § 6525.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.042 State boundary bridges—Investigations—Agreements with counties or states. The department is authorized to enter into agreements with any county of this state and/or with an adjoining state or county thereof for the purpose of implementing an investigation of the feasibility of any toll bridge project for the bridging of a river forming a portion of the boundary of this state, and the adjoining state. The department may use funds available to it to carry out the purposes of this section. These agreements may provide that if any such project is determined to be feasible and is adopted, any advancement of funds by any state or county may be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived from the project. [1984 c 7 § 249; 1961 c 13 § 47.56.042. Prior: 1955 c 203 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.050 Purchase of bridges and ferries authorized—Provisions applicable. (1) The department, whenever it is considered necessary or advantageous and practicable, is empowered to provide for the acquisition by purchase of, and to acquire by purchase (a) any bridge or bridges or ferries which connect with or may be connected with the public highways of this state (b) together with approaches thereto.

(2) In connection with the acquisition by purchase of any bridge or bridges or ferries under subsection (1) of this section, the department, the state treasurer, any city, county, or other political subdivision of this state, and all of their officers:

(a) Are empowered and required to do all acts and things provided for in this chapter to establish and construct toll bridges and operate, finance, and maintain such bridges insofar as the powers and requirements are applicable to the purchase of any bridge or bridges or ferries and their operation, financing, and maintenance; and

(b) In purchasing, operating, financing, and maintaining any bridge or bridges or ferries acquired or to be acquired by purchase under this section, shall act in the same manner and under the same procedures as are provided in this chapter to establish, construct, operate, finance, and maintain toll bridges insofar as such manner and procedure are applicable to the purchase of any bridge or bridges or ferries and their operation, financing, and maintenance.

(3) Without limiting the generality of the provisions contained in subsections (1) and (2) of this section, the department is empowered: (a) To cause surveys to be made for the purpose of investigating the propriety of acquiring by purchase any such bridge or bridges or ferries and the right-of-way necessary or proper for that bridge or bridges or ferries, and other facilities necessary to carry out the provisions of this chapter; (b) to issue, sell, and redeem bonds, and to deposit and pay out the proceeds of the bonds for the financing thereof; (c) to collect, deposit, and expend tolls therefrom; (d) to secure and remit financial and other assistance in the purchase thereof; and (e) to carry insurance thereon.

(4) The provisions of RCW 47.56.220 apply when any bridge or bridges or ferries are acquired by purchase pursuant to this section. [1984 c 7 § 250; 1973 c 106 § 25; 1961 c 13 § 47.56.050. Prior: 1945 c 266 § 1; Rem. Supp. 1945 § 6524-3a.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.060 Toll bridges—General powers of department and officials—Financial statements. The department, the officials thereof, and all other state officials are empowered to act and make agreements consistent with law as may be necessary or desirable in connection with the duties and powers conferred upon them respectively by law regarding the construction, maintenance, operation, and insurance of toll bridges or the safeguarding of the funds and revenues required for such construction and the payment of the indebtedness incurred therefor. The department shall keep full, complete, and separate accounts of each toll bridge, and annually shall prepare balance sheet and income and profit and loss statements showing the financial condition of each such toll bridge, which statement shall be open at all reasonable times to the inspection of holders of bonds issued by the department. [1984 c 7 § 251; 1961 c 13 § 47.56.060. Prior: 1937 c 173 § 17; RRS § 6524-17.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.070 Toll facilities authorized—Provisions applicable. The department of transportation may, in accordance with this chapter, provide for the construction and operation of toll tunnels, toll roads, and other facilities necessary for their construction and connection with public highways of the state. It may cause surveys to be made to determine the propriety of their construction and operation, and may acquire rights-of-way and other facilities necessary to carry out the provisions hereof; and may issue, sell, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction thereof; carry insurance thereon; and handle any other matters pertaining thereto, all of which shall be conducted in the same manner and under the same procedure as provided for the constructing, operating, and maintaining of toll bridges by the department, insofar as reasonably consistent and applicable. [2008 c 122 § 10; 1977 ex.s. c 151 § 67; 1961 c 13 § 47.56.070. Prior: 1953 c 220 § 3; 1937 c 173 § 3 1/2; RRS § 6524-3 1/2.]

47.56.075 Toll roads, facilities—Legislative authorization or regional or local sponsorship required. The

department shall approve for construction only such toll roads as the legislature specifically authorizes or such toll facilities as are specifically sponsored by a regional transportation investment district, city, town, or county. [2002 c 56 § 404; 1984 c 7 § 252; 1961 c 13 § 47.56.075. Prior: 1953 c 220 § 7.]

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.076 Regional transportation investment district—Vehicle tolls authorized. (1) Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may authorize vehicle tolls on a local or regional arterial or a state or federal highway within the boundaries of the district. The department shall administer the collection of vehicle tolls authorized on designated facilities unless otherwise specified in law or by contract, and the commission or its successor statewide tolling authority shall set and impose the tolls in amounts sufficient to implement the regional transportation investment plan under RCW 36.120.020.

(2) Consistent with RCW 47.56.820, vehicle tolls must first be authorized by the legislature if the tolls are imposed on a state route.

(3) Consistent with RCW 47.56.850, vehicle tolls, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in RCW 47.56.850 if the tolls, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility. [2008 c 122 § 11; 2006 c 311 § 19; 2005 c 335 § 3; 2002 c 56 § 403.]

Findings—2006 c 311: See note following RCW 36.120.020.

Captions and subheadings not law—Severability—2002 c 56: See RCW 36.120.900 and 36.120.901.

47.56.077 Concessions to operate private business on toll road prohibited. The department shall not grant concessions for the operation or establishment of any privately owned business upon toll road rights-of-way. [1984 c 7 § 253; 1961 c 13 § 47.56.077. Prior: 1953 c 220 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.078 Transportation benefit district—Vehicle tolls authorized. (1) Subject to the provisions under chapter 36.73 RCW, a transportation benefit district may authorize vehicle tolls on state routes or federal highways, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. The department of transportation shall administer the collection of vehicle tolls authorized on state routes or federal highways, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district's transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose the tolls, only with approval of the transportation commission, in amounts sufficient to implement the district's transportation improvement plan. Tolls may vary for type of vehicle, for

time of day, for traffic conditions, and/or other factors designed to improve performance of the facility or the transportation network.

(2) Consistent with RCW 47.56.820, vehicle tolls must first be authorized by the legislature if the tolls are imposed on a state route.

(3) Consistent with RCW 47.56.850, vehicle tolls, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in RCW 47.56.850 if the tolls, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility. [2008 c 122 § 12; 2005 c 336 § 25.]

Effective date—2005 c 336: See note following RCW 36.73.015.

47.56.090 Authority to acquire right-of-way in constructing a toll bridge. The department of transportation is empowered to secure right-of-way for toll bridges and for approaches thereto by gift or purchase, or by condemnation in the manner provided by law for the taking of private property for public highway purposes. [1977 ex.s. c 151 § 69; 1961 c 13 § 47.56.090. Prior: 1937 c 173 § 5; RRS § 6524-5.]

47.56.100 Toll bridges—Right-of-way across state highways and political subdivisions—Compensation. The right-of-way is hereby given, dedicated, and set apart upon which to locate, construct, and maintain bridges or approaches thereto or other highway crossings, and transportation facilities thereof or thereto, through, over, or across any state highways, and through, over, or across the streets, alleys, lanes, and roads within any city, county, or other political subdivision of the state. If any property belonging to any city, county, or other political subdivision of the state is required to be taken for the construction of any bridge or approach thereto, or if any such property is injured or damaged by such construction, compensation therefor as may be proper or necessary and as agreed upon may be paid by the department to the particular county, city, or other political subdivision of the state owning the property, or condemnation proceedings may be brought for the determination of the compensation. [1984 c 7 § 254; 1977 ex.s. c 103 § 4; 1961 c 13 § 47.56.100. Prior: 1937 c 173 § 16; RRS § 6524-16.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.110 Toll bridges—Resolution of necessity in acquiring right-of-way—Effect of. Before the department proceeds with any action to secure a right-of-way or with construction of any toll bridge under the provisions of this chapter, the commission shall first pass a resolution that public interest and necessity require the acquisition of right-of-way for and the construction of the toll bridge. The resolution is conclusive evidence (1) of the public necessity of such construction; (2) that the property is necessary therefor; and (3) that the proposed construction is planned or located in a manner which will be most compatible with the greatest public good and the least private injury. When it becomes necessary for the department to condemn any real estate to be used in connection with any such bridge, the attorney general of the state shall represent the department. In eminent domain proceedings to acquire property for any of the purposes of this

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chapter, any toll bridge, real property, personal property, franchises, rights, easements, or other property or privileges appurtenant thereto appropriated or dedicated to a public use or purpose by any person, firm, private, public, or municipal corporation, county, city, town, district, or any political subdivision of the state, may be condemned and taken, and the acquisition and use as provided in this chapter for the same public use or purpose to which the property has been so appropriated or dedicated, or for any other public use or purpose, is a superior and permanent right and necessity, and a more necessary use and purpose than the public use or purpose to which the property has already been appropriated or dedicated. It is not necessary in any eminent domain proceedings under this chapter to plead or prove any acts or proceedings preliminary or prior to the adoption of the resolution hereinbefore referred to describing the property sought to be taken and directing such proceedings. [1984 c 7 § 255; 1961 c 13 § 47.56.110. Prior: 1937 c 173 § 11; RRS § 6524-11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.120 Toll bridges—Construction directed—Costs. In the event that any toll bridge should be constructed, all cost thereof including right-of-way, survey, and engineering shall be paid out of any funds available for payment of the cost of such toll bridge under this chapter. [2008 c 122 § 13; 1977 ex.s. c 151 § 70; 1961 c 13 § 47.56.120. Prior: 1937 c 173 § 4; RRS § 6524-4.]

47.56.130 Toll bridges—Bonds—Cooperative funds from state and federal government. The department is hereby empowered to issue bonds for the construction of any toll bridge or toll bridges authorized under the provisions of this chapter. Any and all bonds issued for the construction of any toll bridge or toll bridges under the authority of the department shall be issued in the name of the department, shall constitute obligations only of the department, shall be identified as toll bridge bonds, and shall contain a recital on the face thereof that the payment or redemption of the bonds and the payment of the interest thereon is secured by a direct and exclusive charge and lien upon the tolls and other revenues of any nature whatever received from the operation of the particular toll bridge or bridges for the construction of which the bonds are issued and that neither the payment of the principal or any part thereof nor of the interest thereon or any part thereof constitutes a debt, liability, or obligation of the state of Washington. The department is empowered to receive and accept funds from the state of Washington or the federal government upon a cooperative or other basis for the construction of any toll bridge authorized under this chapter and is empowered to enter into such agreements with the state of Washington or the federal government as may be required for the securing of such funds. [1984 c 7 § 256; 1961 c 13 § 47.56.130. Prior: 1937 c 173 § 7; RRS § 6524-7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.140 Toll bridges, bonds—Form, contents, manner of sale—Interim bonds. The revenue bonds may be issued and sold by the department of transportation from time to time and in such amounts as it deems necessary to

provide sufficient funds for the construction of the bridge, and to pay interest on outstanding bonds issued for its construction during the period of actual construction and for six months after completion thereof.

The department of transportation shall determine the form, conditions, and denominations of the bonds, and the maturity dates which the bonds to be sold shall bear and the interest rate thereon. All bonds of the same issue need not bear the same interest rate. Principal and interest of the bonds may be payable at such place as determined by the department. They may be in any form including bearer bonds or registered bonds as provided in RCW 39.46.030, with interest payable at such times as determined by the department, and shall mature at such times and in such amounts as the department prescribes. The department may provide for the retirement of the bonds at any time prior to maturity, and in such manner and upon payment of such premiums as it may determine in the resolution providing for the issuance of the bonds. All such bonds shall be signed by the state auditor and countersigned by the governor and any interest coupons appertaining thereto shall bear the signature of the state auditor. The countersignature of the governor on such bonds and the signature of the state auditor on any coupons may be their printed or lithographed facsimile signatures. Successive issues of such bonds within the limits of the original authorization shall have equal preference with respect to the redemption thereof and the payment of interest thereon. The department may fix different maturity dates, serially or otherwise, for successive issues under any one original authorization. The bonds shall be negotiable instruments under the law merchant. All bonds issued and sold hereunder shall be sold on sealed bids to the highest and best bidder after such advertising for bids as the department deems proper. The department may reject any and all bids and may thereafter sell the bonds at private sale under such terms and conditions as it deems most advantageous to its own interests; but not at a price below that of the best bid which was rejected. The department may contract loans and borrow money through the sale of bonds of the same character as those herein authorized, from the United States or any agency thereof, upon such conditions and terms as may be agreed to and the bonds shall be subject to all the provisions of this chapter, except the requirement that they be first offered at public sale.

Temporary or interim bonds, certificates, or receipts, of any denomination, and with or without coupons attached, signed by the state auditor, may be issued and delivered until bonds are executed and available for delivery. [1983 c 167 § 118; 1970 ex.s. c 56 § 62; 1969 ex.s. c 232 § 33; 1963 ex.s. c 3 § 45; 1961 c 13 § 47.56.140. Prior: 1953 c 79 § 1; 1937 c 173 § 8; RRS § 6524-8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.56.150 Toll bridges—Bond proceeds and toll revenues, disposition of—Construction fund—Disbursement—Investment. The proceeds from the sale of all bonds authorized under the provisions of this chapter shall be paid to the state treasurer for the credit of the department and be

deposited as demand deposits forthwith in such depository or depositories as may be authorized by law to receive deposits of state funds to the credit of a fund to be designated as the construction fund of the particular toll bridge or toll bridges for which such bonds were issued and sold, which fund shall not be a state fund and shall at all times be kept segregated and set apart from all other funds and in trust for the purposes herein set out. Such proceeds shall be paid out or disbursed solely for the construction of such toll bridge or toll bridges, the acquisition of the necessary lands and easements therefor and the payment of interest on such bonds during the period of actual construction and for a period of six months thereafter, only as the need therefor shall arise. The department may agree with the purchaser of the bonds upon any conditions or limitations restricting the disbursement of such funds that may be deemed advisable, for the purpose of assuring the proper application of such funds. All moneys in such fund and not required to meet current construction costs of the toll bridge or toll bridges for which such bonds were issued and sold, and all funds constituting surplus revenues that are not immediately needed for the particular object or purpose to which they must be applied or are pledged shall be invested in bonds and obligations of the nature eligible for investment of surplus state moneys: PROVIDED, That the department may provide in the proceedings authorizing the issuance of these bonds that the investment of such moneys shall be made only in particular bonds and obligations within the classifications eligible for such investment, and such provisions shall thereupon be binding upon the department and all officials having anything to do with the investment. Any surplus which may exist in the construction fund shall be applied to the retirement of bonds issued for the construction of such toll bridge or toll bridges by purchase or call. If these bonds cannot be purchased at a price satisfactory to the department and are not by their terms callable prior to maturity, the surplus shall be paid into the fund applicable to the payment of principal and interest of the bonds and shall be used for that purpose. The proceedings authorizing the issuance of bonds may provide limitations and conditions upon the time and manner of applying the surplus to the purchase and call of outstanding bonds and the terms upon which they shall be purchased or called. Such limitations and conditions shall be followed and observed in the application and use of the surplus. All bonds so retired by purchase or call shall be immediately canceled. [1984 c 7 § 257; 1961 c 13 § 47.56.150. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.160 Toll bridges—Toll revenue fund. All tolls or other revenues received from the operation of any toll bridge or toll bridges constructed with the proceeds of bonds issued and sold hereunder shall be paid over by the department to the state treasurer. The treasurer shall deposit them forthwith as demand deposits in a depository or depositories authorized by law to receive deposits of state funds. The deposit shall be made to the credit of a special trust fund designated as the toll revenue fund of the particular toll bridge or toll bridges producing the tolls or revenue, which fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds. [1984 c 7 § 258; 1961 c 13 §

47.56.160. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.165 Tacoma Narrows toll bridge account. A special account to be known as the Tacoma Narrows toll bridge account is created in the motor vehicle fund in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for construction of the Tacoma Narrows public-private initiative project, including any capitalized interest;

(b) All of the toll charges and other revenues received from the operation of the Tacoma Narrows bridge as a toll facility, to be deposited at least monthly;

(c) Any interest that may be earned from the deposit or investment of those revenues;

(d) Notwithstanding RCW 47.12.063, proceeds from the sale of any surplus real property acquired for the purpose of building the second Tacoma Narrows bridge; and

(e) All liquidated damages collected under any contract involving the construction of the second Tacoma Narrows bridge.

(2) Proceeds of bonds shall be used consistent with RCW 47.46.130, including the reimbursement of expenses and fees incurred under agreements entered into under RCW 47.46.040 as required by those agreements.

(3) Toll charges, other revenues, and interest may be used to:

(a) Pay any required costs of financing, operation, maintenance, and management and necessary repairs of the facility; and

(b) Repay amounts to the motor vehicle fund as required under RCW 47.46.140.

(4) When repaying the motor vehicle fund under RCW 47.46.140, the state treasurer shall transfer funds from the Tacoma Narrows toll bridge account to the motor vehicle fund on or before each debt service date for bonds issued for the Tacoma Narrows public-private initiative project in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues. [2006 c 17 § 1; 2002 c 114 § 11.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.56.167 Toll collection account. The toll collection account is created in the custody of the state treasurer. All receipts from prepaid customer tolls must be deposited into the account. Distributions from the account may be used only to refund customers' prepaid tolls or for distributions into the appropriate toll facility account. Distributions into the appropriate toll facility account shall be based on charges incurred at each toll facility and shall include a proportionate share of interest earned from amounts deposited into the account. For purposes of accounting, distributions from the account constitute earned toll revenues in the receiving toll

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facility account at the time of distribution. Only the secretary of transportation or the secretary's designee may authorize distributions from the account. Distributions of revenue and refunds from this account are not subject to the allotment procedures under chapter 43.88 RCW and an appropriation is not required. [2008 c 122 § 23.]

Effective date—2008 c 122 §§ 23 and 24: "Sections 23 and 24 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 25, 2008]." [2008 c 122 § 26.]

47.56.170 Toll bridges—Transfer of funds for bond payments—Surplus funds. From the money deposited in each separate construction fund under RCW 47.56.160, the state treasurer shall transfer to the place or places of payment named in the bonds such sums as may be required to pay the interest as it becomes due on all bonds sold and outstanding for the construction of a particular toll bridge or toll bridges during the period of actual construction and during the period of six months immediately thereafter. The state treasurer shall thereafter transfer from each separate toll revenue fund to the place or places of payment named in the bonds such sums as may be required to pay the interest on the bonds and redeem the principal thereof as the interest payments and bond redemption become due for all bonds issued and sold for the construction of the particular toll bridge or toll bridges producing the tolls or revenues so deposited in the toll revenue fund. All funds so transferred for the payment of principal or interest on bonds issued for any particular toll bridge shall be segregated and applied solely for the payment of that principal or interest. The proceedings authorizing the issuance of bonds may provide for setting up a reserve fund or funds out of the tolls and other revenues not needed for the payment of principal and interest, as the same currently matures and for the preservation and continuance of the fund in a manner to be provided therein. The proceedings may also require the immediate application of all surplus moneys in the toll revenue fund to the retirement of the bonds prior to maturity, by call or purchase, in such manner and upon such terms and the payment of such premiums as may be deemed advisable in the judgment of the department.

The moneys remaining in each separate toll revenue fund after providing the amount required for interest and redemption of bonds as provided in this section shall be held and applied as provided in the proceedings authorizing the issuance of the bonds. If the proceedings authorizing the issuance of the bonds do not require surplus revenues to be held or applied in any particular manner, they shall be allocated and used for such other purposes incidental to the construction, operation, and maintenance of the toll bridge or bridges as the department may determine. [1984 c 7 § 259; 1961 c 13 § 47.56.170. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.180 Toll bridges—Payments made by warrants on vouchers—Interest on deposits. Warrants for payments to be made on account of the bonds shall be duly drawn by the state treasurer on vouchers approved by the department.

Moneys required to meet the costs of construction and all expenses and costs incidental to the construction of any par-

ticular toll bridge or toll bridges or to meet the costs of operating, maintaining, and repairing the bridge or bridges shall be paid from the proper fund therefor by the state treasurer upon vouchers approved by the department.

All interest received or earned on money deposited in each and every fund provided for in this chapter shall be credited to and become a part of the particular fund upon which the interest accrues. [1984 c 7 § 260; 1973 c 106 § 26; 1961 c 13 § 47.56.180. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.190 Toll bridges—Agreement on deposit of funds. The department may provide in the proceedings authorizing the issuance of bonds or may otherwise agree with the purchasers of bonds regarding the deposit of all moneys constituting the construction fund and the toll revenue fund and provide for the deposit of the money at such times and with such depositaries or paying agents and upon the furnishing of security as meets with the approval of the purchasers of the bonds so long as the depositaries and security provided for or agreed upon are qualified and eligible in accordance with the requirements of law. [1984 c 7 § 261; 1961 c 13 § 47.56.190. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.200 Toll bridges—Use of bond proceeds and revenue for expenses. Notwithstanding anything contained in this chapter, the proceeds received from the sale of bonds and the tolls or other revenues received from the operation of any toll bridge or toll bridges may be used to defray any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds for the construction of the toll bridge or toll bridges including expenses for the preparation of surveys and estimates and making inspections and examinations required by the purchasers of the bonds. In addition, the proceedings authorizing the issuance of the bonds may contain appropriate provisions governing the use and application of the bond proceeds and toll or other revenues for the purposes herein specified. [1984 c 7 § 262; 1961 c 13 § 47.56.200. Prior: 1937 c 173 § 14, part; RRS § 6524-14, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.210 Toll bridges—Remedies of bond holders. While any bonds issued by the department under this chapter remain outstanding, the powers, duties, or existence of the department or of any other official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. The holder of any bond may by mandamus or other appropriate proceeding require and compel the performance of any of the duties imposed upon any state department, official, or employee, or imposed upon the department or its officers, agents, and employees in connection with the construction, maintenance, operation, and insurance of any bridge, and in connection with the collection, deposit, investment, application, and disbursement of all tolls and other revenues derived from the operation and use of any bridge and in

connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds. The enumeration of rights and remedies in this section shall not be deemed to exclude the exercise or prosecution of any other rights or remedies by the holders of the bonds. [1984 c 7 § 263; 1961 c 13 § 47.56.210. Prior: 1937 c 173 § 18; RRS § 6524-18.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.220 Toll bridges—Limitations on other service—Protection of outstanding bonds. Except as otherwise provided in RCW *47.56.291, **47.56.714, and *47.56.756, as long as any of the bonds issued hereunder for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge or other crossing over, under, through, or across the waters over which such toll bridge is located or constructed, connecting or joining directly or indirectly the lands or extensions thereof or abutments thereon on both sides of the waters spanned or crossed by such toll bridge within a distance of ten miles from either side of such toll bridge excepting bridges or other highway crossings actually in existence and being maintained, or for which there was outstanding an existing and lawfully issued franchise, at the time of the location of such toll bridge and prior to the time of the authorization of such bonds, and no ferry or other similar means of crossing the said waters within the said distance and connecting or plying directly or indirectly between the lands or extensions thereof or abutments thereon on both sides of the waters spanned or crossed by such bridge shall be maintained or operated or permitted or allowed: PROVIDED, That ferries and other similar means of crossing actually in existence and being maintained and operated, or for which there was outstanding an existing and lawfully issued franchise, at the time of the location of such bridge and prior to the time of the authorization of such bonds, may continue and be permitted to be operated and maintained under such existing rights and franchises, or any lawful renewal or extension thereof. The provisions of this section shall be binding upon the state department of transportation, the state of Washington, and all of its departments, agencies, or instrumentalities as well as any and all private, political, municipal, and public corporations and subdivisions, including cities, counties, and other political subdivisions, and the prohibitions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as any of such bonds are outstanding and unpaid and shall be deemed to constitute a contract to that effect for the benefit of the holders of all such bonds. [1983 c 3 § 128; 1979 ex.s. c 212 § 19; 1979 c 131 § 8; 1961 c 13 § 47.56.220. Prior: 1937 c 173 § 13; RRS § 6524-13.]

Reviser's note: *(1) RCW 47.56.291 and 47.56.756 were repealed by 2005 c 335 § 5.

***(2) RCW 47.56.714 was repealed by 1990 c 42 § 403, effective September 1, 1990.

Severability—1979 ex.s. c 212: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 212 § 21.]

47.56.230 Toll bridges—Insurance or indemnity bonds authorized. When any toll bridge or bridges autho-

rized under this chapter is being built by the department, the department may carry or cause to be carried an amount of insurance or indemnity bond or bonds as protection against loss or damage as the department may deem proper. The department is hereby further empowered to carry such an amount of insurance to cover any accident or destruction in part or in whole to any toll bridge or toll bridges until all bonds sold for the construction of the toll bridge or toll bridges and interest accrued thereon have been fully redeemed and paid. All moneys collected on any indemnity bond or insurance policy as the result of any damage or injury to the toll bridge or toll bridges shall be used for the purpose of repairing or rebuilding the toll bridge or toll bridges as long as there are revenue bonds against any such structure outstanding and unredeemed. The department is also empowered to carry insurance or indemnity bonds insuring against the loss of tolls or other revenues to be derived from any such toll bridge or bridges by reason of any interruption in the use of the toll bridge or toll bridges from any cause whatever, and the proceeds of the insurance or indemnity bonds shall be paid into the fund into which the tolls and other revenues of the bridge thus insured are required to be paid and shall be applied to the same purposes and in the same manner as other moneys in the fund. The insurance or indemnity bonds may be in an amount equal to the probable tolls and other revenues to be received from the operation of the toll bridge or toll bridges during any period of time that may be determined by the department and fixed in its discretion, and be paid for out of the toll revenue fund as may be specified in the proceedings. The department may provide in the proceedings authorizing the issuance of bonds for the carrying of insurance as authorized by this chapter, and the purchase and carrying of insurance as authorized by this chapter, and the purchase and carrying of such insurance shall thereupon be obligatory upon the department and be paid for out of the toll revenue fund as may be specified in the proceedings. [1984 c 7 § 264; 1961 c 13 § 47.56.230. Prior: 1937 c 173 § 15; RRS § 6524-15.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.240 Toll bridges—Fixing of toll rates authorized—Lien of bonds on revenue. Except as otherwise provided in RCW 47.56.850, the commission is hereby empowered to fix the rates of toll and other charges for all toll bridges built under the terms of this chapter. Toll charges so fixed may be changed from time to time as conditions warrant. The commission, in establishing toll charges, shall give due consideration to the cost of operating and maintaining such toll bridge or toll bridges including the cost of insurance, and to the amount required annually to meet the redemption of bonds and interest payments on them. The tolls and charges shall be at all times fixed at rates to yield annual revenue equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges of the bonds issued for any particular toll bridge or toll bridges as the bonds become due. The bond redemption and interest payments constitute a first direct charge and lien on all such tolls and other revenues and interest thereon. Sinking funds created therefrom received from the use and operation of the toll bridge or toll bridges,

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and such tolls and revenues together with the interest earned thereon shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as any of these bonds are outstanding and unpaid. [2008 c 122 § 14; 1984 c 7 § 265; 1961 c 13 § 47.56.240. Prior: 1937 c 173 § 9; RRS § 6524-9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.242 Liquidation and closure of facility accounts upon removal of tolls—Transfer to motor vehicle fund. The department is authorized to liquidate and close toll facility trust and other facility accounts established outside the state treasury under chapter 47.56 RCW after the removal of tolls from the facility for which the accounts were established. Any balance remaining in the accounts shall thereupon be transferred to the motor vehicle fund. In addition, the department may, after the removal of tolls from a particular facility or facilities, require that all moneys transferred to the place of payment named in the revenue bonds, for the purpose of paying principal or interest or for redemption of the bonds not then expended for such purpose, be returned to the state treasurer for deposit in the motor vehicle fund. [1984 c 7 § 266; 1967 ex.s. c 145 § 48.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.243 Liquidation and closure of facility accounts upon removal of tolls—Satisfaction of claims. After transfer of such moneys pursuant to RCW 47.56.242, all valid claims against such accounts, including proper claims for refunds for unused commute media and other prepaid toll fees, may be satisfied, and any outstanding bonds or any coupons may be redeemed by payment from the motor vehicle fund upon proper application to and approval by the department of transportation.

Neither the provisions of this section nor of RCW 47.56.242 shall be construed to preclude any remedy otherwise available to bond owners or coupon holders. [1983 c 167 § 119; 1967 ex.s. c 145 § 49.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

47.56.245 Toll charges retained until costs paid. The department shall retain toll charges on all existing and future facilities until all costs of investigation, financing, acquisition of property, and construction advanced from the motor vehicle fund, and obligations incurred under RCW 47.56.250 and chapter 16, Laws of 1945 have been fully paid.

(1) Except as provided in subsection (2) of this section, with respect to every facility completed after March 19, 1953, costs of maintenance and operation shall be paid periodically out of the revenues of the facility in which such costs were incurred.

(2) Where a state toll facility is constructed under chapter 47.46 RCW adjacent to or within two miles of an existing bridge that was constructed under this chapter, revenue from the toll facility may not be used to pay for costs of maintenance on the existing bridge. [2002 c 114 § 23; 1984 c 7 § 267; 1965 ex.s. c 170 § 53; 1961 c 13 § 47.56.245. Prior: 1953 c 220 § 6.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.247 Credit permits for vehicular passage. The department may issue permits for the passage of vehicles on any or all of its toll bridges, toll tunnels, toll roads, or for the Washington state ferry system on a credit basis upon such terms and conditions as the department deems proper. [1984 c 7 § 268; 1961 c 258 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 258: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 258 § 3.]

47.56.248 Credit permits for vehicular passage—Cash deposit or bond—Revocation of permit. The department may require the holder of the permit to furnish to and maintain in force with the department a cash deposit or a corporate surety bond. The department may require the holder of the permit to increase the amount of cash bond, or to furnish an additional surety bond, or may reduce the amount of the cash bond or surety bond required, as the amount of charges incurred and regularity of payment warrant, or may revoke any permit granted for failure of the holder to comply with any of its terms. [1984 c 7 § 269; 1961 c 258 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 258: See note following RCW 47.56.247.

47.56.250 Contributions by the state or political subdivision—Bonds—Repayment. Whenever a proposed toll bridge, toll road, toll tunnel, or any other toll facility of any sort is to be constructed, any city, county, or other political subdivision located in relation to such facility so as to benefit directly or indirectly thereby, may, either jointly or separately, at the request of the transportation commission advance or contribute money, or bonds, rights-of-way, labor, materials, and other property toward the expense of building the toll facility, and for preliminary surveys and the preparation of plans and estimates of cost therefor and other preliminary expenses. Any such city, county, or other political subdivision may, either jointly or separately, at the request of the transportation commission advance or contribute money or bonds for the purpose of guaranteeing the payment of interest or principal on the bonds issued by the commission to finance the toll facility. Appropriations for such purposes may be made from any funds available, including county road funds received from or credited by the state, or funds obtained by excess tax levies made pursuant to law or the issuance of general obligation bonds for this purpose. General obligation bonds issued by a city, county, or political subdivision may with the consent of the commission be placed with the department of transportation to be sold by the department to provide funds for such purpose. Money, or bonds, or property so advanced or contributed may be immediately transferred or delivered to the department to be used for the purpose for which contribution was made. The commission may enter into an agreement with a city, county, or other political subdivision to repay any money, or bonds or the value of a right-of-way, labor, materials, or other property so advanced or contributed. The commission may make such repayment to a

city, county, or other political subdivision and reimburse the state for any expenditures made by it in connection with the toll facility out of tolls and other revenues for the use of the toll facility. [1977 ex.s. c 151 § 71; 1961 c 13 § 47.56.250. Prior: 1959 c 162 § 1; 1955 c 166 § 1; 1937 c 173 § 12; RRS § 6524-12.]

47.56.253 Permits, leases, licenses to governmental entities to use property of toll facility or ferry system. If the department deems it in the public interest and not inconsistent with the use and operation of the toll facility involved, the department may on application therefor issue a permit, lease, or license to the state, or to any city, county, port district, or other political subdivision or municipal corporation of the state to use any portion of the property of any toll bridge, toll road, toll tunnel, or Washington state ferry system upon such terms and conditions as the department may prescribe. [1984 c 7 § 270; 1961 c 257 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 257: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 257 § 7.]

47.56.254 Sale of unneeded property—Authorized—Rules. If the secretary of transportation determines that any real property (including lands, improvements thereon, and any interests or estates) originally acquired for toll facility purposes is no longer required for purposes of the department, the department shall offer it for sale as authorized by RCW 47.12.063 or 47.12.283. The department may adopt rules further implementing this section. [1979 ex.s. c 189 § 4; 1977 ex.s. c 151 § 72; 1973 1st ex.s. c 177 § 3; 1961 c 257 § 3.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

Severability—1961 c 257: See note following RCW 47.56.253.

47.56.255 Sale of unneeded property—Certification to governor—Execution, delivery of deed. When full payment for real property agreed to be sold as authorized by RCW 47.56.254 has been received, the department may certify this fact to the governor, with a description of the land and terms of the sale, and the governor may execute and the secretary of state shall attest the deed and deliver it to the grantee. [1984 c 7 § 271; 1973 1st ex.s. c 177 § 4; 1961 c 257 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 257: See note following RCW 47.56.253.

47.56.256 Franchises for utility, railway, urban public transportation purposes. If the department deems it not inconsistent with the use and operation of any department facility, the department may grant franchises to persons, associations, private or municipal corporations, the United States government, or any agency thereof, to use any portion of the property of any toll bridge, toll road, toll tunnel, or the Washington state ferry system, including approaches thereto, for the construction and maintenance of water pipes, flumes, gas pipes, telephone, telegraph, and electric light and power lines and conduits, trams or railways, any structures or facili-

ties that are part of an urban public transportation system owned or operated by a municipal corporation, agency, or department of the state of Washington other than the department of transportation, and any other such facilities in the manner of granting franchises on state highways. [1984 c 7 § 272; 1967 c 108 § 12; 1961 c 257 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1961 c 257: See note following RCW 47.56.253.

Urban public transportation system defined: RCW 47.04.082.

47.56.257 Deposit of moneys received under RCW 47.56.253 through 47.56.256. Any moneys received pursuant to the provisions of RCW 47.56.253 through 47.56.256 shall be deposited into the separate and proper trust fund with the state treasurer established for the respective toll facility. [1979 ex.s. c 189 § 5; 1961 c 257 § 6.]

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

Severability—1961 c 257: See note following RCW 47.56.253.

47.56.258 Notification requirements. Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 10.]

Finding—Intent—Severability—2007 c 62: See notes following RCW 43.17.400.

47.56.270 1950 Tacoma Narrows bridge part of primary highways. The 1950 Tacoma Narrows bridge in chapter 47.17 RCW made a part of the primary state highways of the state of Washington shall, upon completion, be operated, maintained, kept up, and repaired by the department in the manner provided in this chapter, and the cost of such operation, maintenance, upkeep, and repair shall be paid from funds appropriated for the use of the department for the construction and maintenance of the primary state highways of the state of Washington. This section does not apply to that portion of the Tacoma Narrows bridge facility first opened to traffic after June 13, 2002. [2005 c 335 § 4; 2002 c 114 § 20; 1983 c 3 § 129; 1961 c 13 § 47.56.270. Prior: 1939 c 5 § 4; RRS § 6524-3a.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.56.271 1950 Tacoma Narrows bridge toll-free—Exception. Except as otherwise provided in this section, the 1950 Tacoma Narrows bridge hereinbefore by the provisions of RCW 47.17.065 and 47.56.270 made a part of the primary state highways of the state shall be operated and maintained by the department as a toll-free facility at such time as the bonded indebtedness relating to the construction of the 1950 Tacoma Narrows bridge is wholly retired and tolls equaling the indebtedness of the toll bridge authority incurred for the construction of the 1950 Tacoma Narrows bridge to the county of Pierce have been collected. Toll charges may be imposed upon the 1950 Tacoma Narrows bridge only if that bridge is included as part of a public toll bridge facility that includes an additional toll bridge adjacent to the 1950 Tacoma Narrows bridge and constructed under RCW 47.46.080. [2002 c 114 § 21; 1983 c 3 § 130; 1965 c 50 § 1.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

47.56.366 Hood Canal bridge—Public sport fishing—Disclaimer of liability. The department may permit public sport fishing from the Hood Canal bridge. The department may adopt rules governing public use of the bridge for sport fishing to the end that such activity shall not interfere with the primary use and operation of the bridge as a highway facility. Notwithstanding the provisions of RCW 4.92.090 or any other statute imposing liability upon the state of Washington, the state hereby disclaims any liability arising out of loss or injury in connection with the public use of the Hood Canal bridge for sport fishing purposes. [1984 c 7 § 277; 1963 c 240 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.401 High occupancy toll lanes defined. For the purposes of RCW 46.61.165, 47.56.403, and 47.66.090, "high occupancy toll lanes" means one or more lanes of a highway that charges tolls as a means of regulating access to or the use of the facility, to maintain travel speed and reliability. Supporting facilities include, but are not limited to, approaches, enforcement areas, improvements, buildings, and equipment. [2005 c 312 § 2.]

Intent—2005 c 312: "The legislature recognizes that the Puget Sound region is faced with growing traffic congestion and has limited ability to expand freeway capacity due to financial, environmental, and physical constraints. Freeway high occupancy vehicle lanes have been an effective means of providing transit, vanpools, and carpools with a fast trip on congested freeway corridors, but in many cases, these lanes are themselves getting crowded during the peak commute times, while some are being underused at off-peak times.

It is the intent of the legislature to maximize the effectiveness and efficiency of the freeway system. To evaluate methods to accomplish this, it is beneficial to evaluate alternative approaches to managing the use of freeway high occupancy vehicle lanes, including pilot projects to determine and demonstrate the effectiveness and benefits of implementing high occupancy toll lanes. The legislature acknowledges that state route 167 provides an ideal test of the high occupancy toll lane concept because it is a congested corridor, it has underused capacity in the high occupancy vehicle lane, and it has adequate right-of-way for improvements needed to test the concept. Therefore, it is the intent of this act to direct that the department of transportation, as a pilot project, develop and operate a high occupancy toll lane on state route 167 in King county and to conduct an evaluation of that project to determine impacts on freeway efficiency, effectiveness for transit, feasibility of financing improvements through tolls, and the impacts on freeway users." [2005 c 312 § 1.]

Captions—2005 c 312: "Section captions used in this act are not any part of the law." [2005 c 312 § 9.]

47.56.403 High occupancy toll lane pilot project. (1) The department may provide for the establishment, construction, and operation of a pilot project of high occupancy toll lanes on state route 167 high occupancy vehicle lanes within King county. The department may issue, buy, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction of high occupancy toll lanes, carry insurance, and handle any other matters pertaining to the high occupancy toll lane pilot project.

(2) Tolls for high occupancy toll lanes will be established as follows:

(a) The schedule of toll charges for high occupancy toll lanes must be established by the transportation commission and collected in a manner determined by the commission.

(b) Toll charges shall not be assessed on transit buses and vanpool vehicles owned or operated by any public agency.

(c) The department shall establish performance standards for the state route 167 high occupancy toll lane pilot project. The department must automatically adjust the toll charge, using dynamic tolling, to ensure that toll-paying single-occupant vehicle users are only permitted to enter the lane to the extent that average vehicle speeds in the lane remain above forty-five miles per hour at least ninety percent of the time during peak hours. The toll charge may vary in amount by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria, as the commission may deem appropriate. The commission may also vary toll charges for single-occupant inherently low-emission vehicles such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.

(d) The commission shall periodically review the toll charges to determine if the toll charges are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department shall monitor the state route 167 high occupancy toll lane pilot project and shall annually report to the transportation commission and the legislature on operations and findings. At a minimum, the department shall provide facility use data and review the impacts on:

- (a) Freeway efficiency and safety;
- (b) Effectiveness for transit;
- (c) Person and vehicle movements by mode;
- (d) Ability to finance improvements and transportation services through tolls; and

(e) The impacts on all highway users. The department shall analyze aggregate use data and conduct, as needed, separate surveys to assess usage of the facility in relation to geographic, socioeconomic, and demographic information within the corridor in order to ascertain actual and perceived questions of equitable use of the facility.

(4) The department shall modify the pilot project to address identified safety issues and mitigate negative impacts to high occupancy vehicle lane users.

(5) Authorization to impose high occupancy vehicle tolls for the state route 167 high occupancy toll pilot project expires if either of the following two conditions apply:

(a) If no contracts have been let by the department to begin construction of the toll facilities associated with this pilot project within four years of July 24, 2005; or

(b) Four years after toll collection begins under this section.

(6) The department of transportation shall adopt rules that allow automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits.

(7) The conversion of a single existing high occupancy vehicle lane to a high occupancy toll lane as proposed for SR-167 must be taken as the exception for this pilot project.

(8) A violation of the lane restrictions applicable to the high occupancy toll lanes established under this section is a traffic infraction.

(9) Procurement activity associated with this pilot project shall be open and competitive in accordance with chapter 39.29 RCW. [2005 c 312 § 3.]

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

47.56.600 Naches Pass tunnel—Design. Upon adoption of the financing plan the commission and the authority, acting jointly, shall forthwith proceed to make the design for the entire project. [1961 c 13 § 47.56.600. Prior: 1959 c 292 § 4.]

Reviser's note: Powers, duties, and functions of highway commission and toll bridge authority transferred to department of transportation; see RCW 47.01.031. Terms "commission" and "authority" mean department of transportation; see RCW 47.04.015.

47.56.711 Spokane river bridges. The state highway bridge across the Spokane river in the vicinity of Trent Avenue in Spokane shall be known and designated as the James E. Keefe bridge.

After September 1, 1990, ownership of the Spokane river toll bridge, known as the Maple Street bridge, shall revert to the city of Spokane. [1990 c 42 § 401; 1979 c 131 § 1.]

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Severability—1979 c 131: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 131 § 11.]

47.56.720 Puget Island-Westport ferry—Payments for operation and maintenance to Wahkiakum county—Toll-free operation and provision of rest room facilities, when. (1) The legislature finds that the ferry operated by Wahkiakum county between Puget Island and Westport on the Columbia river provides service which is primarily local in nature with secondary benefits to the state highway system in providing a bypass for state route 4 and providing the only crossing of the Columbia river between the Astoria-Megler bridge and the Longview bridge.

(2) The department is hereby authorized to enter into a continuing agreement with Wahkiakum county pursuant to which the department shall pay to Wahkiakum county from moneys appropriated for such purpose monthly amounts not to exceed eighty percent of the operating and maintenance deficit with a maximum not to exceed the amount appropriated for that biennium to be used in the operation and maintenance of the Puget Island ferry, commencing July 1, 1992.

(3) The annual deficit, if any, incurred in the operation and maintenance of the ferry shall be determined by Wahkiakum county subject to the approval of the department. If eighty percent of the deficit for the preceding fiscal year exceeds the total amount paid to the county for that year, the additional amount shall be paid to the county by the department upon the receipt of a properly executed voucher. The total of all payments to the county in any biennium shall not exceed the amount appropriated for that biennium. The fares established by the county shall be comparable to those used for similar runs on the state ferry system.

(4) Whenever, subsequent to June 9, 1977, state route 4 between Cathlamet and Longview is closed to traffic pursuant to chapter 47.48 RCW due to actual or potential slide conditions and there is no suitable, reasonably short alternate state route provided, Wahkiakum county is authorized to operate the Puget Island ferry on a toll-free basis during the entire period of such closure. The state's share of the ferry

operations and maintenance deficit during such period shall be one hundred percent.

(5) Whenever state route 4 between Cathlamet and Longview is closed to traffic, as mentioned in subsection (4) hereof, the state of Washington shall provide temporary rest room facilities at the Washington ferry landing terminal. [1992 c 82 § 1; 1987 c 368 § 1; 1984 c 7 § 285; 1977 c 11 § 1; 1973 2nd ex.s. c 26 § 1; 1971 ex.s. c 254 § 1.]

Effective date—1987 c 368: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 368 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—1973 2nd ex.s. c 26: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1973." [1973 2nd ex.s. c 26 § 3.]

47.56.725 County ferries—Deficit reimbursements—Capital improvement funds. (1) The department is hereby authorized to enter into a continuing agreement with Pierce, Skagit, and Whatcom counties pursuant to which the department shall, from time to time, direct the distribution to each of the counties the amounts authorized in subsection (2) of this section in accordance with RCW 46.68.090.

(2) The department is authorized to include in each agreement a provision for the distribution of funds to each county to reimburse the county for fifty percent of the deficit incurred during each previous fiscal year in the operation and maintenance of the ferry system owned and operated by the county. The total amount to be reimbursed to Pierce, Skagit, and Whatcom counties collectively shall not exceed one million dollars in any biennium. Each county agreement shall contain a requirement that the county shall maintain tolls on its ferries at least equal to tolls in place on January 1, 1990.

(3) The annual fiscal year operating and maintenance deficit, if any, shall be determined by Pierce, Skagit, and Whatcom counties subject to review and approval of the department. The annual fiscal year operating and maintenance deficit is defined as the total of operations and maintenance expenditures less the sum of ferry toll revenues and that portion of fuel tax revenue distributions which are attributable to the county ferry as determined by the department. Distribution of the amounts authorized by subsection (2) of this section by the state treasurer shall be directed by the department upon the receipt of properly executed vouchers from each county.

(4) The county road administration board may evaluate requests by Pierce, Skagit, Wahkiakum, and Whatcom counties for county ferry capital improvement funds. The board shall evaluate the requests and, if approved by a majority of the board, submit the requests to the legislature for funding out of the amounts available under *RCW 46.68.090(1)(j). Any county making a request under this subsection shall first seek funding through the public works trust fund, or any other available revenue source, where appropriate. [1999 c 269 § 12; 1991 c 310 § 1; 1984 c 7 § 286; 1977 c 51 § 2; 1975-'76 2nd ex.s. c 57 § 2; 1975 1st ex.s. c 21 § 1.]

***Reviser's note:** RCW 46.68.090 was amended by 2003 c 361 § 403, changing subsection (1)(j) to subsection (2)(h).

Effective date—1999 c 269: See note following RCW 36.78.070.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—1977 c 51: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 c 51 § 4.]

Severability—1977 c 51: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 c 51 § 3.]

47.56.730 "No Smoking" areas on ferries—Establishment directed. The legislature finds that the public health, safety, and welfare require that "No Smoking" areas be established on all state ferries since there is a significant number of our citizens who are nonsmokers. The department is hereby authorized and directed to adopt rules pursuant to the administrative procedure act, chapter 34.05 RCW, to establish and clearly designate areas on all state operated ferries that are expressly reserved for use by nonsmokers. [1984 c 7 § 287; 1974 ex.s. c 10 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.56.770 Refunding bonds—Authorized. The state finance committee is authorized to issue refunding bonds and use other available money to refund, defease, and redeem all of those toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds under RCW 47.56.771 through 47.56.774. [1993 c 4 § 2.]

Legislative declaration—1993 c 4: "It is declared that it is in the best interest of the state to modify the debt service and reserve requirements, sources of payment, covenants, and other terms of the outstanding toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds." [1993 c 4 § 1.]

Effective date—1993 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 12, 1993]." [1993 c 4 § 11.]

47.56.771 Refunding bonds—General obligation—Signatures, negotiability—Payment of principal and interest—Pledge of excise taxes. (1) The refunding bonds authorized under RCW 47.56.770 shall be general obligation bonds of the state of Washington and shall be issued in a total principal amount not to exceed fifteen million dollars. The exact amount of refunding bonds to be issued shall be determined by the state finance committee after calculating the amount of money deposited with the trustee for the bonds to be refunded which can be used to redeem or defease outstanding toll bridge authority, ferry, and Hood Canal bridge revenue bonds after the setting aside of sufficient money from that fund to pay the first interest installment on the refunding bonds. The refunding bonds shall be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last maturity date of the refunding bonds shall not be later than January 1, 2002.

(2) The refunding bonds shall be signed by the governor and the state treasurer under the seal of the state, which signatures shall be made manually or in printed facsimile. The bonds shall be registered in the name of the owner in accordance with chapter 39.46 RCW. The refunding bonds shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the

state, and shall contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds shall be fully negotiable instruments.

(3) The principal and interest on the refunding bonds shall be first payable in the manner provided in this section from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW.

(4) The principal of and interest on the refunding bonds shall be paid first from the state excise taxes on motor vehicle and special fuels deposited in the ferry bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapters 82.36 and 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee shall certify to the state treasurer such amount of additional money as may be required for debt service, and the treasurer shall thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the ferry bond retirement fund. Any proceeds of such excise taxes required for these purposes shall first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the Puget Sound capital construction account. If the proceeds from excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest shall next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns shall be repaid from the first money distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants that it shall at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds. [1999 c 269 § 14; 1995 c 274 § 17; 1993 c 4 § 3.]

Effective date—1999 c 269: See note following RCW 36.78.070.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

47.56.772 Refunding bonds—Liquidation of existing bond funds. Upon the issuance of refunding bonds as authorized by RCW 47.56.770, the department of transportation may liquidate the existing bond fund and other funds and accounts established in the proceedings which authorized the issuance of the outstanding toll bridge authority, ferry, and Hood Canal bridge refunding revenue bonds and apply the money contained in those funds and accounts to the defeasance and redemption of outstanding toll bridge authority, ferry, and Hood Canal refunding revenue bonds, except that prior to such bond redemption, money sufficient to pay the first interest installment on the refunding bonds shall be

deposited in the ferry bond retirement fund. Money remaining in such funds not used for such bond defeasance and redemption or first interest installment on the refunding bonds shall be transferred to and deposited in the Puget Sound ferry operations account created under RCW 47.60.530. [1999 c 94 § 25; 1993 c 4 § 4.]

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

47.56.773 Refunding bonds—Repayment to Puget Sound capital construction account. Any money appropriated from the Puget Sound capital construction account under section 10, chapter 4, Laws of 1993 and expended to pay expenses of issuing the refunding bonds authorized by RCW 47.56.770, and any money in the Puget Sound capital construction account subsequently used to pay principal and interest on the refunding bonds authorized by RCW 47.56.770 shall be repaid to the Puget Sound capital construction account for use by the department of transportation. [1993 c 4 § 5.]

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

47.56.774 Various bond issues—Charge against fuel tax revenues. Except as otherwise provided by statute, the refunding bonds issued under authority of RCW 47.56.770, the bonds authorized by RCW 47.60.560 through 47.60.640, the bonds authorized by RCW 47.26.420 through 47.26.427, and any general obligation bonds of the state of Washington which have been or may be authorized by the legislature after the enactment of those sections and which pledge motor vehicle and special fuel excise taxes for the payment of principal thereof and interest thereon shall be an equal charge and lien against the revenues from such motor vehicle and special fuel excise taxes. [1993 c 4 § 6.]

Legislative declaration—Effective date—1993 c 4: See notes following RCW 47.56.770.

47.56.780 New ferry vessel construction for service on routes that require a vessel that carries no more than one hundred motor vehicles—How constructed—Warranty work. (1) The department shall construct one or more new ferry vessels for service on routes that require a vessel that carries no more than one hundred motor vehicles. The department shall include in the procurement of the new vessels a requirement that the vessels be constructed within the boundaries of the state of Washington, except that equipment furnished by the state and components, products, and systems that are standard manufactured items are not subject to the in-state requirement under this subsection.

(2) For purposes of this section, "constructed" means: The fabrication, by the joining together by welding or fastening, of all steel parts from which the total vessel is constructed including, but not limited to, all shell frames, longitudinals, bulkheads, webs, piping runs, wire ways, and ducting. "Constructed" also means (a) the installation of all components and systems including, but not limited to, equipment and machinery, castings, electrical, electronics, deck covering, lining, paint, and joiner work required by the con-

tract and (b) the interconnection of all equipment, machinery, and services, such as piping, wiring, and ducting.

(3) The procurement of the new ferry vessels must also include a requirement that all warranty work on the vessels be performed within the boundaries of the state of Washington, insofar as practicable. [2008 c 4 § 2.]

Findings—2008 c 4: "Washington's marine highways provide vital transportation links between communities. Citizens, businesses, and visitors depend on the state's ferry system to provide safe, dependable auto and passenger service in order to conduct daily life and commerce activities. On November 20, 2007, the secretary of the department of transportation ordered the eighty-year old steel electric class vessels to be immediately removed from service because previously undetected corrosion and pitting in the vessel hulls posed a risk to the safety of passengers and crew. The emergency removal of the state ferry system's steel electric class vessels has imposed a significant hardship on the citizens and businesses served by those vessels. Therefore, an expedited procurement is required for the construction of new vessels to fully restore service to routes previously served by the steel electric class vessels." [2008 c 4 § 1.]

Effective date—2008 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 14, 2008]." [2008 c 4 § 3.]

47.56.785 Authority to collect tolls on existing or replacement state route number 520 bridge—Toll charge schedule. (1) Following the submission of the report required in section 6, chapter 270, Laws of 2008, the department may seek authorization from the legislature to collect tolls on the existing state route number 520 bridge or on a replacement state route number 520 bridge.

(2) The schedule of toll charges must be established by the transportation commission and collected in a manner determined by the department. [2008 c 270 § 4.]

Finding—2008 c 270: See note following RCW 47.01.408.

47.56.790 Interstate 90 floating bridge tolls—Federal authorization—Report. The department shall work with the federal highways administration to determine the necessary actions for receiving federal authorization to toll the Interstate 90 floating bridge. The department must periodically report the status of those discussions to the governor and the joint transportation committee. [2008 c 270 § 5.]

Finding—2008 c 270: See note following RCW 47.01.408.

TOLL FACILITIES CREATED AFTER JULY 1, 2008

47.56.805 Finding—Intent. The legislature finds and declares that it is the policy of the state of Washington to use tolling to provide a source of transportation funding and to encourage effective use of the transportation system.

The legislature intends that the policy framework created by chapter 122, Laws of 2008 will guide subsequent legislation and decisions regarding the tolling of specific facilities and corridors. For each state-owned facility or corridor, the legislature intends that it will authorize the budget and finance plan. Specific issues that may be addressed in the finance plan and budget authorization legislation include the amount of financing required for a facility or corridor, the budget for any construction and operations financed by tolling, whether and how variable pricing will be applied, and the timing of tolling.

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The legislature also intends that while the transportation commission, as the toll-setting authority, may set toll rates for facilities, corridors, or systems thereof, the legislature reserves the authority to impose tolls on any state transportation route or facility. Similarly, local or quasi-local entities that retain the power to impose tolls may do so as long as the effect of those tolls on the state highway system is consistent with the policy guidelines detailed in chapter 122, Laws of 2008. If the imposition of tolls could have an impact on state facilities, the state tolling authority must review and approve such tolls. [2008 c 122 § 1.]

47.56.810 Definitions. The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise:

(1) "Tolling authority" means the governing body that is legally empowered to review and adjust toll rates. Unless otherwise delegated, the transportation commission is the tolling authority for all state highways.

(2) "Eligible toll facility" or "eligible toll facilities" means portions of the state highway system specifically identified by the legislature including, but not limited to, transportation corridors, bridges, crossings, interchanges, on-ramps, off-ramps, approaches, bistate facilities, and interconnections between highways.

(3) "Toll revenue" or "revenue from an eligible toll facility" means toll receipts, all interest income derived from the investment of toll receipts, and any gifts, grants, or other funds received for the benefit of the eligible toll facility. [2008 c 122 § 3.]

47.56.820 Imposition of tolls on eligible toll facilities—Who may authorize, revenue expenditures. (1) Unless otherwise delegated, only the legislature may authorize the imposition of tolls on eligible toll facilities.

(2) All revenue from an eligible toll facility must be used only to construct, improve, preserve, maintain, manage, or operate the eligible toll facility on or in which the revenue is collected. Expenditures of toll revenues are subject to appropriation and must be made only:

(a) To cover the operating costs of the eligible toll facility, including necessary maintenance, preservation, administration, and toll enforcement by public law enforcement within the boundaries of the facility;

(b) To meet obligations for the repayment of debt and interest on the eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves and insurance;

(c) To meet any other obligations to provide funding contributions for any projects or operations on the eligible toll facilities;

(d) To provide for the operations of conveyances of people or goods; or

(e) For any other improvements to the eligible toll facilities. [2008 c 122 § 4.]

47.56.830 Policy guidelines for eligible toll facility proposals. Any proposal for the establishment of eligible toll facilities shall consider the following policy guidelines:

(1) Overall direction. Washington should use tolling to encourage effective use of the transportation system and provide a source of transportation funding.

(2) When to use tolling. Tolling should be used when it can be demonstrated to contribute a significant portion of the cost of a project that cannot be funded solely with existing sources or optimize the performance of the transportation system. Such tolling should, in all cases, be fairly and equitably applied in the context of the statewide transportation system and not have significant adverse impacts through the diversion of traffic to other routes that cannot otherwise be reasonably mitigated. Such tolling should also consider relevant social equity, environmental, and economic issues, and should be directed at making progress toward the state's greenhouse gas reduction goals.

(3) Use of toll revenue. All revenue from an eligible toll facility must be used only to improve, preserve, manage, or operate the eligible toll facility on or in which the revenue is collected. Additionally, toll revenue should provide for and encourage the inclusion of recycled and reclaimed construction materials.

(4) Setting toll rates. Toll rates, which may include variable pricing, must be set to meet anticipated funding obligations. To the extent possible, the toll rates should be set to optimize system performance, recognizing necessary trade-offs to generate revenue.

(5) Duration of toll collection. Because transportation infrastructure projects have costs and benefits that extend well beyond those paid for by initial construction funding, tolls on future toll facilities may remain in place to fund additional capacity, capital rehabilitation, maintenance, management, and operations, and to optimize performance of the system. [2008 c 122 § 5.]

47.56.840 Tolling advisory committee. (1) A tolling advisory committee may be created at the direction of the tolling authority for any eligible toll facilities. The tolling authority shall appoint nine members to the committee, all of whom must be permanent residents of the affected project area as defined for each project. Members of the committee shall serve without receiving compensation.

(2) The tolling advisory committee shall serve in an advisory capacity to the tolling authority on all matters related to the imposition of tolls including, but not limited to: (a) The feasibility of providing discounts; (b) the trade-off of lower tolls versus the early retirement of debt; and (c) consideration of variable or time of day pricing.

(3) In setting toll rates, the tolling authority shall consider recommendations of the tolling advisory committee. [2008 c 122 § 6.]

47.56.850 Transportation commission as state tolling authority—Toll rates. (1) Unless these powers are otherwise delegated by the legislature, the transportation commission is the tolling authority for the state. The tolling authority shall:

(a) Set toll rates, establish appropriate exemptions, if any, and make adjustments as conditions warrant on eligible toll facilities;

(b) Review toll collection policies, toll operations policies, and toll revenue expenditures on the eligible toll facilities and report annually on this review to the legislature.

(2) The tolling authority, in determining toll rates, shall consider the policy guidelines established in RCW 47.56.830.

(3) Unless otherwise directed by the legislature, in setting and periodically adjusting toll rates, the tolling authority must ensure that toll rates will generate revenue sufficient to:

(a) Meet the operating costs of the eligible toll facilities, including necessary maintenance, preservation, administration, and toll enforcement by public law enforcement;

(b) Meet obligations for the repayment of debt and interest on the eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves, minimum debt coverage or other appropriate contingency funding, and insurance; and

(c) Meet any other obligations of the tolling authority to provide its proportionate share of funding contributions for any projects or operations of the eligible toll facilities.

(4) The established toll rates may include variable pricing, and should be set to optimize system performance, recognizing necessary trade-offs to generate revenue for the purposes specified in subsection (3) of this section. Tolls may vary for type of vehicle, time of day, traffic conditions, or other factors designed to improve performance of the system. [2008 c 122 § 7.]

47.56.860 Application. This subchapter applies only to all state toll bridges and other state toll facilities, excluding the Washington state ferries, first authorized within this state after July 1, 2008. [2008 c 122 § 2.]

Chapter 47.58 RCW

EXISTING AND ADDITIONAL BRIDGES

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47.58.010	Improvement of existing bridge and construction of new bridge as single project—Agreement—Tolls.
47.58.020	Examinations and surveys—Preliminary expenses—Financing.
47.58.030	Construction, operation of bridges—Collection of tolls—Schedule of charges.
47.58.040	Revenue bonds—Form—Sale—Interim bonds—Deposit of proceeds.
47.58.050	Revenue bonds—Expenses includable—Conditions—Remedies of bondholders.
47.58.060	Bond resolution—Disposition of income and revenues.
47.58.070	Bonds legal investment for state moneys.
47.58.080	Eminent domain.
47.58.090	Study of projects—Specific authorization of construction and finance.
47.58.900	Chapter provides additional method.

Bridges over navigable waters: RCW 79.110.110 through 79.110.140.

47.58.010 Improvement of existing bridge and construction of new bridge as single project—Agreement—Tolls. Whenever the legislature specifically authorizes, as a single project, the construction of an additional toll bridge, including approaches, and the reconstruction of an existing adjacent bridge, including approaches, and the imposition of tolls on both bridges, the department is authorized to enter into appropriate agreements whereunder the existing bridge or its approaches will be reconstructed and improved and an

additional bridge, including approaches and connecting highways will be constructed as a part of the same project to be located adjacent to or within two miles of the existing bridge and will be financed through the issuance of revenue bonds of the same series. The department has the right to impose tolls for traffic over the existing bridge as well as the additional bridge for the purpose of paying the cost of operation and maintenance of the bridge or bridges and the interest on and creating a sinking fund for retirement of revenue bonds issued for account of such project, all in the manner permitted and provided by this chapter. [1984 c 7 § 288; 1961 c 13 § 47.58.010. Prior: 1955 c 208 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.020 Examinations and surveys—Preliminary expenses—Financing. For the purpose of obtaining information as to the necessity of the reconstruction or improvement of any such bridge and the expediency of constructing any such additional bridge it is the duty of the department to make any examination, investigation, survey, or reconnaissance pertaining thereto. The cost of any such examination, investigation, survey, or reconnaissance, and all preliminary expenses in the issuance of any revenue bonds, making surveys and appraisals and drafting, printing, issuance, and sale of bonds under this chapter, shall be advanced by any interested municipality, agency, or department of the state of Washington. All such advancements shall be reimbursed out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived by the department through its operations hereunder for account of the project, as may be agreed upon between the department and the municipality, agency, or department. [1984 c 7 § 289; 1961 c 13 § 47.58.020. Prior: 1955 c 208 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.030 Construction, operation of bridges—Collection of tolls—Schedule of charges. Except as otherwise provided in RCW 47.56.850, the secretary shall have full charge of the construction of all such improvements and reconstruction work and the construction of any additional bridge, including approaches and connecting highways, that may be authorized under this chapter and the operation of such bridge or bridges, as well as the collection of tolls and other charges for services and facilities thereby afforded. The schedule of charges for the services and facilities shall be fixed and revised from time to time by the commission so that the tolls and revenues collected will yield annual revenue and income sufficient, after payment or allowance for all operating, maintenance, and repair expenses, to pay the interest on all revenue bonds outstanding under the provisions of this chapter for account of the project and to create a sinking fund for the retirement of the revenue bonds at or prior to maturity. The charges shall be continued until all such bonds and interest thereon and unpaid advancements, if any, have been paid. [2008 c 122 § 19; 1984 c 7 § 290; 1961 c 13 § 47.58.030. Prior: 1955 c 208 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.040 Revenue bonds—Form—Sale—Interim bonds—Deposit of proceeds. For the purpose of paying the

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cost of all or any part of the improvement and reconstruction work and the construction of any additional bridge, approaches thereto, and connecting highways, the department is hereby authorized by resolution to issue its revenue bonds which shall constitute obligations only of the department and shall be payable from any funds available except revenue from the general fund, including but not limited to the revenues and income from the operation of the bridge or bridges constituting the project as may be provided in and by such resolution. Each such revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the tolls and revenues pledged for that purpose and that such bond does not constitute an indebtedness of the state of Washington. Such revenue bonds may bear such date or dates, may mature at such time or times as the department shall determine, may bear interest at such rate or rates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this chapter as may be provided in such resolution. Notwithstanding the form or tenor of the bond, and in the absence of an express recital on its face that the bond is nonnegotiable, each such revenue bond shall at all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the state treasurer and countersigned by the governor, and any interest coupons appertaining thereto shall bear the signature of the state treasurer. The countersignature of the governor on the bonds and the signature of the state treasurer on the coupons may be their printed or lithographed facsimile signatures. Pending the issuance of definitive bonds, temporary or interim bonds, certificates, or receipts of any denomination and with or without coupons attached may be issued as may be provided by the resolution. All bonds issued under or by authority of this chapter shall be sold to the highest and best bidder at such price or prices, at such rate or rates of interest, and after such advertising for bids as the department may deem proper, but it may reject any and all bids so submitted and thereafter sell the bonds so advertised under such terms and conditions as it deems advantageous. The purchase price of all bonds issued hereunder shall be paid to the state treasurer consistent with the provisions of the resolution pursuant to which the bonds have been issued or to the trustee designated in the bond resolution and held as a separate trust fund to be disbursed on the orders of the department. [1984 c 7 § 291; 1973 c 106 § 27; 1970 ex.s. c 56 § 64; 1969 ex.s. c 232 § 78; 1961 c 102 § 1; 1961 c 13 § 47.58.040. Prior: 1955 c 208 § 4.]

Severability—1984 c 7: See note following RCW 47.01.141.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.58.050 Revenue bonds—Expenses includable—Conditions—Remedies of bondholders. In determining the amount of bonds required to be issued, there may be included any expenses incurred or approved by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making

inspections and examinations, required reserves, if any, interest during the estimated construction period and for six months thereafter, and a reasonable amount for initial operating expenses and prepaid insurance. The department is hereby empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations, and conditions as it deems necessary with respect to the continued use and application of the revenues and income from the bridge or bridges. The holder of any bond or the trustee for any bonds designated by resolution may by mandamus or other appropriate proceeding compel performance of any duties imposed upon any state department, official, or employee, including any duties imposed upon or undertaken by the department or its officers, agents, and employees in connection with any improvement or reconstruction work on any existing bridge, the construction of any additional bridge, including approaches and connecting highways provided to be so constructed, the maintenance and operation of the bridge or bridges and in connection with the collection, deposit, investment, application, and disbursement of the proceeds of the bonds and the revenues and income derived from the operation of the bridge or bridges. [1984 c 7 § 292; 1961 c 13 § 47.58.050. Prior: 1955 c 208 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.060 Bond resolution—Disposition of income and revenues. Each resolution providing for the issuance of revenue bonds shall provide for setting aside the necessary amounts for the reasonable and proper operation, maintenance, and repair expenses, and shall fix and determine the amounts to be set apart and applied to the payment of the interest on and retirement of the revenue bonds. All income and revenues as collected shall be paid to the state treasurer for the account of the department as a separate trust fund to be segregated and set apart for the payment of the revenue bonds, or may be remitted to and held by a designated trustee in such manner and with such collateral as may be provided in the resolution authorizing the issuance of the bonds. [1984 c 7 § 293; 1961 c 13 § 47.58.060. Prior: 1955 c 208 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.070 Bonds legal investment for state moneys. Notwithstanding any other provision of the law, bonds issued under this chapter shall be legal investments by the state investment board of any state moneys in its hands, except permanent school funds. [1981 c 3 § 39; 1961 c 13 § 47.58.070. Prior: 1955 c 208 § 7.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

47.58.080 Eminent domain. The department is hereby authorized and empowered to acquire in the name of the state by the exercise of the power of eminent domain any lands, property, rights, rights-of-way, franchises, easements, and other property of any person, firm, corporation, political subdivision, or other owner, deemed necessary or convenient for the construction, reconstruction, improvement, and operation of any project initiated and carried on by the department under this chapter. The proceedings shall be in accordance with and subject to the provisions of any and all laws applica-

ble to the exercise of the power of eminent domain by the state. [1984 c 7 § 294; 1961 c 13 § 47.58.080. Prior: 1955 c 208 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.090 Study of projects—Specific authorization of construction and finance. Under the provisions of this chapter, projects other than those specifically authorized herein involving existing bridges may be studied and analyzed by the department, and recommendations therefor may be submitted to the legislature, but such other projects shall not be financed or constructed by the department under the provisions of this chapter until further specific authorization therefor has been provided by the legislature. [1984 c 7 § 295; 1961 c 13 § 47.58.090. Prior: 1955 c 208 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.58.900 Chapter provides additional method. This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers existing on June 8, 1955. [1961 c 13 § 47.58.900. Prior: 1955 c 208 § 9.]

Chapter 47.60 RCW

PUGET SOUND FERRY AND TOLL BRIDGE SYSTEM

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

(1) "Adaptive management" means a systematic process for continually improving management policies and practices by learning from the outcomes of operational programs.

(2) "Capital plan" means the state ferry system plan developed by the department as described in RCW 47.06.050(2), reviewed by the commission, and reported to the transportation committees of the legislature by the commission.

(3) "Capital project" has the same meaning as used in budget instructions developed by the office of financial management.

(4) "Commission" means the transportation commission created in RCW 47.01.051.

(5) "Improvement project" has the same meaning as in the budget instructions developed by the office of financial management. If the budget instructions do not define improvement project, then it has the same meaning as "program project" in the budget instructions. If a project meets both the improvement project and preservation project definitions in this section it must be defined as an improvement project. New vessel acquisitions must be defined as improvement projects.

(6) "Life-cycle cost model" means that portion of a capital asset inventory system which, among other things, is used to estimate future preservation needs.

(7) "Maintenance cost" has the same meaning as used in budget instructions developed by the office of financial management.

(8) "Preservation project" has the same meaning as used in budget instructions developed by the office of financial management.

(9) "Route" means all ferry sailings from one location to another, such as the Seattle to Bainbridge route or the Port Townsend to Keystone route.

(10) "Sailing" means an individual ferry sailing for a specific route, such as the 5:00 p.m. sailing from Seattle to Bremerton.

(11) "Travel shed" means one or more ferry routes with distinct characteristics as determined by the department. [2008 c 124 § 1; 2007 c 512 § 3.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.010 Ferry system, toll bridges, and facilities authorized—Power to contract, sell, and lease back. The department is authorized to acquire by lease, charter, contract, purchase, condemnation, or construction, and partly by any or all of such means, and to thereafter operate, improve, and extend, a system of ferries on and crossing Puget Sound and any of its tributary waters and connections thereof, and connecting with the public streets and highways in the state. The system of ferries shall include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances as shall be determined by the department to be necessary or desirable for efficient operation of the ferry system and best serve the public. Subject to RCW 47.56.820, the department may in like manner acquire by purchase, condemnation, or construction and include in the ferry system such toll bridges, approaches, and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served by the ferry system. In addition to the powers of acquisition granted by this section, the department is empowered to enter into any contracts, agreements, or leases with any person, firm, or corporation and to thereby provide, on such terms and conditions as it shall determine, for the operation of any ferry or ferries or system thereof, whether acquired by the department or not.

The authority of the department to sell and lease back any state ferry, for federal tax purposes only, as authorized by 26 U.S.C., Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal title to any ferry sold and leased back (except for the federal tax benefits attributable to the ownership thereof) shall remain in the state of Washington. [2008 c 122 § 20; 1984 c 18 § 1; 1984 c 7 § 296; 1961 c 13 § 47.60.010. Prior: 1949 c 179 § 1; Rem. Supp. 1949 § 6584-30.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.013 Emergency powers of governor to insure continued operation of ferry and toll bridge system—Cost reimbursement. The governor is authorized to take such actions as may be necessary to insure the continued operation of the Puget Sound ferry and toll bridge system under any emergency circumstances which threaten the continued operation of the system. In the event of such an emergency, the governor may assume all the powers granted by law to the transportation commission and department of transportation with respect to the ferry system. In addition, notwithstanding the provisions of chapters 47.60 and 47.64 RCW, the governor may contract with any qualified persons for the operation of the Washington state ferry system, or any part thereof, or for ferry service to be provided by privately owned vessels.

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Administrative costs to the office of the governor incurred in the exercise of this authority shall be reimbursed by the department. [1981 c 341 § 1.]

Severability—1981 c 341: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 341 § 2.]

47.60.015 "Washington State Ferries"—Name authorized. The department is authorized to operate its ferry system under the name: "Washington State Ferries." [1984 c 7 § 297; 1961 c 13 § 47.60.015. Prior: 1953 c 33 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.017 State ferry system a public mass transportation system. The legislature finds and declares that the state ferry system is a public mass transportation system. [1974 ex.s. c 105 § 1.]

47.60.020 Eminent domain—Condemnation proceedings. For the purpose of carrying out any or all of the powers granted in this chapter, the department has the power of eminent domain for the acquisition of either real or personal property, used or useful for the Puget Sound ferry system. Condemnation pursuant to this chapter shall be the procedure set out in chapter 8.04 RCW. The department may institute condemnation proceedings in the superior court of any county or other court of competent jurisdiction in which any of the property sought to be condemned is located or in which the owner of any thereof does business, and the court in any such action has jurisdiction to condemn property wherever located within the state. It shall not be necessary to allege or prove any offer to purchase or inability to agree with the owners thereof for the purchase of any such property in the proceedings. It is the intention of this section to permit the consolidation in one action of all condemnation proceedings necessary to acquire a ferry system and every type of property incident thereto, irrespective of its location within the state or diversity of ownership. Upon the filing of a petition for condemnation as provided in this section, the court may issue an order restraining the removal from the jurisdiction of the state of any personal property sought to be acquired by the proceeding during the pendency thereof. The court further has the power to issue such orders or process as are necessary to place the department into possession of any property condemned. [1984 c 7 § 298; 1961 c 13 § 47.60.020. Prior: 1949 c 179 § 2; Rem. Supp. 1949 § 6584-31.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.030 Existing contracts—Prior negotiations and bids validated. In any case where the department takes over any property or properties which are under lease, contract, or concession, or where the department has heretofore entered into any contract or negotiation or received any bid for any of the purposes set forth in this chapter, the department is authorized to continue in effect and carry out any such contract, lease, or concession or complete any such negotiation or accept any such bid or any modification of any of them which appears advantageous to the department without regard to any limitations or directions as to the manner thereof contained in this chapter. However, this section shall not be con-

strued as requiring the department so to act, but this section is permissive only and then only in respect to contracts, leases, concessions, negotiations, or bids existing, entered into, or received prior to April 1, 1949. [1984 c 7 § 299; 1961 c 13 § 47.60.030. Prior: 1949 c 179 § 7; Rem. Supp. 1949 § 6584-36.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.040 Survey by department. For the purpose of obtaining information for the consideration of the department upon the acquisition of any ferries or ferry facilities or the construction of any toll bridge under this chapter, the department shall make any examination, investigation, survey, or reconnaissance for the determination of material facts pertaining thereto.

The cost of any such examination, investigation, survey, or reconnaissance, and all preliminary expenses leading up to and resulting in the issuance of any revenue bonds including, but not being limited to expenses in making surveys and appraisals and the drafting, printing, issuance, and sale of bonds under this chapter shall be borne by the department out of the motor vehicle fund. All such costs and expenses as well as any thereof heretofore incurred shall be reimbursed to the motor vehicle fund out of any proceeds derived from the sale of bonds or out of tolls and revenues to be derived by the department through its operations hereunder. [1984 c 7 § 300; 1961 c 13 § 47.60.040. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.050 Improvement of facilities—Financing. Any facility that the department acquires or is authorized to acquire under the provisions of this chapter may be rehabilitated, rebuilt, enlarged, or improved, and the cost thereof may be paid from the revenues of the system or through the issuance of bonds as hereinafter provided. [1984 c 7 § 301; 1961 c 13 § 47.60.050. Prior: 1949 c 179 § 3, part; Rem. Supp. 1949 § 6584-32, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.060 Revenue bonds authorized—Issuance—Conditions—Negotiability—Interim bonds. For the purpose of paying the cost of acquiring by lease, charter, contract, purchase, condemnation, or construction all or any part of such Puget Sound ferry system, including toll bridges, approaches, and roadways incidental thereto, and for rehabilitating, rebuilding, enlarging, or improving all or any part of the system, the department is authorized by resolution to issue its revenue bonds which shall constitute obligations only of the department and shall be payable solely and only from all or such part of the revenues from the operation of the system as may be provided in and by the resolution.

Each revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the tolls and revenues pledged for that purpose and that the bond does not constitute an indebtedness of the state of Washington.

The department is empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations, and conditions as may be deemed necessary with

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respect to the continued use and application of the income and revenues from the undertaking.

The revenue bonds may bear such date or dates, may mature at such time or times as the department determines, may bear interest at such rate or rates, may be in such denomination or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this chapter as may be provided in the resolution. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, each such revenue bond shall at all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the state treasurer and countersigned by the governor, and any interest coupons appertaining thereto shall bear the signature of the state treasurer. The countersignature of the governor on the bonds and the signature of the state treasurer on the coupons may be their printed or lithographed facsimile signatures.

Pending the issuance of definitive bonds, temporary or interim bonds, certificates, or receipts of any denomination and with or without coupons attached may be issued as may be provided by the resolution. [1984 c 7 § 302; 1973 c 106 § 28; 1970 ex.s. c 56 § 65; 1969 ex.s. c 232 § 34; 1961 c 13 § 47.60.060. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

47.60.080 Determining amount of bonds to be issued. In determining the amount of bonds required to be issued there may be included any expenses incurred by the department in connection with and incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making inspections and examinations, interest during the estimated construction period, and for six months thereafter, and a reasonable amount for working capital and prepaid insurance. [1984 c 7 § 303; 1961 c 13 § 47.60.080. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.090 Sale of bonds—Deposit, disbursement of proceeds. All bonds issued under or by authority of this chapter shall be sold to the highest and best bidder after such advertising for bids as the department deems proper. However, the department may reject any and all bids so submitted and thereafter sell such bonds so advertised under such terms and conditions as it deems most advantageous to its own interests. The purchase price of all bonds issued under this chapter shall be paid to the state treasurer consistent with the provisions of the resolution pursuant to which the bonds have been issued or to the trustee designated in the bond resolution and held as a separate trust fund to be disbursed on the orders of the department. [1984 c 7 § 304; 1961 c 13 § 47.60.090. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.100 Bonds are legal investment for state moneys. Notwithstanding any other provision of the law, bonds issued by the authority shall be legal investments by the state investment board of any state moneys in its hands, except permanent school funds and motor vehicle funds. [1981 c 3 § 40; 1961 c 13 § 47.60.100. Prior: 1953 c 154 § 14; 1951 c 259 § 3; 1951 c 121 § 14; 1949 c 179 § 8; Rem. Supp. 1949 § 6584-37.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

47.60.110 Bondholders may compel performance. The holder of any bond or the trustee for any bonds designated by resolution may by mandamus or other appropriate proceeding require and compel performance of any duties imposed upon any state department, official or employee, including any duties imposed upon or undertaken by the authority or its officers, agents and employees in connection with the construction, maintenance and operation of the ferry system and in connection with the collection, deposit, investment, application and disbursement of the proceeds of the bonds and the revenue and income derived from the operation of the system. [1961 c 13 § 47.60.110. Prior: 1949 c 179 § 4, part; Rem. Supp. 1949 § 6584-33, part.]

47.60.113 Refunding bonds—Authorization—Amount—Interest—Conditions. The department is authorized to refund, at the maturity thereof, or before the maturity thereof if they are subject to call prior to maturity or if all of the holders thereof consent thereto, upon such terms and conditions as it deems best, any or all of its revenue bonds now or hereafter outstanding, issued for the purpose of acquiring, constructing, or reconstructing any toll bridge, toll road, toll tunnel, ferry system, or any other toll facility of any sort, or issued for the purpose of refunding such bonds, which revenue bonds are payable out of all or part of the revenues of the toll facility. Refunding bonds may be issued hereunder in a sufficient amount to provide additional funds for acquiring, constructing, reconstructing, rehabilitating, rebuilding, enlarging, or improving any toll bridge, toll road, toll tunnel, ferry system, or any other toll facility of any sort, and to pay all refunding costs and expenses and to provide adequate reserves for the toll facility and for any such refunding bonds. Various issues and series of such outstanding bonds, including refunding bonds, may be combined and refunded by a single issue of refunding bonds. The refunding bonds shall bear interest at such rates and mature at such times, without limitation by the interest rates or maturity of the bonds being refunded, and shall contain such other covenants and conditions as the department determines by resolution. [1984 c 7 § 305; 1961 c 13 § 47.60.113. Prior: 1957 c 152 § 1; 1955 c 17 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.114 Refunding bonds—Payable from revenues. Any refunding bonds authorized by this chapter constitute obligations of the department only and not of the state of Washington. They shall be payable solely out of all or such part of the revenues derived from the operation of the toll

bridge, toll road, toll tunnel, ferry system, or any other toll facility, as shall be provided in the resolution authorizing the issuance of the refunding bonds. [1984 c 7 § 306; 1961 c 13 § 47.60.114. Prior: 1957 c 152 § 2; 1955 c 17 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.115 Refunding bonds—Disposition—Laws applicable. The bonds herein authorized shall, in the discretion of the department, be exchanged at the best possible price for the bonds being refunded, or any such bonds not exchanged shall be sold in the manner provided in RCW 47.60.090. The bonds herein authorized shall be issued in accordance with, and shall be subject to, the provisions of RCW 47.60.050, 47.60.060, 47.60.080, 47.60.100, 47.60.110, and 47.60.120. [1983 c 3 § 134; 1961 c 13 § 47.60.115. Prior: 1957 c 152 § 3; 1955 c 17 § 3.]

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 83). (1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

(5) This section does not apply to the operation of passenger-only ferry service by public transportation benefit areas meeting the requirements of RCW 36.57A.200 or to the operation of passenger-only ferry service by ferry districts. [2003 c 83 § 204; 1993 c 427 § 1; 1984 c 7 § 307; 1961 c 13 § 47.60.120. Prior: 1949 c 179 § 6; Rem. Supp. 1949 § 6584-35.]

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.60.120 Other crossings—Infringement of existing franchises—Waivers (as amended by 2003 c 373). (1) If the department acquires or constructs, maintains, and operates any ferry crossings upon or toll bridges over Puget Sound or any of its tributary or connecting waters, there shall not be constructed, operated, or maintained any other ferry crossing upon or bridge over any such waters within ten miles of any such crossing or bridge operated or maintained by the department excepting such bridges or ferry crossings in existence, and being operated and maintained under a lawfully issued franchise at the time of the location of the ferry crossing or construction of the toll bridge by the department.

(2) The ten-mile distance in subsection (1) of this section means ten statute miles measured by airline distance. The ten-mile restriction shall be

applied by comparing the two end points (termini) of a state ferry crossing to those of a private ferry crossing.

(3) The Washington utilities and transportation commission may, upon written petition of a commercial ferry operator certificated or applying for certification under chapter 81.84 RCW, and upon notice and hearing, grant a waiver from the ten-mile restriction. The waiver must not be detrimental to the public interest. In making a decision to waive the ten-mile restriction, the commission shall consider, but is not limited to, the impact of the waiver on transportation congestion mitigation, air quality improvement, and the overall impact on the Washington state ferry system. The commission shall act upon a request for a waiver within ninety days after the conclusion of the hearing. A waiver is effective for a period of five years from the date of issuance. At the end of five years the waiver becomes permanent unless appealed within thirty days by the commission on its own motion, the department, or an interested party.

(4) The department shall not maintain and operate any ferry crossing or toll bridge over Puget Sound or any of its tributary or connecting waters that would infringe upon any franchise lawfully issued by the state and in existence and being exercised at the time of the location of the ferry crossing or toll bridge by the department, without first acquiring the rights granted to such franchise holder under the franchise.

(5) This section does not apply to operators of passenger-only ferry service. [2003 c 373 § 2; 1993 c 427 § 1; 1984 c 7 § 307; 1961 c 13 § 47.60.120. Prior: 1949 c 179 § 6; Rem. Supp. 1949 § 6584-35.]

Reviser's note: RCW 47.60.120 was amended twice during the 2003 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—2003 c 373: See note following RCW 47.64.090.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.122 Ferries, terminal facilities—Interim revenue warrants authorized. For the purpose of paying the cost of acquiring, constructing, or reconstructing ferries or ferry terminal facilities, and all costs which may be incurred in connection therewith, the department is authorized to issue interim revenue warrants, which shall constitute obligations only of the department, and which shall not be obligations of the state of Washington. Such warrants shall be payable solely out of part or all of the revenues derived from the operation of the Puget Sound ferry system as shall be provided in the resolution authorizing their issuance, and shall be drawn upon, and the principal thereof and interest thereon shall be payable out of, such fund or funds as shall be created in and provided by the resolution. The warrants may be interest-bearing coupon warrants with a fixed maturity date, or may be interest-bearing registered warrants payable in order of their issuance whenever there is sufficient money in the fund upon which they were drawn to redeem any of them. [1984 c 7 § 308; 1961 c 13 § 47.60.122. Prior: 1953 c 159 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.124 Revenue refunding bonds to redeem interim warrants. If it is deemed advisable or found necessary to redeem any or all of such warrants, the department is authorized to issue its revenue refunding bonds for that purpose. The bonds shall constitute obligations only of the department, and shall not be obligations of the state of Washington. The refunding bonds shall be payable solely out of part or all of the revenues derived from the operation of the Puget Sound ferry system as shall be provided in the resolution authorizing their issuance. [1984 c 7 § 309; 1961 c 13 § 47.60.124. Prior: 1953 c 159 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.126 Interim warrants and refunding bonds—Laws applicable. All provisions of chapter 47.60 RCW pertaining and applicable to the revenue bonds of the department authorized in that chapter are applicable to the warrants and revenue refunding bonds authorized herein except insofar as otherwise provided by RCW 47.60.122 through 47.60.126. [1984 c 7 § 310; 1961 c 13 § 47.60.126. Prior: 1953 c 159 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.130 Unit or combined operation—Continuous project—Rental, charter, lease of system property—Sale of unneeded property. Such ferry system, including any toll bridges, approaches, and roadways incidental thereto, may be financed and operated in combination or separately as one or more units as the department of transportation may determine, and such ferry system together with any toll bridge hereafter constructed by the department upon or across the waters of Puget Sound or Hood Canal, or any part of either, replacing one or more presently operated ferry routes, is declared to be a continuous project within the meaning of *RCW 47.56.070. The department is empowered to rent, lease, or charter any property acquired under this chapter. If the department determines that any real property (including lands, improvements thereon, and any interests or estates) originally acquired for the ferry system is no longer required for the purposes of the ferry system, the department shall offer it for sale in the manner and with the authority authorized to the department by RCW 47.12.063 or 47.12.283. The secretary of transportation may adopt rules further implementing this section. The proceeds of all such sales shall be paid into the separate trust fund of the state treasury established pursuant to **RCW 47.60.150. [1979 ex.s. c 189 § 6; 1973 1st ex.s. c 177 § 5; 1961 c 13 § 47.60.130. Prior: 1955 c 22 § 1; 1953 c 32 § 1; 1949 c 179 § 3, part; Rem. Supp. 1949 § 6584-32, part.]

Reviser's note: *(1) RCW 47.56.070 was amended by 2008 c 122 § 10, deleting the language pertaining to the meaning of a continuous project.

***(2) RCW 47.60.150 was repealed by 2007 c 512 § 16.

Effective date—1979 ex.s. c 189: See note following RCW 47.12.283.

47.60.135 Charter of state ferries—Hazardous materials. (1) The charter use of Washington State Ferry vessels when established route operations and normal user requirements are not disrupted is permissible. In establishing chartering agreements, Washington State Ferries shall consider the special needs of local communities and interested parties. Washington State Ferries shall use sound business judgment and be sensitive to the interests of existing private enterprises.

(2) Consistent with the policy as established in subsection (1) of this section, the chief executive officer of the Washington State Ferries may approve agreements for the chartering of Washington State Ferry vessels to groups or individuals, including hazardous material transporters, in accordance with the following:

(a) Vessels may be committed to charter only when established route operation and normal user requirements are not disrupted or inconvenienced. If a vessel is engaged in the transport of hazardous materials, the transporter shall pay for all legs necessary to complete the charter, even if the vessel is

simultaneously engaged in an operational voyage on behalf of Washington State Ferries.

(b) Charter rates for vessels must be established at actual vessel operating costs plus a market-rate profit margin. Actual vessel operating costs include, but are not limited to, all labor, fuel, and vessel maintenance costs incurred due to the charter agreement, including deadheading and standby.

(c) Parties chartering Washington State Ferry vessels shall comply with all applicable laws, rules, and regulations during the charter voyage, and failure to so comply is cause for immediate termination of the charter voyage. [2003 c 374 § 1; 1997 c 323 § 2.]

Finding—1997 c 323: "The legislature finds that when established route operations and normal user requirements are not disrupted Washington state ferries may be used for the transportation of hazardous materials under the chartering procedures and rates described in RCW 47.60.135." [1997 c 323 § 1.]

47.60.140 System as self-liquidating undertaking—Powers of department—Concessions. (1) The department is empowered to operate such ferry system, including all operations, whether intrastate or international, upon any route or routes, and toll bridges as a revenue-producing and self-liquidating undertaking. The department has full charge of the construction, rehabilitation, rebuilding, enlarging, improving, operation, and maintenance of the ferry system, including toll bridges, approaches, and roadways incidental thereto that may be authorized by the department, including the collection of tolls and other charges for the services and facilities of the undertaking. The department has the exclusive right to enter into leases and contracts for use and occupancy by other parties of the concessions and space located on the ferries, wharves, docks, approaches, parking lots, and landings, including the selling of commercial advertising space and licenses to use the Washington State Ferries trademarks, but, except as provided in subsection (2) of this section, no such leases or contracts may be entered into for more than ten years, nor without a competitive contract process, except as otherwise provided in this section. The competitive process shall be either an invitation for bids in accordance with the process established by chapter 43.19 RCW, or a request for proposals in accordance with the process established by RCW 47.56.030. All revenues from commercial advertising, concessions, parking, leases, and contracts must be deposited in the Puget Sound ferry operations account in accordance with *RCW 47.60.150.

(2) As part of a joint development agreement under which a public or private developer constructs or installs improvements on ferry system property, the department may lease all or part of such property and improvements to such developers for that period of time, not to exceed fifty-five years, or not to exceed thirty years for those areas located within harbor areas, which the department determines is necessary to allow the developer to make reasonable recovery on its initial investment. Any lease entered into as provided for in this subsection that involves state aquatic lands shall conform with the Washington state Constitution and applicable statutory requirements as determined by the department of natural resources. That portion of the lease rate attributable to the state aquatic lands shall be distributed in the same man-

ner as other lease revenues derived from state aquatic lands as provided in **RCW 79.24.580.

(3) The department shall include in the strategic planning and performance assessment process, as required by RCW 43.88.090, an analysis of the compatibility of public and private partnerships with the state ferry system's core business, and the department's efforts to maximize nonfarebox revenues and provide benefit to the public users of the ferry system facilities. The department shall include an assessment of the need for an open solicitation to identify and select possible public or private partnerships in order to maximize the value of projects and the state's investment in current and future ferry system operations.

(a) When the department determines that an open solicitation is necessary, a request for proposal shall be released, consisting of an open solicitation outlining functional specifications to be used as the basis for selecting partnerships in the project.

(b) Any responses to the request for proposal shall be evaluated, at a minimum, on the basis of compatibility with the state ferry system's core business, potential to maximize nonfarebox revenue, longevity of the possible partnership commitment, and benefit to the public users of the ferry system facilities.

(c) If no responses are received, or those that are received are incompatible with ferry system operations, or do not meet the criteria stated in (b) of this subsection, the state ferry system may proceed with state ferry system operating strategies designed to achieve state ferry system objectives without established partnerships. [2003 c 374 § 2; 1995 1st sp.s. c 4 § 2; 1987 c 69 § 1; 1984 c 7 § 311; 1965 ex.s. c 170 § 58; 1961 c 13 § 47.60.140. Prior: 1951 c 259 § 1; 1949 c 179 § 5, part; Rem. Supp. 1949 § 6584-34, part.]

Reviser's note: *(1) RCW 47.60.150 was repealed by 2007 c 512 § 16. ***(2) RCW 79.24.580 was recodified as RCW 79.90.245 pursuant to 2003 c 334 § 569. RCW 79.90.245 was subsequently recodified as RCW 79.105.150 pursuant to 2005 c 155 § 1003.

Effective date—1995 1st sp.s. c 4: See note following RCW 47.56.030.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.145 Historic ferries—Acquisition by qualified persons or organizations. (1) An "historic ferry" is any vessel in the Washington state ferries fleet which has been listed in the Washington state register of historic places.

(2) When the department of transportation determines that an historic ferry is surplus to the needs of Washington state ferries, the department shall call for proposals from persons who wish to acquire the historic ferry. Proposals for the acquisition of an historic ferry shall be accepted only from persons or organizations that (a) are a governmental entity or a nonprofit corporation or association dedicated to the preservation of historic properties; (b) agree to a contract approved by the state historic preservation officer, which requires the preservation and maintenance of the historic ferry and provides that title to the ferry reverts to the state if the secretary of transportation determines that the contract has been violated; and (c) demonstrate the administrative and financial ability successfully to comply with the contract.

(3) The department shall evaluate the qualifying proposals and shall select the proposal which is most advantageous

to the state. Factors to be considered in making the selection shall include but not be limited to:

- (a) Extent and quality of restoration;
- (b) Retention of original design and use;
- (c) Public access to the vessel;
- (d) Provisions for historical interpretation;
- (e) Monetary return to the state.

(4) If there are no qualifying proposals, an historic ferry shall be disposed of in the manner provided by state law. [1982 c 210 § 1.]

Severability—1982 c 210: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 210 § 2.]

Archaeology and historic preservation, office of: Chapter 27.34 RCW.

47.60.170 Ferries revolving fund—Deposit of excess funds. Nothing in *RCW 47.60.150 forbids the establishment by the department of a Washington state ferries revolving fund of not to exceed six hundred thousand dollars from the proceeds of any bonds sold under the provisions of this chapter. The fund may be deposited by the department in such banks or financial institutions as it may select throughout the state. RCW 43.01.050 does not apply to the fund or any deposits therein made by the department under this section. The department may deposit all moneys received under this chapter in the fund. All expenses whatsoever arising in the operations of the Puget Sound ferry system shall be paid from the fund, if established, by check or voucher in such manner as may be prescribed by the department.

All moneys received by the department or any employee under the foregoing sections of this chapter, except an amount of petty cash for each day's needs as fixed by the regulation of the department, shall each day and as often during the day as advisable, be deposited in the nearest authorized depository selected by the department under this section.

Whenever the fund exceeds six hundred thousand dollars, the department shall forthwith transmit the excess to the state treasurer for deposit in the trust fund established by *RCW 47.60.150. [1984 c 7 § 313; 1970 ex.s. c 85 § 6; 1961 c 13 § 47.60.170. Prior: 1951 c 259 § 13.]

*Reviser's note: RCW 47.60.150 was repealed by 2007 c 512 § 16.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

47.60.200 Consent to liability not general liability of state. Any consent to liability given under the provisions of this chapter creates liability of the department only and does not create any general liability of the state. [1984 c 7 § 314; 1961 c 13 § 47.60.200. Prior: 1951 c 259 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.210 Seamen may sue for injuries—Venue. The state consents to suits against the department by seamen for injuries occurring upon vessels of the department in accordance with the provisions of section 688, title 46, of the United States code. The venue of such actions may be in the superior court for Thurston county or the county where the injury occurred. [1984 c 7 § 315; 1961 c 13 § 47.60.210. Prior: 1951 c 259 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.220 Department as common carrier—Rights and liabilities. The department has all the obligations, duties, and rights of a common carrier of persons and property in its operation of ferries, terminals, or other facilities used in its ferry operations, including the right to participate in joint rates and through routes, agreements, and divisions of through and joint rates with railroads and other common carriers and the right to make any filings with the interstate commerce commission, the United States maritime commission, or any other state or federal regulatory or governmental body and to comply with the lawful rules and regulations or requirements of any such body, and is subject to laws relating to carrier's liability for loss or damage to property transported, and for personal injury or death of persons transported. [1984 c 7 § 316; 1961 c 13 § 47.60.220. Prior: 1951 c 259 § 7.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.230 Liability for damages as to persons or property. In case of property loss or damage or personal injuries or death resulting from the operation of any ferry or terminal by the department, any person or the personal representative of any person, subject to and to the extent hereinafter provided, has a right of action against the department for the damage, loss, injury, or death. [1984 c 7 § 317; 1961 c 13 § 47.60.230. Prior: 1951 c 259 § 8.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.240 Liability to persons other than shippers or passengers—Limitation. The right of action extended by this chapter is applicable to loss or damage of property and/or personal injury or death resulting from the operation of ferries or terminals by the department to persons other than shippers or passengers, but any recovery of damages in such cases shall not exceed an amount equal to the limitations of the insurance carried by the department to insure it against loss for such liability. [1984 c 7 § 318; 1961 c 13 § 47.60.240. Prior: 1951 c 259 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.250 Claim for damages—Filing—Contents—Time limitations. As a condition to a recovery thereon, a verified claim against the department growing out of such damages, loss, injuries, or death must first be presented to the department and filed with the secretary within one hundred twenty days after the time when the claim accrued. If the claimant is incapacitated from verifying and filing a claim within the one hundred twenty days, or if the claimant is a minor, then the claim may be verified and presented on behalf of the claimant by his or her relative, attorney, or agent. Each claim must accurately locate and describe the event or defect that caused the damage, loss, injury, or death, reasonably describe the damage, loss, or injury, and state the time when the damage, loss, or injury occurred, give the claimant's residence for the last six months, and contain the items of damages claimed. No action may be maintained against the department upon the claim until the claim has been presented to, and filed with, the department and sixty

days have elapsed after the presentation and filing, nor more than three years after the claim accrued.

With respect to the content of the claims, this section shall be liberally construed so that substantial compliance will be deemed satisfactory. [1984 c 7 § 319; 1967 c 164 § 3; 1961 c 13 § 47.60.250. Prior: 1951 c 259 § 10.]

Severability—1984 c 7: See note following RCW 47.01.141.

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

Claims against the state: Chapter 4.92 RCW.

47.60.260 Payment of claims. The department may upon such terms and conditions as it may impose and under such rules as it may adopt, pay claims arising under its operation of ferries or terminals or compromise or settle the claims. No claim may be paid by the department or any settlement or compromise of it be made except from the operating revenues of the department derived from its operation of ferries or terminals or from the proceeds of insurance recoveries. [1984 c 7 § 320; 1961 c 13 § 47.60.260. Prior: 1951 c 259 § 11.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.270 Venue of actions—Enforcement of judgment. Actions for the recovery of damages under RCW 47.60.220 through 47.60.260 may be brought in Thurston county or in the county in which the aggrieved person resides. No execution upon a judgment or attachment may be levied against the property of the department, nor does the state consent to any maritime lien against vessels of the department, but the department may be required by order of court to pay any judgment. [1984 c 7 § 321; 1961 c 13 § 47.60.270. Prior: 1951 c 259 § 12.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.275 Local law enforcement officers on ferries and terminals. Law enforcement officers of cities, towns, and counties which are served by state ferries shall have, and are hereby authorized to exercise, concurrent jurisdiction and authority with state law enforcement officers in the enforcement of laws of the state and local governmental divisions at those state ferry terminals located within the respective governmental division served by such local law enforcement officers and on state ferries at the terminals and throughout the ferry runs, notwithstanding that the ferry may not be in the officer's governmental division. [1969 ex.s. c 13 § 1.]

47.60.277 "No Smoking" areas on state ferries—Establishment directed. See RCW 47.56.730.

47.60.280 Ferry service—Lummi Island to Orcas Island—Limitation on operation. The department is authorized and directed to establish and operate a ferry service from a suitable point on Lummi Island in Whatcom county to a suitable point on Orcas Island in San Juan county by the most feasible route if and when Whatcom county constructs a bridge from Gooseberry Point on the mainland to Lummi Island. The actual operation of the ferry service shall not begin until Whatcom county has completed the construction

of such bridge. [1984 c 7 § 322; 1961 c 13 § 47.60.280. Prior: 1959 c 198 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.282 Ferry service between Port Townsend and Keystone—Operation authorized, when. The department is authorized to operate a ferry service between Port Townsend and Keystone on Admiralty Inlet if the certificate of convenience and necessity for the ferry operation is theretofore surrendered, rights thereunder are abandoned, and the ferry service is discontinued. In no event may the department undertake such a ferry service preceding events as set forth herein or before April 1, 1973. [1984 c 7 § 323; 1972 ex.s. c 44 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.283 Ferry service between Port Townsend and Keystone—Purpose. The purpose of RCW 47.60.282 and 47.60.283 is to provide service on the ferry route between Port Townsend and Keystone to be determined by the department. Operation of this route is necessary for the economic health, safety, and welfare of the people of the state. Additionally, state operation of this route will further benefit the people of the state by providing better access to important installations maintained by the United States Navy and the United States Coast Guard. [1984 c 7 § 324; 1972 ex.s. c 44 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.286 Ferry user data survey. (1) The commission shall, with the involvement of the department, conduct a survey to gather data on ferry users to help inform level of service, operational, pricing, planning, and investment decisions. The survey must include, but is not limited to:

- (a) Recreational use;
- (b) Walk-on customer use;
- (c) Vehicle customer use;
- (d) Freight and goods movement demand; and
- (e) Reactions to potential operational strategies and pricing policies described under RCW 47.60.327 and 47.60.290.

(2) The commission shall develop the survey after providing an opportunity for ferry advisory committees to offer input.

(3) The survey must be updated at least every two years and maintained to support the development and implementation of adaptive management of ferry services. [2007 c 512 § 4.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.290 State ferries—Review of fares and pricing policies—Proposals. (1) The department shall annually review fares and pricing policies applicable to the operation of the Washington state ferries.

(2) Beginning in 2008, the department shall develop fare and pricing policy proposals that must:

(a) Recognize that each travel shed is unique, and might not have the same farebox recovery rate and the same pricing policies;

(b) Use data from the current survey conducted under RCW 47.60.286;

(c) Be developed with input from affected ferry users by public hearing and by review with the affected ferry advisory committees, in addition to the data gathered from the survey conducted in RCW 47.60.286;

(d) Generate the amount of revenue required by the biennial transportation budget;

(e) Consider the impacts on users, capacity, and local communities; and

(f) Keep fare schedules as simple as possible.

(3) While developing fare and pricing policy proposals, the department must consider the following:

(a) Options for using pricing to level vehicle peak demand; and

(b) Options for using pricing to increase off-peak ridership. [2007 c 512 § 5; 1983 c 3 § 136; 1972 ex.s. c 24 § 6; 1961 c 13 § 47.60.290. Prior: 1959 c 199 § 1.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.300 State ferries—Scope of review—Periodic reviews required. The review shall include but not be limited to tariffs for automobiles, passengers, trucks, commutation rates, and volume discounts. The review shall give proper consideration to time of travel, distance of travel, operating costs, maintenance and repair expenses, and the resultant effect any change in tariff might have on the debt service requirements of the department as specifically provided in existing financing programs. The review shall also include the allocation of vessels to particular runs, the scheduling of particular runs, the adequacy and arrangements of docks and dock facilities, and any other subject deemed by the department to be properly within the scope of the review. The department is further authorized and directed to make a like review within every three-year period. [1984 c 7 § 325; 1961 c 13 § 47.60.300. Prior: 1959 c 199 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.310 State ferries—Local expressions—Ferry advisory committees. (1) The department is further directed to conduct such review by soliciting and obtaining expressions from local community groups in order to be properly informed as to problems being experienced within the area served by the Washington state ferries. In order that local representation may be established, the department shall give prior notice of the review to the ferry advisory committees.

(2) The legislative authorities of San Juan, Skagit, Clallam, and Jefferson counties shall each appoint a committee to consist of five members to serve as an advisory committee to the department or its designated representative in such review. The legislative authorities of other counties that contain ferry terminals shall appoint ferry advisory committees consisting of three members for each terminal area in each county, except for Vashon Island, which shall have one committee, and its members shall be appointed by the Vashon/Maury Island community council. At least one person appointed to each ferry advisory committee shall be representative of an established ferry user group or of frequent users of the ferry system. Each member shall reside in the vicinity of the terminal that the advisory committee represents.

(3) The members of the San Juan, Clallam, and Jefferson county ferry advisory committees shall be appointed for four-

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year terms. The initial terms shall commence on July 1, 1982, and end on June 30, 1986. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. At least one person appointed to the advisory committee shall be representative of an established ferry-user group or of frequent users of the ferry system, at least one shall be representative of persons or firms using or depending upon the ferry system for commerce, and one member shall be representative of a local government planning body or its staff. Every member shall be a resident of the county upon whose advisory committee he or she sits, and not more than three members shall at the time of their appointment be members of the same major political party.

(4) The members of each terminal area committee shall be appointed for four-year terms. The initial terms of the members of each terminal area committee shall be staggered as follows: All terms shall commence September 1, 1988, with one member's term expiring August 31, 1990, one member's term expiring August 31, 1991, and the remaining member's term expiring August 31, 1992. Any vacancy shall be filled for the remainder of the unexpired term by the appointing authority. Not more than two members of any terminal-area committee may be from the same political party at the time of their appointment, and in a county having more than one committee, the overall party representation shall be as nearly equal as possible.

(5) The chairmen of the several committees constitute an executive committee of the Washington state ferry users. The executive committee shall meet twice each year with representatives of the marine division of the department to review ferry system issues.

(6) The committees to be appointed by the county legislative authorities shall serve without fee or compensation. [1988 c 100 § 1; 1983 c 15 § 24; 1983 c 3 § 137; 1977 c 29 § 1; 1961 c 13 § 47.60.310. Prior: 1959 c 199 § 3.]

Severability—1983 c 15: See RCW 47.64.910.

47.60.315 Fares and pricing policies—Adoption schedule—Revenues. (1) The commission shall adopt fares and pricing policies by rule, under chapter 34.05 RCW, according to the following schedule:

(a) Each year the department shall provide the commission a report of its review of fares and pricing policies, with recommendations for the revision of fares and pricing policies for the ensuing year;

(b) By September 1st of each year, beginning in 2008, the commission shall adopt by rule fares and pricing policies for the ensuing year.

(2) The commission may adopt by rule fares that are effective for more or less than one year for the purposes of transitioning to the fare schedule in subsection (1) of this section.

(3) The commission may increase ferry fares included in the schedule of charges adopted under this section by a percentage that exceeds the fiscal growth factor.

(4) The chief executive officer of the ferry system may authorize the use of promotional, discounted, and special event fares to the general public and commercial enterprises for the purpose of maximizing capacity use and the revenues collected by the ferry system. The department shall report to

the commission a summary of the promotional, discounted, and special event fares offered during each fiscal year and the financial results from these activities.

(5) Fare revenues and other revenues deposited in the Puget Sound ferry operations account created in RCW 47.60.530 may not be used to support the Puget Sound capital construction account created in RCW 47.60.505, unless the support for capital is separately identified in the fare.

(6) The commission may not raise fares until the fare rules contain pricing policies developed under RCW 47.60.290, or September 1, 2009, whichever is later. [2007 c 512 § 6.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.327 Operational strategies for asset utilization.

(1) The department shall develop, and the commission shall review, operational strategies to ensure that existing assets are fully utilized and to guide future investment decisions. These operational strategies must, at a minimum:

(a) Recognize that each travel shed is unique and might not have the same operational strategies;

(b) Use data from the current survey conducted under RCW 47.60.286;

(c) Be consistent with vehicle level of service standards;

(d) Choose the most efficient balance of capital and operating investments by using a life-cycle cost analysis; and

(e) Use methods of collecting fares that maximize efficiency and achieve revenue management control.

(2) After the commission reviews recommendations by the department, the commission and department shall make joint recommendations to the legislature for the improvement of operational strategies.

(3) In developing operational strategies, the following, at a minimum, must be considered:

(a) The feasibility of using reservation systems;

(b) Methods of shifting vehicular traffic to other modes of transportation;

(c) Methods of improving on-dock operations to maximize efficiency and minimize operating and capital costs;

(d) A cost-benefit analysis of remote holding versus over-water holding;

(e) Methods of reorganizing holding areas and minimizing on-dock employee parking to maximize the dock size available for customer vehicles;

(f) Schedule modifications;

(g) Efficiencies in exit queuing and metering;

(h) Interoperability with other transportation services;

(i) Options for leveling vehicle peak demand; and

(j) Options for increasing off-peak ridership.

(4) Operational strategies must be reevaluated periodically and, at a minimum, before developing a new capital plan. [2007 c 512 § 7.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.330 Public participation—Legislative approval. (1) Before a substantial change to the service levels provided to ferry users, the department shall consult with affected ferry users by public hearing and by review with the affected ferry advisory committees.

(2) Before adding or eliminating a ferry route, the department shall consult with affected ferry users and receive legislative approval. [2007 c 512 § 8; 2003 c 374 § 5; 1983 c 15 § 26.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

Severability—1983 c 15: See RCW 47.64.910.

47.60.335 Appropriation limitations—Capital program cost allocation. (1) Appropriations made for the Washington state ferries capital program may not be used for maintenance costs.

(2) Appropriations made for preservation projects shall be spent only on preservation and only when warranted by asset condition, and shall not be spent on master plans, right-of-way acquisition, or other nonpreservation items.

(3) Systemwide and administrative capital program costs shall be allocated to specific capital projects using a cost allocation plan developed by the department. Systemwide and administrative capital program costs shall be identifiable.

(4) The vessel emergency repair budget may not be used for planned maintenance and inspections of inactive vessels. [2008 c 124 § 7; 2007 c 512 § 9.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.340 Vessel maintenance and preservation program—Report. (1) The department shall develop and maintain a vessel maintenance and preservation program that meets or exceeds all federal requirements and, at a minimum:

(a) Includes a bilge and void maintenance program;

(b) Includes a visual inspection/audio gauging steel preservation program; and

(c) Uses a lowest life-cycle cost method.

(2) The vessel maintenance and preservation program must maximize cost efficiency by, at a minimum:

(a) Reducing planned out-of-service time to the greatest extent possible; and

(b) Striving to eliminate planned peak season out-of-service periods.

(3) When construction is underway for the replacement of a vessel, the vessel that is scheduled for retirement is exempt from the requirement in subsection (1)(c) of this section.

(4) The department shall include a plain language status report on the maintenance and preservation vessel program with each budget submittal to the office of financial management. This report must include, at a minimum:

(a) A description of the maintenance and preservation of each vessel in the fleet;

(b) A highlight and explanation of any significant deviation from the norm;

(c) A highlight and explanation of any significant deviation from the vessel preservation plan required under RCW 47.60.375;

(d) A highlight and explanation of decisions not to invest in vessels; and

(e) A highlight and explanation of decisions to invest early in vessels. [2008 c 124 § 5.]

47.60.345 Life-cycle cost model on capital assets. (1)

The department shall maintain a life-cycle cost model on capital assets such that:

(a) Available industry standards are used for estimating the life of an asset, and department-adopted standard life cycles derived from the experience of similar public and private entities are used when industry standards are not available;

(b) Standard estimated life is adjusted for asset condition when inspections are made;

(c) It does not include utilities or other systems that are not replaced on a standard life cycle; and

(d) It does not include assets not yet built.

(2) All assets in the life-cycle cost model must be inspected and updated in the life-cycle cost model for asset condition at least every three years.

(3) The life-cycle cost model shall be used when estimating future terminal and vessel preservation needs.

(4) The life-cycle cost model shall be the basis for developing the budget request for terminal and vessel preservation funding. [2008 c 124 § 4; 2007 c 512 § 10.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.355 Preservation funding requests—Predesign study. (1) Preservation funding requests shall only be for assets in the life-cycle cost model.

(2) Preservation funding requests that exceed five million dollars per project must be accompanied by a predesign study. The predesign study must include all elements required by the office of financial management. [2007 c 512 § 11.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.365 Terminal design standards. The department shall develop terminal design standards that:

(1) Adhere to vehicle level of service standards as described in RCW 47.06.140;

(2) Adhere to operational strategies as described in RCW 47.60.327; and

(3) Choose the most efficient balance between capital and operating investments by using a life-cycle cost analysis. [2007 c 512 § 12.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.375 Capital plan. (1) The capital plan must adhere to the following:

(a) A current ridership demand forecast;

(b) Vehicle level of service standards as described in RCW 47.06.140;

(c) Operational strategies as described in RCW 47.60.327; and

(d) Terminal design standards as described in RCW 47.60.365.

(2) The capital plan must include the following:

(a) A current vessel preservation plan;

(b) A current systemwide vessel rebuild and replacement plan;

(c) A current vessel deployment plan; and

(d) A current terminal preservation plan. [2008 c 124 § 3; 2007 c 512 § 13.]

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Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.377 Vessel rebuild and replacement plan. The department shall develop and maintain a vessel rebuild and replacement plan that, at a minimum:

(1) Includes projected retirement dates for all vessels, distinguishing between active and inactive vessels;

(2) Includes projected rebuild dates for all vessels;

(3) Includes timelines for vessel replacement, including business decisions, design, procurement, and construction; and

(4) Includes a summary of the condition of all vessels, distinguishing between active and inactive vessels. [2008 c 124 § 2.]

47.60.385 Terminal improvement project funding requests—Predesign study—New vessel acquisition planning. (1) Terminal improvement project funding requests must adhere to the capital plan.

(2) Requests for terminal improvement design and construction funding must be submitted with a predesign study that:

(a) Includes all elements required by the office of financial management;

(b) Separately identifies basic terminal elements essential for operation and their costs;

(c) Separately identifies additional elements to provide ancillary revenue and customer comfort and their costs;

(d) Includes construction phasing options that are consistent with forecasted ridership increases;

(e) Separately identifies additional elements requested by local governments and the cost and proposed funding source of those elements;

(f) Separately identifies multimodal elements and the cost and proposed funding source of those elements; and

(g) Identifies all contingency amounts.

(h)[(3)] When planning for new vessel acquisitions, the department must evaluate the long-term vessel operating costs related to fuel efficiency and staffing. [2008 c 124 § 6; 2007 c 512 § 14.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.395 Evaluation of cost allocation methodology and preservation and improvement costs. (Expires December 31, 2010.) (1) The joint legislative audit and review committee shall assess and report as follows:

(a) Audit the implementation of the cost allocation methodology evaluated under [section 205,] chapter 518, Laws of 2007, as it exists on July 22, 2007, assessing whether actual costs are allocated consistently with the methodology, whether there are sufficient internal controls to ensure proper allocation, and the adequacy of staff training; and

(b) Review the assignment of preservation costs and improvement costs for fiscal year 2009 to determine whether:

(i) The costs are capital costs;

(ii) The costs meet the statutory requirements for preservation activities and for improvement activities; and

(iii) Improvement costs are within the scope of legislative appropriations.

(2) The report on the evaluations in this section is due by January 31, 2010.

(3) This section expires December 31, 2010. [2007 c 512 § 15.]

Finding—Intent—2007 c 512: See note following RCW 47.06.140.

47.60.400 Refunding bonds authorized, 1961 Act.

The Washington toll bridge authority is authorized to issue revenue bonds to refund all or any part of the authority's outstanding 1955 Washington state ferry system refunding revenue bonds and 1957 ferry and Hood Canal bridge revenue bonds. With respect to the issuing of such bonds and the payment of principal and interest thereon, the payment into reserves, sinking funds, and the fixing and revision of charges for services and facilities of the system, and in managing all its fiscal operations, the authority shall have all the powers and shall follow the same procedures established for it under existing laws, except as otherwise provided herein. [1986 c 66 § 3; 1961 ex.s. c 9 § 1.]

Reviser's note: Powers, duties, and functions of toll bridge authority transferred to department of transportation; see RCW 47.01.031. Term "Washington toll bridge authority" means department of transportation; see RCW 47.04.015.

Effective date—1986 c 66: "This act shall take effect July 1, 1987. The secretary of transportation may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1986 c 66 § 14.]

Appropriation—1961 ex.s. c 9: "There is hereby appropriated from the motor vehicle fund to the Washington toll bridge authority, for the biennium ending June 30, 1963, the sum of two million six hundred thousand dollars or so much thereof as may be necessary for the operation and maintenance of the Washington state ferries and the payments of principal and interest on outstanding 1955 Washington state ferry system refunding revenue bonds and 1957 ferry and Hood Canal bridge revenue bonds and payments into reserves thereof as required by resolutions adopted by the authority with respect to such bond issues. Whenever such bond issues shall be refunded, any unexpended part of this appropriation shall lapse." [1961 ex.s. c 9 § 8.]

47.60.420 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Prior charge against Puget Sound capital construction account if ferry system revenues insufficient. To the extent that all revenues from the Washington state ferry system available therefor are insufficient to provide for the payment of principal and interest on the bonds authorized and issued under RCW 47.60.400 through *47.60.450 and for sinking fund requirements established with respect thereto and for payment into such reserves as the department has established with respect to the securing of the bonds, there is imposed a first and prior charge against the Puget Sound capital construction account of the motor vehicle fund created by RCW 47.60.505 and, to the extent required, against all revenues required by RCW 46.68.090 to be deposited in the Puget Sound capital construction account.

To the extent that the revenues from the Washington state ferry system available therefor are insufficient to meet required payments of principal and interest on bonds, sinking fund requirements, and payments into reserves, the department shall use moneys in the Puget Sound capital construction account for such purpose. [1999 c 269 § 15; 1990 c 42 § 407; 1986 c 66 § 4; 1984 c 7 § 330; 1961 ex.s. c 9 § 3.]

***Reviser's note:** RCW 47.60.450 was repealed by 2005 c 335 § 5.

Effective date—1999 c 269: See note following RCW 36.78.070.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: See note following RCW 47.60.400.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.430 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Agreement to continue imposition of certain taxes. So long as any bonds issued as authorized herein are outstanding, the state hereby agrees to continue to impose at least one-quarter cent of motor vehicle fuel tax and one-quarter cent of special fuel tax required by law and to deposit the proceeds of these taxes in the Puget Sound capital construction account of the motor vehicle fund. [1986 c 66 § 5; 1961 ex.s. c 9 § 4.]

Effective date—1986 c 66: See note following RCW 47.60.400.

47.60.440 Additional revenue bonds, refunding bonds, authorized, 1961 Act—Ferry system a revenue-producing undertaking—Debt service—Tolls on ferry system and Hood Canal bridge. The Washington state ferry system shall be efficiently managed, operated, and maintained as a revenue-producing undertaking. Subject to the provisions of *RCW 47.60.326 the commission shall maintain and revise from time to time as necessary a schedule of tolls and charges on said ferry system with other moneys deposited in the Puget Sound ferry operations account for maintenance and operation and all moneys in the Puget Sound capital construction account available for debt service will produce net revenue available for debt service, in each fiscal year, in an amount at least equal to minimum annual debt service requirements as hereinafter provided. Minimum annual debt service requirements as used in this section shall include required payments of principal and interest, sinking fund requirements, and payments into reserves on all outstanding revenue bonds authorized by RCW 47.60.400 through **47.60.470.

The provisions of law relating to the revision of tolls and charges to meet minimum annual debt service requirements from net revenues as required by this section shall be binding upon the commission but shall not be deemed to constitute a contract to that effect for the benefit of the holders of such bonds. [1999 c 94 § 28; 1990 c 42 § 408; 1986 c 66 § 6; 1983 c 3 § 139; 1972 ex.s. c 24 § 7; 1963 ex.s. c 3 § 42; 1961 ex.s. c 9 § 5.]

Reviser's note: *(1) RCW 47.60.326 was repealed by 2007 c 512 § 16.

***(2) RCW 47.60.470 was repealed by 1998 c 245 § 176.

Legislative finding—Effective dates—1999 c 94: See notes following RCW 43.84.092.

Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42: See notes following RCW 82.36.025.

Effective date—1986 c 66: See note following RCW 47.60.400.

47.60.500 Acquisition of additional ferries—Legislative finding—Department authority. (1) The legislature finds that the state's ferry fleet available for mass transportation of people within the urban region of Puget Sound is critically deficient and that substantial financial assistance for the acquisition of new ferries is necessary if the Washington state ferries is to continue to fulfill its role in the Puget Sound regional urban transportation system.

(2) The department is authorized:

(a) To apply to the United States secretary of transportation for a financial grant to assist the state to acquire urgently needed ferries;

(b) To enter into an agreement with the United States secretary of transportation or other duly authorized federal officials and to assent to such conditions as may be necessary to obtain financial assistance for the acquisition of additional ferries. In connection with the agreement the department may pledge any moneys in the Puget Sound capital construction account, not required for debt service, in the motor vehicle fund or any moneys to be deposited in the account for the purpose of paying the state's share of the cost of acquiring ferries. To the extent of the pledge the department shall use the moneys available in the Puget Sound capital construction account to meet the obligations as they arise. [1986 c 66 § 8; 1984 c 7 § 333; 1970 ex.s. c 85 § 1.]

Effective date—1986 c 66: See note following RCW 47.60.400.

Severability—1984 c 7: See note following RCW 47.01.141.

Effective date—1970 ex.s. c 85: "This 1970 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect April 1, 1970." [1970 ex.s. c 85 § 9.]

47.60.505 Puget Sound capital construction account—Created—Use. There is hereby created in the motor vehicle fund the Puget Sound capital construction account. All moneys hereafter deposited in said account shall be used by the department of transportation for:

(1) Reimbursing the motor vehicle fund for all transfers therefrom made in accordance with RCW 47.60.620; and

(2) Improving the Washington state ferry system including, but not limited to, vessel acquisition, vessel construction, major and minor vessel improvements, terminal construction and improvements, and reconstruction or replacement of, and improvements to, the Hood Canal bridge, reimbursement of the motor vehicle fund for any state funds, other than insurance proceeds, expended therefrom for reconstruction or replacement of and improvements to the Hood Canal bridge, pursuant to proper appropriations: PROVIDED, That any funds accruing to the Puget Sound capital construction account after June 30, 1979, which are not required to reimburse the motor vehicle fund pursuant to RCW 47.60.620 as such obligations come due nor are required for capital improvements of the Washington state ferries pursuant to appropriations therefor shall from time to time as shall be determined by the department of transportation be transferred by the state treasurer to the Puget Sound ferry operations account in the motor vehicle fund.

(3) The department may pledge any moneys in the Puget Sound capital construction account or to be deposited in that account to guarantee the payment of principal or interest on bonds issued to refund the outstanding 1955 Washington state ferry system refunding bonds and the 1957 ferry and Hood Canal bridge revenue bonds.

The department may further pledge moneys in the Puget Sound capital construction account to meet any sinking fund requirements or reserves established by the department with respect to any bond issues provided for in this section.

To the extent of any pledge authorized in this section, the department shall use the first moneys available in the Puget Sound capital construction account to meet such obligations

as they arise, and shall maintain a balance of not less than one million dollars in the account for this purpose.

(4) The treasurer shall never transfer any moneys from the Puget Sound capital construction account for use by the department for state highway purposes so long as there is due and unpaid any obligations for payment of principal, interest, sinking funds, or reserves as required by any pledge of the Puget Sound capital construction account. Whenever the department has pledged any moneys in the account for the purposes authorized in this section, the state agrees to continue to deposit in the Puget Sound capital construction account the motor vehicle fuel taxes and special fuel taxes as provided in RCW 82.36.020 and 82.38.290 and further agrees that, so long as there exists any outstanding obligations pursuant to such pledge, to continue to impose such taxes.

(5) Funds in the Puget Sound capital construction account of the motor vehicle fund that are not required by the department for payment of principal or interest on bond issues or for any of the other purposes authorized in this chapter may be invested by the department in bonds and obligations of the nature eligible for the investment of current state funds as provided in RCW 43.84.080. [1986 c 66 § 9; 1979 c 27 § 3; 1977 ex.s. c 360 § 10; 1970 ex.s. c 85 § 2.]

Transfer of funds—1986 c 66: "Moneys in the Puget Sound reserve account and ferry improvement fund on July 1, 1987, shall be transferred to the Puget Sound capital construction account." [1986 c 66 § 13.]

Effective date—1986 c 66: See note following RCW 47.60.400.

Severability—1979 c 27: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 27 § 10.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

Effective date—1970 ex.s. c 85: See note following RCW 47.60.500.

47.60.530 Puget Sound ferry operations account—Created—Use. There is hereby created in the motor vehicle fund the Puget Sound ferry operations account to the credit of which shall be deposited all moneys directed by law to be deposited therein. All moneys deposited in this account shall be expended pursuant to appropriations only for reimbursement of the motor vehicle fund for any state moneys, other than insurance proceeds, expended therefrom for alternate transportation services instituted as a result of the destruction of the Hood Canal bridge, and for maintenance and operation of the Washington state ferries including the Hood Canal bridge, supplementing as required the revenues available from the Washington state ferry system. [1979 c 27 § 4; 1972 ex.s. c 24 § 3.]

Severability—1979 c 27: See note following RCW 47.60.505.

47.60.550 Parking or holding area for ferry patrons in conjunction with municipal off-street parking facilities.

(1) Whenever a county, city, or other municipal corporation acquires or constructs a facility to be used in whole or in part for off-street parking of motor vehicles which is in the immediate vicinity of an existing or planned ferry terminal, the department may enter into an agreement with the local governmental body providing for the use in part or at specified times of the facility as a holding area for traffic waiting to board a ferry or for parking by ferry patrons.

(2) As a part of an agreement authorized by subsection (1) of this section, the department, subject to the limitations contained in RCW 47.60.505, may pledge any moneys in the Puget Sound capital construction account in the motor vehicle fund, or to be deposited in the account, to guarantee the payment of principal and interest on bonds issued by a county, city, or other municipal corporation to finance the acquisition or construction of the parking facility. In making the pledge, the department shall reserve the right to issue its own bonds for the purpose of paying the costs of acquiring ferry vessels with the provision that the bonds shall rank on parity with the bonds authorized by this section as a lien upon moneys in or to be deposited in the Puget Sound capital construction account.

The department shall also reserve the right to pledge moneys in the Puget Sound capital construction account to guarantee subsequent bonds issued by any county, city, or other municipal corporation to finance parking facilities as authorized in subsection (1) of this section with the provision that the subsequent bonds shall rank on parity with prior bonds guaranteed pursuant to this section as a lien upon moneys in or to be deposited in the Puget Sound capital construction account. To the extent of any pledge herein authorized, the department shall use the first moneys available in the Puget Sound capital construction account to meet the obligations as they arise. [1986 c 66 § 10; 1984 c 7 § 335; 1975-'76 2nd ex.s. c 69 § 1.]

Effective date—1986 c 66: See note following RCW 47.60.400.

Severability—1984 c 7: See note following RCW 47.01.141.

47.60.560 General obligation bonds—Ferries—Authorized—Purposes—Passenger-only vessels—Issuance, sale, and retirement. In order to provide funds necessary for vessel acquisition, vessel construction, major and minor vessel improvements, and terminal construction and improvements for the Washington state ferries, there shall be issued and sold upon the request of the department general obligation bonds of the state of Washington in the sum of one hundred thirty-five million dollars or such amount thereof as may be required (together with other funds available therefor). If the state of Washington is able to obtain matching funds from the urban mass transportation administration or other federal government agencies for the acquisition of passenger-only vessels capable of operating as an integral part of the Washington state ferries on Puget Sound and the Straits of Juan de Fuca, a sufficient amount of the proceeds of the bonds authorized herein shall be used to pay the state's share of the acquisition cost of the passenger-only vessels. Upon request being made by the department, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds in accordance with chapter 39.42 RCW. The bonds may be sold from time to time in such amounts as may be necessary for the orderly progress in constructing the ferries. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. The state finance committee may obtain insurance, letters of credit, or other credit facility devices with respect to the bonds and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the pur-

pose of insuring the payment or enhancing the marketability of the bonds. Promissory notes or other obligations issued under this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the promissory notes or other obligations relate. The state finance committee may authorize the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1986 c 290 § 8; 1985 c 176 § 1; 1984 c 7 § 336; 1977 ex.s. c 360 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 ex.s. c 360: "If any provision of this 1977 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 360 § 13.]

47.60.570 Disposition of proceeds from sale of bonds.

The proceeds from the sale of the bonds shall be deposited in the Puget Sound capital construction account of the motor vehicle fund and such proceeds shall be available only for the purposes enumerated in RCW 47.60.560, for the payment of bond anticipation notes, if any, and for the payment of the expense incurred in the drafting, printing, issuance, and sale of such bonds. The costs of obtaining insurance, letters of credit, or other credit enhancement devices with respect to the bonds shall be considered to be expenses incurred in the issuance and sale of the bonds. [1986 c 290 § 9; 1977 ex.s. c 360 § 2.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.580 Bonds—Terms—Principal and interest payable from proceeds of state excise taxes on motor vehicle and special fuels. Bonds issued under the provisions of RCW 47.60.560 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 47.60.560 through 47.60.640 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.60.560 through 47.60.640 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.60.560 through 47.60.640. [1995 c 274 § 18; 1977 ex.s. c 360 § 3.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.590 Repayment of bonds—Fund sources. Any funds required to repay the bonds authorized by RCW 47.60.560 or the interest thereon when due shall be taken from that portion of the motor vehicle fund which results

from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state for expenditure pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. [1977 ex.s. c 360 § 4.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.600 Bonds—Powers and duties of state finance committee. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of such bonds, the state finance committee shall estimate, subject to the provisions of RCW 47.60.590, the percentage of the receipts in money of the motor vehicle fund resulting from collection of excise taxes on motor vehicle and special fuels, for each month of the year which shall be required to meet interest or bond payments when due and shall notify the treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle and special fuels of the motor vehicle fund to the ferry bond retirement fund hereby created in the state treasury, which funds shall be available solely for payment of the principal of and interest on the bonds when due. If in any month it shall appear that the estimated percentage of moneys so made is insufficient to meet the requirements for payment of the principal thereof or interest thereon, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for the interest on and principal of all bonds issued shall be fully met at all times. [1977 ex.s. c 360 § 5.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.610 Excess repayment funds—Disposition. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle and special fuels payable into the bond retirement fund proves more than is required for the payment of interest on bonds when due, or current retirement of bonds, any excess may, in the discretion of the state finance committee and with the concurrence of the department, be available for the prior redemption of any bonds or remain available in the fund to reduce requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1984 c 7 § 337; 1977 ex.s. c 360 § 6.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.620 Reimbursements and transfers of funds. Whenever, pursuant to RCW 47.60.600, the state treasurer shall transfer funds from the motor vehicle fund to the ferry bond retirement fund, the state treasurer shall at the same time reimburse the motor vehicle fund in an identical amount from the Puget Sound capital construction account. After each transfer by the treasurer of funds from the motor vehicle fund to the bond retirement fund and to the extent permitted

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by RCW 47.60.420, 47.60.505(3), and 47.60.505(4), the obligation to reimburse the motor vehicle fund as required herein shall constitute a first and prior charge against the funds within and accruing to the Puget Sound capital construction account, including the proceeds of the additional two-tenths of one percent excise tax imposed by *RCW 82.44.020, as amended by chapter 332, Laws of 1977 ex. sess. All funds reimbursed to the motor vehicle fund as provided herein shall be distributed to the state for expenditure pursuant to RCW 46.68.130. [1986 c 66 § 11; 1977 ex.s. c 360 § 7.]

***Reviser's note:** RCW 82.44.020 was repealed by 2000 1st sp.s. c 1 § 2.

Effective date—1986 c 66: See note following RCW 47.60.400.

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.630 Bonds legal investment for public funds. The bonds authorized in RCW 47.60.560 through 47.60.640 shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1977 ex.s. c 360 § 8.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.640 Bonds—Equal charge against revenues from motor vehicle and special fuel excise taxes. Bonds issued under authority of RCW 47.60.560 through 47.60.640 and any subsequent general obligation bonds of the state of Washington which may be authorized and which pledge motor vehicle and special fuel excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuel excise taxes. [1977 ex.s. c 360 § 9.]

Severability—1977 ex.s. c 360: See note following RCW 47.60.560.

47.60.645 Passenger ferry account. There is hereby established in the transportation fund the passenger ferry account. Money in the account shall be used for operating or capital grants for ferry systems as provided in chapters 36.54, 36.57A, and 53.08 RCW. Moneys in the account shall be expended with legislative appropriation. [2008 c 45 § 2; 2006 c 332 § 1; 1995 2nd sp.s. c 14 § 558.]

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

47.60.649 Passenger-only ferry service—Finding. The legislature finds and declares that there is a compelling need for the construction of additional state ferry vessels and corresponding terminal improvements in order to provide more capacity and frequent service to meet the forecasted travel demands of citizens traveling on Puget Sound ferry routes. The vessel technology required must provide additional travel options for high growth ferry routes through increased passenger-only ferry service.

The 1989 west corridor study evaluated cross-sound travel through the year 2020 and identified the Southworth to Seattle and the Kingston to Seattle passenger-only ferry routes as promising based on criteria evaluating cost-effectiveness, time savings, physical constraints to operation, non-

duplication of current service, and ability to relieve congestion.

Furthermore, as a result of legislative direction provided in the 1991-93 transportation budget to the state transportation commission to evaluate and determine the location of new passenger-only ferry routes, the commission reviewed several service alternatives, determined that the Southworth to Seattle and Kingston to Seattle routes ranked highest, and directed the Washington state ferries to proceed with the design and permitting processes for passenger-only terminals at both Southworth and Kingston. [1998 c 166 § 1.]

47.60.652 Passenger-only ferry service—Vessel and terminal acquisition, procurement, and construction. The department is authorized to proceed with the acquisition, procurement, and construction of a maximum of four passenger-only vessels that respond to the service demands of state ferry service on the Southworth to Seattle and Kingston to Seattle ferry routes, including the terminal and docking facilities necessary to accommodate such service. The acquisition, procurement, and construction of vessels and terminals authorized herein shall be undertaken in accordance with the authority provided in RCW 47.56.030. [1998 c 166 § 2.]

47.60.654 Passenger-only ferry service—Contingency. The department's authority to proceed with the acquisition, procurement, and construction of vessels and terminals authorized under RCW 47.60.652 is contingent on a legislative appropriation approving that authority: PROVIDED, That the appropriation does not reduce the current level of funding for the maintenance and repair of vessels and terminals in service as of June 11, 1998. [1998 c 166 § 3.]

Reviser's note: Cf. 1998 c 346 § 913.

47.60.656 Passenger-only ferry service—Conveyance of vessels authorized. The department of transportation may enter into contracts with public transportation benefit areas meeting the requirements of RCW 36.57A.200 or county ferry districts to convey passenger-only ferry vessels and other properties associated with passenger-only ferry service that serve to provide passenger-only ferry service, as full or part consideration for the benefit area or ferry district assuming all future maintenance and operation obligations and costs required to maintain and operate the vessel and facilities. The conveyances must provide that the vessels or properties revert to the department if the vessels are not used for providing passenger-only ferry service. [2003 c 83 § 203.]

Reviser's note: 2003 c 83 directed that this section be added to chapter 47.52 RCW. However, codification in chapter 47.60 RCW appears to be more appropriate.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.60.658 Passenger-only ferry service between Vashon and Seattle. The department shall maintain the level of service existing on January 1, 2006, for the Vashon to Seattle passenger-only ferry route until such time as the route is assumed by another entity, providing a level of service at or exceeding the state level. [2007 c 223 § 8; 2006 c 332 § 3.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

47.60.662 Ferry system collaboration with passenger-only ferry service providers. The Washington state ferry system shall collaborate with new and potential passenger-only ferry service providers, as described in chapters 36.54, 36.57A, and 53.08 RCW, for terminal operations at its existing terminal facilities. [2008 c 45 § 3; 2007 c 223 § 3; 2006 c 332 § 5.]

Effective date—2007 c 223: See note following RCW 36.57A.220.

47.60.680 Prequalification of contractors required. No contract for the construction, improvement, or repair of a ferry, ferry terminal, or other facility operated by the Washington state ferries or for the repair, overhaul, or the dry-docking of any ferry operated by Washington state ferries may be awarded to any contractor who has not first been prequalified to perform the work by the department of transportation. No bid or proposal for such a contract may be received from any contractor who has not first been prequalified to perform the work by the department of transportation. [1983 c 133 § 1.]

47.60.690 Qualifications of contractor—Rules to assure. The secretary of transportation shall adopt rules prescribing standards and criteria to assure that each ferry system construction and repair contract described in RCW 47.60.680 shall be awarded to a competent and responsible contractor who has all of the following qualifications:

- (1) Adequate financial resources, which may take into account the ability of the contractor to secure such resources;
- (2) The necessary organization, personnel, equipment, facilities, experience, and technical qualification[s] to perform ferry system construction and repair contracts generally and with respect to any specific contract such additional special qualifications as may be necessary to perform the contract;
- (3) The ability to comply with the department's performance schedules taking into account the outstanding work on all of the contractor's construction and repair contracts;
- (4) A satisfactory record of performing previous contracts;
- (5) A satisfactory record of integrity, judgment, and skills; and
- (6) Such other qualifications as the secretary may prescribe to assure that prequalified contractors are competent and responsible. [1983 c 133 § 2.]

47.60.700 Application for prequalification—Form. Any contractor desiring to submit bids or proposals for ferry system construction or repair contracts as described in RCW 47.60.680 shall file an application for prequalification with the department. The application shall be on a standard form supplied by the department. The form shall require a complete statement of the applicant's financial ability, including a statement of the applicant's current net assets and working capital. The form shall require such additional information as may be necessary for the department to determine whether or not the applicant is entitled to be prequalified in accordance with RCW 47.60.680 through 47.60.760 and the rules adopted thereunder. [1983 c 133 § 3.]

47.60.710 Department authority to obtain information. Upon request by the department an applicant for prequalification shall authorize the department to obtain any information pertinent to the application, including information relating to the applicant's net worth, assets, and liabilities, from banks or other financial institutions, surety companies, and material and equipment suppliers. [1983 c 133 § 4.]

47.60.720 Additional investigation—Terms of prequalification—Notice of nonqualification. Upon receipt of an application by a contractor for prequalification to perform ferry system construction and repair contracts, the department shall conduct such additional investigation as it deems necessary. If it finds that the applicant is qualified in accordance with the rules as adopted by the secretary, the department shall prequalify the contractor to perform the contracts for a period of one year. The prequalification shall fix the aggregate dollar amount of work, including any contract let by the department, that the contractor may have under contract and uncompleted at any one time and may limit the contractor to the submission of bids or proposals upon a certain class of work. Subject to any restrictions on the dollar amount or class of work specified thereunder, the prequalification shall authorize a contractor to bid or submit proposals on all ferry system construction and repair contracts mentioned in RCW 47.60.680 except contracts requiring special prequalification. If the department determines that an applicant is not entitled to prequalification, it shall give written notice of the determination to the applicant. [1983 c 133 § 5.]

47.60.730 Renewal of prequalification—Nonrenewal or revocation, notice. A contractor may apply annually for renewal of its prequalification by submission of a new or supplemental questionnaire and financial statement on standard forms provided by the department. Based upon information received at the time of renewal or at any other time the department may amend the prequalification of the contractor as to the dollar amount or class of work that the contractor may perform or may refuse to renew the prequalification or may revoke a prequalification previously approved, all in accordance with the same standards and criteria used for considering an original application for prequalification. The department shall give written notice of any such action to the contractor. [1983 c 133 § 6.]

47.60.740 Rejection of bid despite prequalification—Unqualified bidder. If the department finds, after the opening of bids, that facts exist that would disqualify the lowest bidder, or that the lowest bidder is not competent or responsible in accordance with the standards and criteria for prequalifying contractors, the department shall reject the bid despite the prior prequalification of the bidder. No contract may be awarded to a bidder not qualified to bid on it at the time fixed for receiving bids. [1983 c 133 § 7.]

47.60.750 Appeal of refusal, modification, or revocation of prequalification. The action of the department in refusing, modifying, or revoking the prequalification of any contractor under RCW 47.60.680 through 47.60.740 is con-

clusive unless an appeal is filed with the Thurston county superior court within ten days after receiving written notice of the refusal, modification, or revocation. The appeal shall be heard summarily within twenty days after the appeal is taken and on five days notice thereof to the department. The court shall hear any such appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the action of the department was arbitrary or capricious. [1983 c 133 § 8.]

47.60.760 Financial information regarding qualify- ing not public. The department of transportation shall not be required to make available for public inspection and copying financial information supplied by any person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750. [1983 c 133 § 9.]

47.60.770 Jumbo ferry construction—Notice. Whenever the department is authorized to construct one or more new jumbo ferry vessels under this chapter, it shall publish a notice of its intent once a week for at least two consecutive weeks in at least one trade paper and one other paper, both of general circulation in the state. The notice shall contain, but not be limited to, the following information:

- (1) The number of jumbo ferry vessels to be constructed and the proposed delivery date for each vessel;
- (2) A short summary of the requirements for prequalification of bidders including a statement that prequalification is a prerequisite to consideration by the department of any bid, and a statement that the bidder shall submit its bid for the vessel in compliance with the plans and specifications supplied by the state; and
- (3) An address and telephone number that may be used to obtain the bid package. [1993 c 493 § 1.]

Effective date—1993 c 493: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]." [1993 c 493 § 8.]

47.60.772 Jumbo ferry construction—Bidding documents. The department shall send to any firm that requests it bidding documents specifying the criteria for the jumbo ferry vessels. The bid documents shall include, but not be limited to, the following information:

- (1) Solicitation of a bid to deliver to the department vessels that are constructed as specified by the plans and specifications provided by the department;
- (2) A requirement that bids submitted should include one bid for the construction of three vessels;
- (3) The proposed delivery date for each vessel, the port on Puget Sound where delivery will be taken, and the location where acceptance sea trials will be held;
- (4) The amount and form of required contract security under RCW 39.08.100;
- (5) A copy of the vessel construction contract that will be signed by the successful bidder;
- (6) The date by which bids for ferry vessel construction must be received by the department in order to be considered;

(7) A requirement that the contractor comply with all applicable laws, rules, and regulations including, but not limited to those pertaining to the environment, worker health and safety, and prevailing wages;

(8) A requirement that the vessels be constructed within the boundaries of the state of Washington except that equipment furnished by the state and components, products, and systems that are standard manufactured items are not subject to the in-state requirement under this subsection. For the purposes of this section, "constructed" means: The fabrication, by the joining together by welding or fastening of all steel parts from which the total vessel is constructed, including, but not limited to, all shell frames, longitudinals, bulkheads, webs, piping runs, wire ways, and ducting. "Constructed" also means the installation of all components and systems, including, but not limited to, equipment and machinery, castings, electrical, electronics, deck covering, lining, paint and joiner work, required by the contract. "Constructed" also means the interconnection of all equipment, machinery, and services, such as piping, wiring, and ducting;

(9) A requirement that all warranty work on the vessel be performed within the boundaries of the state of Washington, insofar as practicable;

(10) A statement that any bid submitted constitutes an offer and remains open until ninety days after the deadline for submitting bids, unless the firm submitting it withdraws it by formal written notice that is received by the department before the date and time specified for opening of the bids, together with an explanation of the requirement that all bids submitted be accompanied by a bid deposit in the amount of five percent of the bid amount; and

(11) A listing of all equipment to be furnished by the state. [1993 c 493 § 2.]

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.774 Jumbo ferry construction—Procedure on conclusion of evaluation. (1) Upon concluding its evaluation, the department may:

(a) Select the firm submitting the lowest responsible bid for the construction of new jumbo ferries, taking into consideration the requirements stated in the bid documents and rank the remaining firms, judging them by the same standards;

(b) Reject all bids not in compliance with the requirements contained in the bid documents;

(c) Reject all bids.

(2) The department shall immediately notify those firms that were not selected as the firm presenting the lowest responsible bid. The department's selection is conclusive unless appeal from it is taken by an aggrieved firm to the superior court of Thurston county within five days after receiving notice of the department's final decision. The appeal shall be heard summarily within ten days after it is taken and on five days' notice to the department. The court shall hear any appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the action of the department was arbitrary or capricious. [1993 c 493 § 4.]

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.776 Jumbo ferry construction—Contract. (1) Upon selecting the firm that has submitted the lowest responsible bid for the construction of new jumbo ferries, and ranking the remaining firms in order of preference, the department shall:

(a) Sign a contract with the firm presenting the lowest responsible bid; or

(b) If a final agreement satisfactory to the department cannot be signed with the firm presenting the lowest responsible bid, the department may sign a contract with the firm ranked next lowest bidder. If necessary, the department may repeat this procedure with each firm in order until the list of firms has been exhausted, or reject all bids.

(2) In developing a contract for the construction of ferry vessels, the department may, subject to the provisions of *RCW 39.25.020, authorize the use of foreign-made materials and components, products, and systems that are standard manufactured items in the construction of ferries in order to minimize costs. [1993 c 493 § 5.]

***Reviser's note:** RCW 39.25.020 was repealed by 1994 c 138 § 2.

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.778 Jumbo ferry construction—Bid deposits—Low bidder claiming error. Bids submitted by firms under this section constitute an offer and shall remain open for ninety days. When submitted, each bid shall be accompanied by a deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent of the bid amount, and no bid may be considered unless the deposit is enclosed. If the department awards a contract to a firm and the firm fails to enter into a contract or fails to furnish a satisfactory contract security as required by RCW 39.08.100, its deposit shall be forfeited to the state and be deposited by the state treasurer to the credit of the Puget Sound capital construction account. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Upon the execution of a ferry construction contract for the construction of new jumbo ferries, all bid deposits shall be returned. [1996 c 18 § 9; 1993 c 493 § 6.]

Effective date—1993 c 493: See note following RCW 47.60.770.

47.60.780 Jumbo ferry construction—Propulsion system acquisition. (1) The department may enter into a contract for the acquisition of the propulsion system, or any component of it, including diesel engines and spare parts, for installation into one or more of the three Jumbo Class Mark II ferry vessels authorized under this chapter. This authorization does not limit the department from obtaining and installing the propulsion system, or any component of it, as incidental to the overall vessel construction contract authorized under RCW 47.60.770 through 47.60.778, nor from proceeding to complete an existing contract for acquisition of the propulsion system or any component of it.

(2) Acquisition of a propulsion system, or any component of it, for the Jumbo Class Mark II ferries by the department under this section is exempt from chapter 43.19 RCW.

(3) Whenever the department decides to enter into an acquisition contract under this section it shall publish a notice of its intent to negotiate such a contract once a week for at

least two consecutive weeks in one trade newspaper and one other newspaper, both of general circulation in the state. The notice must contain, but is not limited to, the following information:

(a) The identity of the propulsion system or components to be acquired and the proposed delivery dates for the propulsion system or components;

(b) An address and telephone number that may be used to obtain the request for proposal.

(4) The department shall send to any firm that requests it, a request for proposal outlining the design and construction requirements for the propulsion system, including any desired components. The request for proposal must include, but is not limited to, the following information:

(a) The proposed delivery date for each propulsion system or desired component and the location where delivery will be taken;

(b) The form and formula for contract security;

(c) A copy of the proposed contract;

(d) The date by which proposals must be received by the department in order to be considered; and

(e) A statement that any proposal submitted constitutes an offer and must remain open until ninety days after the deadline for submitting proposals, together with an explanation of the requirement that all proposals submitted must be accompanied by a deposit in the amount of five percent of the proposed cost.

(5) The department shall evaluate all timely proposals received for: (a) Compliance with the requirements specified in the request for proposal; and (b) suitability of each firm's proposal by applying appropriate criteria to be developed by the department: (i) To assess the ability of the firm to expeditiously and satisfactorily perform and (ii) to accomplish an acquisition that is most advantageous to the department. A portion of the technical requirements addressed in the request for proposal shall include, but is not limited to, user verifications of manufacturer's reliability claims; the quality of engine maintenance documentation; and engine compatibility with ship design.

(6) The criteria to select the most advantageous diesel engine under subsection (5)(b)(ii) shall consist of life-cycle cost factors weighted at forty-five percent; and operational factors weighted as follows: Reliability at twenty percent, maintainability at twenty percent, and engine performance at fifteen percent. For purposes of this subsection, the life-cycle cost factors shall consist of the costs for engine acquisition and warranty, spare parts acquisition and inventory, fuel efficiency and lubricating oil consumption, and commonality. The fuel efficiency and lubricating oil consumption life-cycle cost factors shall receive not less than twenty percent of the total evaluation weighting and shall be evaluated under a format similar to that employed in the 1992 M.V. Tyee engine replacement contract. The reliability factors shall consist of the length of service and reliability record in comparable uses, and mean time between overhauls. The mean time between overhauls evaluation shall be based upon the manufacturer's required hours between change of wear components. The maintainability factors shall consist of spare parts availability, the usual time anticipated to perform typical repair functions, and the quality of factory training programs for ferry system maintenance staff. The performance factors

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shall consist of load change responsiveness, and air quality of exhaust and engine room emissions.

(7) Upon concluding its evaluation, the department shall:

(a) Select the firm presenting the proposal most advantageous to the department, taking into consideration compliance with the requirements stated in the request for proposal, and the criteria developed by the department, and rank the remaining firms in order of preference, judging them by the same standards; or

(b) Reject all proposals as not in compliance with the requirements contained in the request for proposals.

(8) The department shall immediately notify those firms that were not selected as the firm presenting the most advantageous proposal of the department's decision. The department's decision is conclusive unless an aggrieved firm appeals the decision to the superior court of Thurston county within five days after receiving notice of the department's final decision. The appeal shall be heard summarily within ten days after it is taken and on five days' notice to the department. The court shall hear the appeal on the administrative record that was before the department. The court may affirm the decision of the department, or it may reverse the decision if it determines the action of the department is arbitrary or capricious.

(9) Upon selecting the firm that has presented the most advantageous proposal and ranking the remaining firms in order of preference, the department shall:

(a) Negotiate a contract with the firm presenting the most advantageous proposal; or

(b) If a final agreement satisfactory to the department cannot be negotiated with the firm presenting the most advantageous proposal, the department may then negotiate with the firm ranked next highest in order of preference. If necessary, the department may repeat this procedure and negotiate with each firm in order of rank until the list of firms has been exhausted.

(10) Proposals submitted by firms under this section constitute an offer and must remain open for ninety days. When submitted, each proposal must be accompanied by a deposit in cash, certified check, cashier's check, or surety bond in the amount equal to five percent of the amount of the proposed contract price, and the department may not consider a proposal that has no deposit enclosed with it. If the department awards a contract to a firm under the procedure set forth in this section and the firm fails to enter into the contract and furnish the required contract security within twenty days, exclusive of the day of the award, its deposit shall be forfeited to the state and deposited by the state treasurer to the credit of the Puget Sound capital construction account. Upon the execution of a contract all proposal deposits shall be returned. [1994 c 181 § 2.]

Finding and intent—1994 c 181: "The legislature finds and declares that:

A 1991 legislative study, conducted by Booz, Allen, Hamilton and M. Rosenblatt and Son, examining the Washington state ferries' management of its vessel refurbishment and construction program, resulted in recommendations for improvements and changes in the vessel refurbishment and construction program. These legislatively adopted recommendations encourage and support input by Washington state ferries' engineers in the development of refurbishment and new construction project requirements.

The recommendations of the Booz, Allen study have been applied to the construction of the Jumbo Class Mark II ferries through the appointment of a Jumbo Class Mark II steering committee comprised of current state ferry

engineers responsible for the design, operation, and maintenance of state ferry vessels.

The steering committee, in carrying out the recommendations of the Booz. Allen study, has determined that the procedure for the procurement of equipment, parts, and supplies for the Jumbo Class Mark II ferry vessels authorized by RCW 47.60.770 through 47.60.778, must take into consideration, in addition to life-cycle cost criteria, criteria that are essential to the operation of a public mass transportation system responsive to the needs of Washington state ferries' users, and that assess the reliability, maintainability, and performance of equipment, parts, and supplies to be installed in the Jumbo Mark II ferries.

The construction of the new Jumbo Class Mark II ferry vessels authorized by RCW 47.60.770 through 47.60.778 is critical to the welfare of the state and any delay in the immediate construction of the ferries will result in severe hardship and economic loss to the state and its citizens. Recognizing these findings, it is the intent of the legislature that the vessel construction should not be delayed further because of the acquisition of a propulsion system, or any component of it, for the ferries, and to authorize the department of transportation to acquire all components of a complete propulsion system as soon as possible so that planned construction of the Jumbo Class Mark II ferry vessels can proceed immediately.

The purpose of this chapter is to authorize the use, by the department, of supplemental, alternative contracting procedures for the procurement of a propulsion system, and the components thereof, for the Jumbo Class Mark II ferries; and to prescribe appropriate requirements and criteria to ensure that contracting procedures for such procurement serve the public interest." [1994 c 181 § 1.]

Effective date—1994 c 181: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 181 § 4.]

47.60.800 General obligation bonds—1992 issue—Purpose—Issuance and sale. In order to provide funds necessary for vessel and terminal acquisition, construction, and major and minor improvements, including long lead time materials acquisition for the Washington state ferries, there shall be issued and sold upon the request of the Washington state transportation commission and legislative appropriation a total of two hundred ten million dollars of general obligation bonds of the state of Washington. [1992 c 158 § 1.]

47.60.802 Bonds—1992 issue—Supervision of sale by state finance committee—Option of short-term obligations. (1) Upon request being made by the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by RCW 47.60.800 through 47.60.808 in accordance with chapter 39.42 RCW. The bonds may be sold from time to time in such amounts as may be necessary for the purposes under RCW 47.60.800. The bonds shall be sold in such manner, at such time or times, in such amounts, and at such price or prices as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

(2) The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purposes of retiring the bonds during the life of the project for which they were issued. [1992 c 158 § 2.]

47.60.804 Bonds—1992 issue—Use of proceeds. The proceeds from the sale of bonds authorized by RCW 47.60.800 through 47.60.808 shall be deposited in the Puget Sound capital construction account of the motor vehicle fund

and such proceeds shall be available only for the purposes under RCW 47.60.800, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting. [1992 c 158 § 3.]

47.60.806 Bonds—1992 issue—Payment of principal and interest from pledged excise taxes. Bonds issued under the authority of RCW 47.60.800 through 47.60.808 shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest shall be first payable in the manner provided in RCW 47.60.800 through 47.60.808 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW and distributed to the state pursuant to RCW 46.68.130 and shall never constitute a charge against any allocations of such funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle and special fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on any such bonds. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.60.800 through 47.60.808, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.60.800 through 47.60.808. [1995 c 274 § 19; 1992 c 158 § 4.]

47.60.808 Bonds—1992 issue—Payment from ferry bond retirement fund. Both principal and interest on the bonds issued for the purposes of RCW 47.60.800 through 47.60.808 shall be payable from the ferry bond retirement fund authorized in RCW 47.60.600. Whenever, pursuant to RCW 47.60.800 and 47.60.806, the state treasurer transfers funds from the motor vehicle fund to the ferry bond retirement fund, the state treasurer may at the same time reimburse the motor vehicle fund in an identical amount from the Puget Sound capital construction account. [1992 c 158 § 5.]

47.60.810 Design-build ferries—Authorized—Phases defined. (1) The department may purchase new auto ferries through use of a modified request for proposals process whereby the prevailing shipbuilder and the department engage in a design and build partnership for the design and construction of the auto ferries. The process consists of the three phases described in subsection (2) of this section.

(2) The definitions in this subsection apply throughout RCW 47.60.812 through 47.60.822.

(a) "Phase one" means the evaluation and selection of proposers to participate in development of technical proposals in phase two.

(b) "Phase two" means the preparation of technical proposals by the selected proposers in consultation with the department.

(c) "Phase three" means the submittal and evaluation of bids, the award of the contract to the successful proposer, and the design and construction of the auto ferries. [2001 c 226 § 4.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.812 Design-build ferries—Notice of request for proposals. To commence the request for proposals process, the department shall publish a notice of its intent once a week for at least two consecutive weeks in at least one trade paper and one other paper, both of general circulation in the state. The notice must contain, but is not limited to, the following information:

(1) The number of auto ferries to be procured, the auto and passenger capacities, the delivery dates, and the estimated price range for the contract;

(2) A statement that a modified request for proposals design and build partnership will be used in the procurement process;

(3) A short summary of the requirements for prequalification of proposers including a statement that prequalification is a prerequisite to submittal of a proposal in phase one; and

(4) An address and telephone number that may be used to obtain a prequalification questionnaire and the request for proposals. [2001 c 226 § 5.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.814 Design-build ferries—Issuance of request for proposals. Subject to legislative appropriation for the procurement of vessels, the department shall issue a request for proposals to interested parties that must include, at least, the following:

(1) Solicitation of a proposal to participate in a design and build partnership with the department to design and construct the auto ferries;

(2) Instructions on the prequalification process and procedures;

(3) A description of the modified request for proposals process. Under this process, the department may modify any component of the request for proposals, including the outline specifications, by addendum at any time before the submittal of bids in phase three;

(4) A description of the design and build partnership process to be used for procurement of the vessels;

(5) Outline specifications that provide the requirements for the vessels including, but not limited to, items such as length, beam, displacement, speed, propulsion requirements, capacities for autos and passengers, passenger space characteristics, and crew size. The department will produce notional line drawings depicting hull geometry that will interface with Washington state ferries terminal facilities. Notional lines may be modified in phase two, subject to approval by the department;

(6) Instructions for the development of technical proposals in phase two, and information regarding confidentiality of technical proposals;

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(7) The vessel delivery schedule, identification of the port on Puget Sound where delivery must take place, and the location where acceptance trials must be held;

(8) The estimated price range for the contract;

(9) The form and amount of the required bid deposit and contract security;

(10) A copy of the contract that will be signed by the successful proposer;

(11) The date by which proposals in phase one must be received by the department in order to be considered;

(12) A description of information to be submitted in the proposals in phase one concerning each proposer's qualifications, capabilities, and experience;

(13) A statement of the maximum number of proposers that may be selected in phase one for development of technical proposals in phase two;

(14) Criteria that will be used for the phase one selection of proposers to participate in the phase two development of technical proposals;

(15) A description of the process that will be used for the phase three submittal and evaluation of bids, award of the contract, and postaward administrative activities;

(16) A requirement that the contractor comply with all applicable laws, rules, and regulations including but not limited to those pertaining to the environment, worker health and safety, and prevailing wages;

(17) A requirement that the vessels be constructed within the boundaries of the state of Washington except that equipment furnished by the state and components, products, and systems that are standard manufactured items are not subject to the in-state requirement under this subsection. For the purposes of this subsection, "constructed" means the fabrication, by the joining together by welding or fastening of all steel parts from which the total vessel is constructed, including, but not limited to, all shell frames, longitudinals, bulkheads, webs, piping runs, wire ways, and ducting. "Constructed" also means the installation of all components and systems, including, but not limited to, equipment and machinery, castings, electrical, electronics, deck covering, lining, paint, and joiner work required by the contract. "Constructed" also means the interconnection of all equipment, machinery, and services, such as piping, wiring, and ducting; and

(18) A requirement that all warranty work on the vessel must be performed within the boundaries of the state of Washington, insofar as practical. [2001 c 226 § 6.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.816 Design-build ferries—Phase one. Phase one of the request for proposals process consists of evaluation and selection of prequalified proposers to participate in subsequent development of technical proposals in phase two, as follows:

(1) The department shall issue a request for proposals to interested parties.

(2) The request for proposals must require that each proposer prequalify for the contract under chapter 468-310 WAC, except that the department may adopt rules for the financial prequalification of proposers for this specific contract only. The department shall modify the financial prequalification rules in chapter 468-310 WAC in order to maximize

competition among financially capable and otherwise qualified proposers. In adopting these rules, the department shall consider factors including, without limitation: (a) Shipyard resources in Washington state; (b) the cost to design and construct multiple vessels under a single contract without options; and (c) the sequenced delivery schedule for the vessels.

(3) The department may use some, or all, of the nonfinancial prequalification factors as part of the evaluation factors in phase one to enable the department to select a limited number of best qualified proposers to participate in development of technical proposals in phase two.

(4) The department shall evaluate submitted proposals in accordance with the selection criteria established in the request for proposals. Selection criteria may include, but are not limited to, the following:

- (a) Shipyard facilities;
- (b) Organization components;
- (c) Design capability;
- (d) Build strategy;
- (e) Experience and past performance;
- (f) Ability to meet vessel delivery dates;
- (g) Projected workload; and
- (h) Expertise of project team and other key personnel.

(5) Upon concluding its evaluation of proposals, the department shall select the best qualified proposers in accordance with the request for proposals. The selected proposers must participate in development of technical proposals. Selection must be made in accordance with the selection criteria stated in the request for proposals. All proposers must be ranked in order of preference as derived from the same selection criteria. [2001 c 226 § 7.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.818 Design-build ferries—Phase two. Phase two of the request for proposals process consists of preparation of technical proposals in consultation with the department, as follows:

(1) The development of technical proposals in compliance with the detailed instructions provided in the request for proposals, including the outline specifications, and any addenda to them. Technical proposals must include the following:

- (a) Design and specifications sufficient to fully depict the ferries' characteristics and identify installed equipment;
- (b) Drawings showing arrangements of equipment and details necessary for the proposer to develop a firm, fixed price bid;
- (c) Project schedule including vessel delivery dates; and
- (d) Other appropriate items.

(2) The department shall conduct periodic reviews with each of the selected proposers to consider and critique their designs, drawings, and specifications. These reviews must be held to ensure that technical proposals meet the department's requirements and are responsive to the critiques conducted by the department during the development of technical proposals.

(3) If, as a result of the periodic technical reviews or otherwise, the department determines that it is in the best interests of the department to modify any element of the request

for proposals, including the outline specifications, it shall do so by written addenda to the request for proposals.

(4) Proposers must submit final technical proposals for approval that include design, drawings, and specifications at a sufficient level of detail to fully depict the ferries' characteristics and identify installed equipment, and to enable a proposer to deliver a firm, fixed price bid to the department. The department shall reject final technical proposals that modify, fail to conform to, or are not fully responsive to and in compliance with the requirements of the request for proposals, including the outline specifications, as amended by addenda. [2001 c 226 § 8.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.820 Design-build ferries—Phase three. Phase three consists of the submittal and evaluation of bids and the award of the contract to the successful proposer for the final design and construction of the auto ferries, as follows:

(1) The department shall request bids for detailed design and construction of the vessels after completion of the review of technical proposals in phase two. The department will review detailed design drawings in phase three for conformity with the technical proposals submitted in phase two. In no case may the department's review replace the builder's responsibility to deliver a product meeting the phase two technical proposal. The department may only consider bids from selected proposers that have qualified to bid by submitting technical proposals that have been approved by the department.

(2) Each qualified proposer must submit its total bid price for all vessels, including certification that the bid is based upon its approved technical proposal and the request for proposals.

(3) Bids constitute an offer and remain open for ninety days from the date of the bid opening. A deposit in cash, certified check, cashier's check, or surety bond in an amount specified in the request for proposals must accompany each bid and no bid may be considered unless the deposit is enclosed.

(4) The department shall evaluate the submitted bids. Upon completing the bid evaluation, the department may select the responsive and responsible proposer that offers the lowest total bid price for all vessels.

(5) The department may waive informalities in the proposal and bid process, accept a bid from the lowest responsive and responsible proposer, reject any or all bids, republish, and revise or cancel the request for proposals to serve the best interests of the department.

(6) The department may:

(a) Award the contract to the proposer that has been selected as the responsive and responsible proposer that has submitted the lowest total bid price;

(b) If a contract cannot be signed with the apparent successful proposer, award the contract to the next lowest responsive and responsible proposer; or

(c) If necessary, repeat this procedure with each responsive and responsible proposer in order of rank until the list of those proposers has been exhausted.

(7) If the department awards a contract to a proposer under this section, and the proposer fails to enter into the con-

tract and furnish satisfactory contract security as required by chapter 39.08 RCW within twenty days from the date of award, its deposit is forfeited to the state and will be deposited by the state treasurer to the credit of the Puget Sound capital construction account. Upon the execution of a ferry design and construction contract all proposal deposits will be returned.

(8) The department may provide an honorarium to reimburse each unsuccessful phase three proposer for a portion of its technical proposal preparation costs at a preset, fixed amount to be specified in the request for proposals. If the department rejects all bids, the department may provide the honoraria to all phase three proposers that submitted bids. [2001 c 226 § 9.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.822 Design-build ferries—Notice to proposers not selected—Appeal. (1) The department shall immediately notify those proposers that are not selected to participate in development of technical proposals in phase one and those proposers who submit unsuccessful bids in phase three.

(2) The department's decision is conclusive unless an aggrieved proposer files an appeal with the superior court of Thurston county within five days after receiving notice of the department's award decision. The court shall hear any such appeal on the department's administrative record for the project. The court may affirm the decision of the department, or it may reverse or remand the administrative decision if it determines the action of the department was arbitrary and capricious. [2001 c 226 § 10.]

Findings—Purpose—2001 c 226: See note following RCW 47.20.780.

47.60.824 Design-build ferries—Single best-qualified proposer—Incentives—Proposal negotiations—Compensation. If at any point there is only a single best-qualified proposer participating in the competitive design-build procurement process prior to the submission of bids in phase three, or if there is only a single responsive and responsible bid submitted in phase three, or if the current best-qualified proposers elect to jointly submit a single proposal, the department may negotiate a fair-value contract with the proposer or joint proposers. The negotiations may consider the scope of work as well as contract price. The contract price must be established between the department and the proposer through negotiation based on detailed cost and price information provided by the proposer, the department, and other relevant sources in a format as determined by the department. To achieve efficiencies, the department may negotiate incentives and economic cost sharing between the state and the proposer. In addition to the cost incentives, other incentives may be considered, as determined by the department, to be in the best interests of the state. Such incentives may include, but are not limited to, key schedule milestones, technological innovations, performance efficiencies, constructability, and operational value or life-cycle cost. The department may issue guidelines, requirements, and procedures for all negotiations.

If the department conducts negotiations with a single remaining proposer or joint proposers prior to the submission

of bids in phase three, all negotiations must be completed within forty-five days of the department's approval of the final technical proposal. If the department conducts negotiations with a single responsive and responsible phase three bidder, all negotiations must be completed within thirty days of submission of the phase three bids.

If the department reaches an agreement with the proposer or joint proposers, the department shall submit a copy of the contract, the final negotiated price, and supporting information to the office of financial management at least ten days prior to execution of the contract. If the final negotiated price is greater than the legislature's adopted expenditure plan for vessel construction, the department may not execute the contract until the legislature reviews the final proposals and adjusts the expenditure plan accordingly.

If the department is unable within the designated time period to reach an agreement with the proposer or joint proposers that is fair, reasonable, and in the department's budget, or if the proposers initially provide notice of their intent to jointly submit a single proposal but fail to do so, or if any one of the proposers withdraws from a jointly submitted single proposal before entering into a contract with the department, or if both of the current best-qualified proposers withdraw or otherwise fail to proceed with the request for proposals process, the department may issue a new request for proposals or cancel the request for proposals process, to serve the best interests of the state.

The department may pay an honorarium in a specified amount determined by the department to a proposer or joint proposers who has [have] submitted a final, approved technical proposal and with whom the department has engaged in unsuccessful negotiations. The proposer or joint proposers shall not receive any other compensation for attempting to negotiate a contract, except to the extent allowed by the department in a final contract awarded pursuant to the request for proposal. [2007 c 481 § 2.]

Effective date—2007 c 481: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2007]." [2007 c 481 § 3.]

47.60.8241 Findings—Single proposal process for new ferry vessel construction. The legislature finds that the Washington state ferry system has an excellent safety record and has commenced a long-term vessel procurement plan to ensure the replacement of older and outdated ferry vessels. The legislature further finds that the current vessel procurement process must move forward with all due speed, balancing the interests of both the taxpayers and shipyards. The commencement of construction of new vessels is important not only for safety reasons, but also to keep skilled marine construction jobs in the Puget Sound region and to sustain the capacity of the region to meet the ongoing preservation needs of the ferry system fleet of vessels.

The legislature further finds that the balancing of interests described in this section may necessitate the department of transportation to consider in the department's current new 144—auto ferries request for proposals a single proposal submitted jointly by the current best-qualified proposers. The department may, therefore, consider and accept or reject in the department's discretion such a single proposal, and the

current best-qualified proposers may meet and confer to discuss matters that are reasonably necessary to determine whether to submit such a single proposal and to implement a single final contract if the proposal is accepted by the department. Discussions may address the terms of any agreement that may be entered into between the best-qualified proposers for purposes of submitting a single proposal, as well as any agreement that may be entered into with the department. Discussions may also address cost and price information and division of work under the request for proposals. The current best-qualified proposers shall each expressly declare in writing to the department, their intent, if any, to jointly submit a single proposal within thirty days of May 14, 2007, and shall further provide within the thirty-day period information that may be required by the department including, but not limited to, information regarding the proposed shipyard organizational structure and responsibilities of each participant. If at the end of the thirty-day period the proposers have not declared such an intent and provided the information required by the department, or if the department, in its discretion, determines that the joint venture, other legal entity, or organizational structure, or division of responsibilities intended by the joint proposers are unacceptable and not in the best interests of the state, the proposers will be deemed as proposing separately to the request for proposals, and further discussions related to the request for proposals shall not be allowed between the proposers.

To further facilitate the balancing of interests described in this section, the department of transportation may, in its discretion, make revisions to the request for proposals that the department deems necessary or appropriate to balance such interests. [2007 c 481 § 1.]

Effective date—2007 c 481: See note following RCW 47.60.824.

47.60.830 Ferry system operation—Fuel purchasing strategies—Report. In performing the function of operating its ferry system, the department may, subject to the availability of amounts appropriated for this specific purpose and after consultation with the department of general administration's office of state procurement, explore and implement strategies designed to reduce the overall cost of fuel and mitigate the impact of market fluctuations and pressure on both short-term and long-term fuel costs. These strategies may include, but are not limited to, futures contracts, hedging, swap transactions, option contracts, costless collars, and long-term storage. The department shall periodically submit a report to the transportation committees of the legislature and the office of state procurement on the status of any such implemented strategies, including cost mitigation results, a description of each contract established to mitigate fuel costs, the amounts of fuel covered by the contracts, the cost mitigation results, and any related recommendations. The first report must be submitted within one year of implementation. [2008 c 126 § 4.]

Finding—Intent—2008 c 126: See note following RCW 35.58.262.

Chapter 47.61 RCW

ACQUISITION OF NEW FERRY VESSELS UNDER URBAN MASS TRANSPORTATION ACT OF 1964

Sections

47.61.010	Authority to enter into agreement and apply for financial assistance.
47.61.020	Bonds for matching funds—Issuance and sale.
47.61.030	Term of bonds—Terms and conditions.
47.61.040	Bonds—Signatures—Registration—Where payable—Negotiable instruments.
47.61.050	Bonds—Denominations—Manner and terms of sale—Legal investment for state funds.
47.61.060	Proceeds of bonds—Deposit and use.
47.61.070	Statement describing nature of bond obligation—Pledge of excise taxes.
47.61.080	Bonds to reflect terms and conditions of grant agreement.
47.61.090	Designation of funds to repay bonds and interest.
47.61.100	Bond repayment procedure—Highway bond retirement fund.
47.61.110	Sums in excess of bond retirement requirements—Use.

47.61.010 Authority to enter into agreement and apply for financial assistance. Recognizing that the Washington state ferries system is an integral part of the state highway system, the department is authorized to enter into an agreement with the administrator of the housing and home finance agency and to make application for a grant for financial assistance for the acquisition by construction or purchase of new vessels pursuant to the provisions of the Urban Mass Transportation Act of 1964. [1984 c 7 § 338; 1965 ex.s. c 56 § 1.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.61.020 Bonds for matching funds—Issuance and sale. In order to provide necessary state matching funds as required by the Urban Mass Transportation Act of 1964, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of eleven million dollars, or such amount thereof and at such times as determined to be necessary by the state highway commission. No bonds shall be issued under the provisions of this chapter until the administrator of the housing and home finance agency has approved a grant to the Washington state highway commission of not less than fifty percent of the cost of acquisition of vessels referred to in RCW 47.61.010. The issuance, sale and retirement of said bonds shall be under the supervision and control of the state finance committee which, upon request being made by the Washington state highway commission, shall provide for the issuance, sale and retirement of coupon or registered bonds to be dated, issued, and sold from time to time in such amounts as may be necessary for the orderly progress of said project. [1965 ex.s. c 56 § 2.]

Reviser's note: Powers, duties, and functions of highway commission transferred to department of transportation; see RCW 47.01.031. Term "Washington state highway commission" means department of transportation; see RCW 47.04.015.

47.61.030 Term of bonds—Terms and conditions. Each of such bonds shall be made payable at any time not exceeding twenty-five years from the time of its issuance, with such reserved rights of prior redemption, bearing such interest, and such terms and conditions, as the state finance committee may prescribe to be specified therein. [1965 ex.s. c 56 § 3.]

47.61.040 Bonds—Signatures—Registration—Where payable—Negotiable instruments. The bonds shall be signed by the governor and the state treasurer under the seal of the state, one of which signatures shall be made manually and the other signature may be in printed facsimile, and any coupons attached to such bonds shall be signed by the same officers whose signatures thereon may be in printed facsimile. Any bonds may be registered in the name of the holder on presentation to the state treasurer or at the fiscal agency of the state of Washington in New York City, as to principal alone, or as to both principal and interest under such regulations as the state treasurer may prescribe. Such bonds shall be payable at such places as the state finance committee may provide. All bonds issued hereunder shall be fully negotiable instruments. [1965 ex.s. c 56 § 4.]

47.61.050 Bonds—Denominations—Manner and terms of sale—Legal investment for state funds. The bonds issued hereunder shall be in denominations to be prescribed by the state finance committee and may be sold in such manner and in such amounts and at such times and on such terms and conditions as the committee may prescribe. If bonds are sold to any purchaser other than the state of Washington, they shall be sold at public sale, and it shall be the duty of the state finance committee to cause such sale to be advertised in such manner as it shall deem sufficient. Bonds issued under the provisions of this chapter shall be legal investment for any of the funds of the state, except the permanent school fund. [1965 ex.s. c 56 § 5.]

47.61.060 Proceeds of bonds—Deposit and use. The money arising from the sale of said bonds shall be deposited in the state treasury to the credit of the motor vehicle fund and such money shall be available only for the acquisition by construction or purchase of new ferry vessels and for the payment of all expense incurred in the drafting, printing, issuance, and sale of any such bonds. [1965 ex.s. c 56 § 6.]

47.61.070 Statement describing nature of bond obligation—Pledge of excise taxes. Bonds issued under the provisions of this chapter shall distinctly state that they are not a general obligation of the state but are payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapters 82.36 and *82.40 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter. [1965 ex.s. c 56 § 7.]

*Reviser's note: Chapter 82.40 RCW was repealed by 1971 ex.s. c 175 § 33, effective January 1, 1972.

47.61.080 Bonds to reflect terms and conditions of grant agreement. Bonds issued under the provisions of RCW 47.61.020 shall fully reflect the terms and conditions of the grant agreement to be executed pursuant to the provisions of RCW 47.61.010. [1965 ex.s. c 56 § 8.]

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47.61.090 Designation of funds to repay bonds and interest. Funds required to repay the bonds, or the interest thereon when due, shall be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle fuels and which is, or may be appropriated to the department for state highway purposes, and shall never constitute a charge against any allocations of the funds to counties, cities, and towns unless and until the amount of the motor vehicle fund arising from the excise taxes on motor vehicle fuels and available for state highway purposes proves insufficient to meet the requirements for bond retirement or interest on the bonds. [1984 c 7 § 339; 1965 ex.s. c 56 § 9.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.61.100 Bond repayment procedure—Highway bond retirement fund. At least one year prior to the date any interest is due and payable on such bonds or before the maturity date of any bonds, the state finance committee shall estimate the percentage of the receipts in money of the motor vehicle fund, resulting from collection of excise taxes on motor vehicle fuels, for each month of the year which will be required to meet interest or bond payments under the provisions of this chapter when due, and shall notify the state treasurer of such estimated requirement. The state treasurer shall thereafter from time to time each month as such funds are paid into the motor vehicle fund, transfer such percentage of the monthly receipts from excise taxes on motor vehicle fuels of the motor vehicle fund to the highway bond retirement fund, and which fund shall be available solely for payment of such interest or bonds when due. If in any month it shall appear that the estimated percentage of money so made is insufficient to meet the requirements for interest or bond retirement, the treasurer shall notify the state finance committee forthwith and such committee shall adjust its estimates so that all requirements for interest and principal of all bonds issued shall be fully met at all times. [1965 ex.s. c 56 § 10.]

47.61.110 Sums in excess of bond retirement requirements—Use. Whenever the percentage of the motor vehicle fund arising from excise taxes on motor vehicle fuels, payable into the highway bond retirement fund, shall prove more than is required for the payment of interest on bonds when due, or current retirement of bonds, or in the event there is appropriated from time to time additional amounts to be placed in the said bond retirement fund, any excess may, in the discretion of the state finance committee, be available for the prior redemption of any bonds or remain available in the fund to reduce the requirements upon the fuel excise tax portion of the motor vehicle fund at the next interest or bond payment period. [1965 ex.s. c 56 § 11.]

Chapter 47.64 RCW

MARINE EMPLOYEES— PUBLIC EMPLOYMENT RELATIONS

Sections

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47.64.005 Declaration of policy. The state of Washington, as a public policy, declares that sound labor relations are essential to the development of a ferry and bridge system which will best serve the interests of the people of the state. [1961 c 13 § 47.64.005. Prior: 1949 c 148 § 1; Rem. Supp. 1949 § 6524-22.]

47.64.006 Public policy. The legislature declares that it is the public policy of the state of Washington to: (1) Provide continuous operation of the Washington state ferry system at reasonable cost to users; (2) efficiently provide levels of ferry service consistent with trends and forecasts of ferry usage; (3) promote harmonious and cooperative relationships between the ferry system and its employees by permitting ferry employees to organize and bargain collectively; (4) protect the citizens of this state by assuring effective and orderly operation of the ferry system in providing for their health, safety, and welfare; (5) prohibit and prevent all strikes or work stoppages by ferry employees; (6) protect the rights of ferry employees with respect to employee organizations; and (7) promote just and fair compensation, benefits, and working conditions for ferry system employees as compared with public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia in directly comparable but not necessarily identical positions. [1989 c 327 § 1; 1983 c 15 § 1.]

47.64.011 Definitions. As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

(1) "Collective bargaining representative" means the persons designated by the governor and employee organizations to be the exclusive representatives during collective bargaining negotiations.

(2) "Commission" means the marine employees' commission created in RCW 47.64.280.

(3) "Department of transportation" means the department as defined in RCW 47.01.021.

(4) "Employer" means the state of Washington.

(5) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(6) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(7) "Lockout" means the refusal of the employer to furnish work to ferry employees in an effort to get ferry employee organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage shall not be considered a lockout.

(8) "Office of financial management" means the office as created in RCW 43.41.050.

(9) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her willful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter. [2006 c 164 § 1; 1983 c 15 § 2.]

Prospective application—Savings—2006 c 164: "(1) This act applies prospectively only and not retroactively. It applies to collective bargaining agreements, the negotiations of collective bargaining agreements, mediations, arbitrations, and other actions under this act that arise or are commenced on or after March 21, 2006.

(2) This act does not apply to collective bargaining agreements, either in effect or for which the negotiations have begun, or mediations and arbitrations that arose or commenced under *this chapter before March 21, 2006. Such collective bargaining agreements and related proceedings must be administered in accordance with the authorities, rules, and procedures that were established under *this chapter as it existed before March 21, 2006. The repealers in section 19 of this act do not affect any existing right acquired, or liability or obligation incurred, under the statutes repealed or under any rule or order adopted under those statutes, nor do they affect any proceeding instituted under them." [2006 c 164 § 16.]

***Reviser's note:** The term "this chapter" apparently refers to chapter 47.64 RCW.

Effective dates—2006 c 164: "Except for section 10 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2006]." [2006 c 164 § 21.]

47.64.060 Federal social security—State employees' retirement. All employees engaged in the operation of ferries acquired by the department shall remain subject to the federal social security act and shall be under the state employees' retirement act. The department shall make such deductions from salaries of employees and contributions from revenues of the department as shall be necessary to qualify the employees for benefits under the federal social security act. The appropriate officials are authorized to con-

tract with the secretary of health, education and welfare to effect the coverage. [1984 c 7 § 340; 1961 c 13 § 47.64.060. Prior: 1957 c 271 § 7; 1951 c 82 § 2; 1949 c 148 § 5; Rem. Supp. 1949 § 6524-26.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.64.070 Employees subject to industrial insurance laws. Employees, except the masters and members of the crews of vessels, shall be subject to and entitled to the benefits of the industrial insurance laws of the state, and are hereby declared to be in extrahazardous employment within the meaning of such laws. [1961 c 13 § 47.64.070. Prior: 1951 c 259 § 2; 1949 c 148 § 6; Rem. Supp. 1949 § 6524-27.]

47.64.080 Employee seniority rights. Employees employed at the time of the acquisition of any ferry or ferry system by the department have seniority rights to the position they occupy aboard the ferries or ferry system. In the event of curtailment of ferry operations for any reason, employees shall be relieved of service on the basis of their duration of employment in any ferry or ferry system acquired by the department. [1984 c 7 § 341; 1961 c 13 § 47.64.080. Prior: 1949 c 148 § 7; Rem. Supp. 1949 § 6524-28.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.64.090 Other party operating ferry by rent, lease, or charter—Passenger-only ferry service (as amended by 2003 c 91). (1) Except as provided in section 203 (~~(of this act)~~), chapter 83, Laws of 2003 and subsection (2) of this section, or as provided in section 303 (~~(of this act)~~), chapter 83, Laws of 2003 and subsection (3) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions, and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) If a public transportation benefit area meeting the requirements of section 201 (~~(of this act)~~), chapter 83, Laws of 2003 has voter approval to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase passenger-only vessels, related equipment, or terminal space for purposes of loading and unloading the passenger-only ferry. Charges for the vessels, equipment, and space must be fair market value taking into account the public benefit derived from the ferry service. A benefit area or subcontractor of that benefit area that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, give preferential hiring to former employees of the department of transportation who separated from employment with the department because of termination of the ferry service by the state of Washington; and

(c) Unless otherwise prohibited by federal or state law, a requirement that the benefit area and any contract with its subcontractors, on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer.

(3) If a ferry district is formed under section 301 (~~(of this act)~~), chapter 83, Laws of 2003 to operate passenger-only ferry service, it may enter into an agreement with Washington State Ferries to rent, lease, or purchase vessels, related equipment, or terminal space for purposes of loading and unloading the ferry. Charges for the vessels, equipment, and space must be

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fair market value taking into account the public benefit derived from the ferry service. A ferry district or subcontractor of that district that qualifies under this subsection is not subject to the restrictions of subsection (1) of this section, but is subject to:

(a) ~~((Subject to))~~ The terms of those collective bargaining agreements that it or its subcontractors negotiate with the exclusive bargaining representatives of its or its subcontractors' employees under chapter 41.56 RCW or the National Labor Relations Act, as applicable;

(b) ~~((Subject to))~~ Unless otherwise prohibited by federal or state law, a requirement((,-to be included by)) that the ferry district ((in)) and any contract with ((the district's)) its subcontractors, ((that)) on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer. [2003 c 91 § 1; 2003 c 83 § 205; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

(c) ~~((Subject to))~~ Unless otherwise prohibited by federal or state law, a requirement((,-to be included by)) that the ferry district ((in)) and any contract with ((the district's)) its subcontractors, ((that)) on any questions concerning representation of employees for collective bargaining purposes, may be determined by conducting a cross-check comparing an employee organization's membership records or bargaining authorization cards against the employment records of the employer. [2003 c 91 § 1; 2003 c 83 § 205; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Contingent effective date—2003 c 91: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 23, 2003], but only if Engrossed Substitute House Bill No. 1853 has become law. If Engrossed Substitute House Bill No. 1853 has not become law by June 30, 2003, sections 1 and 2 of this act are null and void." [2003 c 91 § 4.] Engrossed Substitute House Bill No. 1853 became law as 2003 c 83, effective April 23, 2003.

Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83: See notes following RCW 36.57A.200.

47.64.090 Other party operating ferry by rent, lease, or charter (as amended by 2003 c 373). (1) Except as provided in subsection (2) of this section, if any party assumes the operation and maintenance of any ferry or ferry system by rent, lease, or charter from the department of transportation, such party shall assume and be bound by all the provisions herein and any agreement or contract for such operation of any ferry or ferry system entered into by the department shall provide that the wages to be paid, hours of employment, working conditions and seniority rights of employees will be established by the marine employees' commission in accordance with the terms and provisions of this chapter and it shall further provide that all labor disputes shall be adjudicated in accordance with chapter 47.64 RCW.

(2) The department of transportation shall make its terminal, dock, and pier space available to private operators of passenger-only ferries if the space can be made available without limiting the operation of car ferries operated by the department. These private operators are not bound by the provisions of subsection (1) of this section. Charges for the equipment and space must be fair market value taking into account the public benefit derived from the passenger-only ferry service. [2003 c 373 § 3; 1983 c 15 § 27; 1961 c 13 § 47.64.090. Prior: 1949 c 148 § 8; Rem. Supp. 1949 § 6524-29.]

Reviser's note: RCW 47.64.090 was amended three times during the 2003 legislative session, twice without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Findings—Intent—2003 c 373: "The legislature finds that the Washington state department of transportation should focus on its core ferry mission of moving automobiles on Washington state's marine highways. The legislature finds that current statutes impose barriers to entities other than the state operating passenger-only ferries. The legislature intends to lift those barriers to allow entities other than the state to provide passenger-only ferry service. The legislature finds that the provision of this service and the improvement in the mobility of the citizens of Washington state is legally adequate consideration for the use of state facilities in conjunction with the provision of the service, and the legislature finds that allowing the operators of passenger-only ferries to use state facilities on the basis of legally adequate consideration does not evince donative intent on the part of the legislature." [2003 c 373 § 1.]

Severability—1983 c 15: See RCW 47.64.910.

47.64.120 Scope of negotiations—Interest on retroactive compensation increases—Agreement conflicts. (1) The employer and ferry system employee organizations, through their collective bargaining representatives, shall meet at reasonable times, to negotiate in good faith with respect to wages, hours, working conditions, insurance, and health care benefits as limited by RCW 47.64.270, and other matters mutually agreed upon. Employer funded retirement benefits shall be provided under the public employees retirement system under chapter 41.40 RCW and shall not be included in the scope of collective bargaining.

(2) Upon ratification of bargaining agreements, ferry employees are entitled to an amount equivalent to the interest earned on retroactive compensation increases. For purposes of this section, the interest earned on retroactive compensation increases is the same monthly rate of interest that was earned on the amount of the compensation increases while held in the state treasury. The interest will be computed for each employee until the date the retroactive compensation is paid, and must be allocated in accordance with appropriation authority. The interest earned on retroactive compensation is not considered part of the ongoing compensation obligation of the state and is not compensation earnable for the purposes of chapter 41.40 RCW. Negotiations shall also include grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties.

(3) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable. [2006 c 164 § 3; 1997 c 436 § 1; 1983 c 15 § 3.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.130 Unfair labor practices. (1) It is an unfair labor practice for the employer or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. However, subject to rules made by the commission pursuant to RCW 47.64.280, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160. However, nothing prohibits the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter. However, this subsection does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer.

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit. [2006 c 164 § 4; 1983 c 15 § 4.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.140 Strikes, work stoppages, and lockouts prohibited. (1) It is unlawful for any ferry system employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, or participate in a strike or work stoppage against the ferry system.

(2) It is unlawful for the employer to authorize, consent to, or condone a strike or work stoppage; or to conduct a lockout; or to pay or agree to pay any ferry system employee for any day in which the employee participates in a strike or work stoppage; or to pay or agree to pay any increase in compensation or benefits to any ferry system employee in response to or as a result of any strike or work stoppage or any act that violates subsection (1) of this section. It is unlawful for any official, director, or representative of the ferry system to authorize, ratify, or participate in any violation of this subsection. Nothing in this subsection prevents new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time. No collective bargaining agreement provision regarding suspension or modification of any court-ordered penalty provided in this section is binding on the courts.

(3) In the event of any violation or imminently threatened violation of subsection (1) or (2) of this section, any citizen domiciled within the jurisdictional boundaries of the state may petition the superior court for Thurston county for an injunction restraining the violation or imminently threatened violation. Rules of civil procedure regarding injunctions apply to the action. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him or her; and no bond may be required of the plaintiff unless the court determines that a

bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted under this section is a contempt of court as provided in chapter 7.21 RCW. The court may impose a penalty of up to ten thousand dollars for an employee organization or the ferry system, for each day during which the failure to comply continues. The sanctions for a ferry employee found to be in contempt shall be as provided in chapter 7.21 RCW. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

(4) The right of ferry system employees to engage in strike or work slowdown or stoppage is not granted and nothing in this chapter may be construed to grant such a right.

(5) Each of the remedies and penalties provided by this section is separate and several, and is in addition to any other legal or equitable remedy or penalty.

(6) In addition to the remedies and penalties provided by this section the successful litigant is entitled to recover reasonable attorney fees and costs incurred in the litigation.

(7) Notwithstanding the provisions of chapter 88.04 RCW and chapter 88.08 RCW, the department of transportation shall adopt rules allowing vessels, as defined in RCW 88.04.015, as well as other watercraft, to engage in emergency passenger service on the waters of Puget Sound in the event ferry employees engage in a work slowdown or stoppage. Such emergency rules shall allow emergency passenger service on the waters of Puget Sound within seventy-two hours following a work slowdown or stoppage. Such rules that are adopted shall give due consideration to the needs and the health, safety, and welfare of the people of the state of Washington. [2006 c 164 § 5; 1989 c 373 § 25; 1983 c 15 § 5.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Severability—1989 c 373: See RCW 7.21.900.

47.64.150 Grievance procedures. An agreement with a ferry employee organization that is the exclusive representative of ferry employees in an appropriate unit may provide procedures for the consideration of ferry employee grievances and of disputes over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of ferry employee grievances and of disputes over the interpretation and application of existing agreements. An arbitrator's decision on a grievance shall not change or amend the terms, conditions, or applications of the collective bargaining agreement. The procedures shall provide for the invoking of arbitration only with the approval of the employee organization. The costs of arbitrators shall be shared equally by the parties.

Ferry system employees shall follow either the grievance procedures provided in a collective bargaining agreement, or if no such procedures are so provided, shall submit the grievances to the marine employees' commission as provided in RCW 47.64.280. [1983 c 15 § 6.]

47.64.160 Union security provisions. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall

enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions shall safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. [1983 c 15 § 7.]

47.64.170 Collective bargaining procedures. (1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) Until a new collective bargaining agreement is in effect, the terms and conditions of the previous collective bargaining agreement shall remain in force. It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect.

(8)(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the

legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

(9) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement. [2007 c 160 § 1; 2006 c 164 § 6; 1983 c 15 § 8.]

Prospective application—Savings—Effective dates—2006 c 164:
See notes following RCW 47.64.011.

47.64.175 Collective bargaining agreement negotiation. (1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee.

(2) Two or more ferry employee organizations may, upon agreement of the parties, negotiate, as a coalition with the employer representative as designated in subsection (1) of this section, a multiunion collective bargaining agreement on behalf of all the employees in ferry employee organization bargaining units that the exclusive bargaining representatives represent. The coalition shall bargain for a multiunion collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of bargaining unit-specific issues for inclusion in or as an addendum to the multiunion collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. Nothing in this section impairs the right of each ferry employee organization to negotiate a collective bargaining agreement exclusive to the bargaining unit it represents. [2006 c 164 § 2.]

Prospective application—Savings—Effective dates—2006 c 164:
See notes following RCW 47.64.011.

47.64.200 Impasse procedures. As the first step in the performance of their duty to bargain, the employer and the employee organization shall endeavor to agree upon impasse procedures. Unless otherwise agreed to by the employee organization and the employer in their impasse procedures, the arbitrator or panel is limited to selecting the most reasonable offer, in its judgment, of the final offers on each impasse item submitted by the parties. The employee organization and the employer may mutually agree to the impasse procedure under which the arbitrator or panel may issue a decision it deems just and appropriate with respect to each impasse item. If the parties fail to agree upon impasse procedures under this section, the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320 apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 and 47.64.230 and 47.64.300 through 47.64.320. [2006 c 164 § 7; 1983 c 15 § 11.]

Prospective application—Savings—Effective dates—2006 c 164:
See notes following RCW 47.64.011.

47.64.210 Mediation. In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures by August 1st in the even-numbered year preceding the biennium, either party may request the commission to appoint an impartial and disinterested person to act as mediator. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree. [2007 c 160 § 2; 2006 c 164 § 8; 1983 c 15 § 12.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.220 Salary survey. (1) Prior to collective bargaining and for purposes of collective bargaining and arbitration, the commission shall conduct a salary survey. The results of the survey shall be published in a report which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey report shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties.

(2) Salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter 42.56 RCW. [2006 c 164 § 10; (2006 c 164 § 9 expired July 1, 2006); 2005 c 274 § 308; 1999 c 256 § 1; 1989 c 327 § 2; 1983 c 15 § 13.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Expiration date—2006 c 164 § 9: "Section 9 of this act expires July 1, 2006." [2006 c 164 § 20.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Retroactive application—1999 c 256 § 1: "Section 1, chapter 256, Laws of 1999 is a clarification of existing law and applies retroactively." [1999 c 256 § 3.]

47.64.230 Waiver of mediation. By mutual agreement, the parties may waive mediation and proceed with binding arbitration as provided for in the impasse procedures agreed to under RCW 47.64.200 or in 47.64.300 through 47.64.320, as applicable. The waiver shall be in writing and be signed by the representatives of the parties. Regardless of the status of mediation, the parties must comply with the interest arbitration agreement under RCW 47.64.170(6)(a), absent any subsequent agreement to the contrary. [2007 c 160 § 3; 2006 c 164 § 11; 1983 c 15 § 14.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.250 Legal actions. (1) Any ferry employee organization and the department of transportation may sue or be sued as an entity under this chapter. Service upon any party

shall be in accordance with law or the rules of civil procedure. Nothing in this chapter may be construed to make any individual or his assets liable for any judgment against the department of transportation or a ferry employee organization if the individual was acting in his official capacity.

(2) Any legal action by any ferry employee organization or the department of transportation under this chapter shall be filed in Thurston county superior court within ten days of when the cause of action arose. The court shall consider those actions on a priority basis and determine the merits of the actions within thirty days of filing. [1983 c 15 § 16.]

47.64.260 Notice and service. Any notice required under this chapter shall be in writing, but service thereof is sufficient if mailed by certified mail, return receipt requested, addressed to the last known address of the parties, or sent by electronic facsimile transmission with transaction report verification and same-day United States postal service mailing of copies or service as specified in Title 316 WAC, unless otherwise provided in this chapter. Refusal of certified mail by any party shall be considered service. Prescribed time periods commence from the date of the receipt of the notice. Any party may at any time execute and deliver an acceptance of service in lieu of mailed notice. [2001 c 19 § 1; 1983 c 15 § 17.]

47.64.270 Insurance and health care. Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW; and the employer and employee organizations may collectively bargain for other insurance and health care plans, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050. To the extent that ferry employees by bargaining unit have absorbed the required offset of wage increases by the amount that the employer's contribution for employees' and dependents' insurance and health care plans exceeds that of other state general government employees in the 1985-87 fiscal biennium, employees shall not be required to absorb a further offset except to the extent the differential between employer contributions for those employees and all other state general government employees increases during any subsequent fiscal biennium. If such differential increases in the 1987-89 fiscal biennium or the 1985-87 offset by bargaining unit is insufficient to meet the required deduction, the amount available for compensation shall be reduced by bargaining unit by the amount of such increase or the 1985-87 shortage in the required offset. Compensation shall include all wages and employee benefits. [2006 c 164 § 17; 1995 1st sp.s. c 6 § 6; 1993 c 492 § 224; 1988 c 107 § 21; 1987 c 78 § 2; 1983 c 15 § 18.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Intent—1987 c 78: "The legislature finds that the provisions of RCW 47.64.270 have been subject to misinterpretation. The objective of this act is to clarify the intent of RCW 47.64.270 as originally enacted." [1987 c 78 § 1.]

Effective date—1987 c 78: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 78 § 3.]

47.64.280 Marine employees' commission. (1) There is created the marine employees' commission. The governor shall appoint the commission with the consent of the senate. The commission shall consist of three members: One member to be appointed from labor, one member from industry, and one member from the public who has significant knowledge of maritime affairs. The public member shall be chair of the commission. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Commission members are eligible for reappointment. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission. Members of the commission shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission by RCW 47.01.061. The payments shall be made from the Puget Sound ferry operations account.

(2) The commission shall: (a) Adjust all complaints, grievances, and disputes between labor and management arising out of the operation of the ferry system as provided in RCW 47.64.150; (b) provide for impasse mediation as required in RCW 47.64.210; (c) provide salary surveys as required in RCW 47.64.220; and (d) perform those duties required in RCW 47.64.300.

(3)(a) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the commission, which shall make careful inquiry into the cause thereof and issue an order advising the ferry employee, or the ferry employee organization representing him or her, and the department of transportation, as to the decision of the commission.

(b) The parties are entitled to offer evidence relating to disputes at all hearings conducted by the commission. The orders and awards of the commission are final and binding upon any ferry employee or employees or their representative affected thereby and upon the department.

(c) The commission shall adopt rules of procedure under chapter 34.05 RCW.

(d) The commission has the authority to subpoena any ferry employee or employees, or their representatives, and any member or representative of the department, and any witnesses. The commission may require attendance of witnesses and the production of all pertinent records at any hearings held by the commission. The subpoenas of the commission

are enforceable by order of any superior court in the state of Washington for the county within which the proceeding may be pending. The commission may hire staff as necessary, appoint consultants, enter into contracts, and conduct studies as reasonably necessary to carry out this chapter. [2006 c 164 § 18; 1984 c 287 § 95; 1983 c 15 § 19.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

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

Compensation of class four groups: RCW 43.03.250.

47.64.290 Toll bridge employees subject to civil service. Notwithstanding any other provisions of this chapter, toll bridge employees of the marine transportation division are subject to chapter 41.06 RCW. [1984 c 48 § 2.]

47.64.300 Interest arbitration—Procedures. (1) If an agreement has not been reached following a reasonable period of negotiations and, when applicable, mediation, upon the recommendation of the assigned mediator that the parties remain at impasse or, with respect to biennial bargaining, in compliance with the interest arbitration agreement under RCW 47.64.170(6)(a), all impasse items shall be submitted to arbitration under this section. The issues for arbitration shall be limited to the issues certified by the commission.

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as those of an arbitration panel. If the parties cannot agree on the arbitrator within five working days, the selection shall be made under subsection (3) of this section, except with respect to biennial bargaining described under RCW 47.64.170(6). The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

(3) Within seven days following the issuance of the determination of the commission, each party shall, absent an agreement to the contrary, name one person to serve as its arbitrator on the arbitration panel. Except with respect to biennial bargaining described under RCW 47.64.170(6), the two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, either party may apply to the federal mediation and conciliation service, or, with the consent of the parties, the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(4) In consultation with the parties, the arbitrator or arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. The parties shall exchange final positions in writing, with copies to the arbitrator or arbitration panel, with respect to every issue to be arbitrated, on a date mutually agreed upon, but in no event later than ten working days before the date set for hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument.

No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof.

(5) The neutral chair shall consult with the other members of the arbitration panel, if a panel has been created. Within thirty days following the conclusion of the hearing, or sooner as the October 1st deadline set forth in RCW 47.64.170 (6)(c) and (7) necessitates, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [2007 c 160 § 4; 2006 c 164 § 12.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.310 Interest arbitration—Function. An interest arbitration proceeding under RCW 47.64.300 exercises a state function and is, for the purposes of this chapter, functioning as a state agency. Chapter 34.05 RCW does not apply to an interest arbitration proceeding under this chapter. [2006 c 164 § 13.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.320 Parties not bound by arbitration—Arbitration factors. (1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter.

(2) The decision of an arbitrator or arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to compensation and fringe benefit provisions of an arbitrated collective bargaining agreement, is not binding on the state, the department of transportation, or the ferry employee organization.

(3) In making its determination, the arbitrator or arbitration panel shall be mindful of the legislative purpose under RCW 47.64.005 and 47.64.006 and, as additional standards

or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;

(b) The constitutional and statutory authority of the employer;

(c) Stipulations of the parties;

(d) The results of the salary survey as required in RCW 47.64.220;

(e) Comparison of wages, hours, employee benefits, and conditions of employment of the involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved;

(f) Changes in any of the foregoing circumstances during the pendency of the proceedings;

(g) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature; and

(h) Other factors that are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under this chapter. [2006 c 164 § 14.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.330 Collective bargaining limitations. Collective bargaining under chapter 164, Laws of 2006 may not be for the purposes of making a collective bargaining agreement take effect before July 1, 2007. No party may engage in collective bargaining under chapter 164, Laws of 2006 to amend a collective bargaining agreement in effect on March 21, 2006. A collective bargaining agreement or amendment thereto entered into under chapter 164, Laws of 2006 shall not be effective before July 1, 2007, and may not have any retroactive effect. [2006 c 164 § 15.]

Prospective application—Savings—Effective dates—2006 c 164: See notes following RCW 47.64.011.

47.64.900 Section captions not part of law—1983 c 15. Section captions used in this act constitute no part of the law. [1983 c 15 § 29.]

47.64.910 Severability—1983 c 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 15 § 30.]

Chapter 47.66 RCW

MULTIMODAL TRANSPORTATION PROGRAMS

Sections

47.66.010	Legislative declaration.
47.66.030	Regional mobility grants.
47.66.040	Selection process—Local matching funds.
47.66.070	Multimodal transportation account.
47.66.080	Grant programs examination.
47.66.090	High occupancy toll lanes operations account.
47.66.900	Effective date—1993 c 393.

47.66.010 Legislative declaration. There is significant state interest in assuring that viable multimodal transportation programs are available throughout the state. The legislature recognizes the need to create a mechanism to fund multimodal transportation programs and projects. The legislature further recognizes the complexities associated with current funding mechanisms and seeks to create a process that would allow for all transportation programs and projects to compete for limited resources. [1993 c 393 § 3.]

47.66.030 Regional mobility grants. (1) The department shall establish a regional mobility grant program. The purpose of the grant program is to aid local governments in funding projects such as intercounty connectivity service, park and ride lots, rush hour transit service, and capital projects that improve the connectivity and efficiency of our transportation system. The department shall identify cost-effective projects that reduce delay for people and goods and improve connectivity between counties and regional population centers. The department shall submit a prioritized list of all projects requesting funding to the legislature by December 1st of each year.

(2) The department may establish an advisory committee to carry out the mandates of this chapter.

(3) The department must report annually to the transportation committees of the legislature on the status of any grants projects funded by the program created under this section. [2005 c 318 § 4; 1996 c 49 § 3; 1995 c 269 § 2604; 1993 c 393 § 5.]

Findings—Intent—2005 c 318: See note following RCW 47.01.330.

Effective date—1995 c 269: See note following RCW 9.94A.850.

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

47.66.040 Selection process—Local matching funds.

(1) The department shall select projects based on a competitive process. The competition shall be consistent with the following criteria:

- (a) Local, regional, and state transportation plans;
- (b) Local transit development plans; and
- (c) Local comprehensive land use plans.

(2) The following criteria shall be considered by the department in selecting programs and projects:

(a) Objectives of the growth management act, the high capacity transportation act, the commute trip reduction act, transportation demand management programs, federal and state air quality requirements, and federal Americans with Disabilities Act and related state accessibility requirements; and

(b) Enhancing the efficiency of regional corridors in moving people among jurisdictions and modes of transportation, energy efficiency issues, reducing delay for people and goods, freight and goods movement as related to economic development, regional significance, rural isolation, the leveraging of other funds, and safety and security issues.

(3) The department shall determine the appropriate level of local match required for each project based on the source of funds. [2005 c 318 § 5; 1995 c 269 § 2606; 1993 c 393 § 6.]

Findings—Intent—2005 c 318: See note following RCW 47.01.330.

Effective date—1995 c 269: See note following RCW 9.94A.850.

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

47.66.070 Multimodal transportation account. The multimodal transportation account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for transportation purposes. [2000 2nd sp.s. c 4 § 2.]

Effective date—2000 2nd sp.s. c 4 §§ 1-3, 20: See note following RCW 82.08.020.

47.66.080 Grant programs examination. Beginning in 2005, and every other year thereafter, the department shall examine the division's existing grant programs, and the methods used to allocate grant funds, to determine the program's effectiveness, and whether the methods used to allocate funds result in an equitable distribution of the grants. The department shall submit a report of the findings to the transportation committees of the legislature. [2005 c 318 § 6.]

Findings—Intent—2005 c 318: See note following RCW 47.01.330.

47.66.090 High occupancy toll lanes operations account. The high occupancy toll lanes operations account is created in the state treasury. The department shall deposit all revenues received by the department as toll charges collected from high occupancy toll lane users. Moneys in this account may be spent only if appropriated by the legislature. Moneys in this account may be used for, but be not limited to, debt service, planning, administration, construction, maintenance, operation, repair, rebuilding, enforcement, and expansion of high occupancy toll lanes and to increase transit, vanpool and carpool, and trip reduction services in the corridor. A reasonable proportion of the moneys in this account must be dedicated to increase transit, vanpool, carpool, and trip reduction services in the corridor. A reasonable proportion of the moneys in this account must be dedicated to increase transit, vanpool, carpool, and trip reduction services in the corridor. [2005 c 312 § 4.]

Intent—Captions—2005 c 312: See notes following RCW 47.56.401.

47.66.900 Effective date—1993 c 393. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]. [1993 c 393 § 10.]

Chapter 47.68 RCW

AERONAUTICS

(Formerly: Chapter 14.04 RCW, Aeronautics commission)

Sections

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47.68.010 Statement of policy. It is hereby declared that the purpose of this chapter is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by cooperating in effecting uniformity of the laws and regulations relating to the development and regulation of aeronautics in the several states consistent with federal aeronautics laws and regulations; by granting to a state agency such powers and imposing upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, assist in the development of a statewide system of airports, cooperate with and assist the municipalities of this state and others engaged in aeronautics, and encourage and develop aeronautics; by establishing only such regulations as are essential in order that persons engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state. [1947 c 165 § 2; Rem. Supp. 1947 § 10964-82. Formerly RCW 14.04.010.]

47.68.015 Change of meaning, certain terms. Unless the language specifically indicates otherwise, or unless the context plainly requires a different interpretation:

Wherever in any provision in the Revised Code of Washington the term "Washington state aeronautics commission", "the state aeronautics commission", "the aeronautics commission of the state", "the aeronautics commission", or "the commission" (when referring to the Washington state aero-

nautics commission) is used, it shall mean the department of transportation created in RCW 47.01.031.

Wherever in any provision in the Revised Code of Washington the term "state director of aeronautics", "director of aeronautics", or "director" (when referring to the state director of aeronautics) is used, it shall mean the secretary of transportation whose office is created in RCW 47.01.041. [1977 ex.s. c 151 § 22.]

47.68.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(3) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or right-of-way, together with all airport buildings and facilities located thereon.

(4) "Department" means the state department of transportation.

(5) "Secretary" means the state secretary of transportation.

(6) "State" or "this state" means the state of Washington.

(7) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(8) "Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over this state or upon any airport within this state.

(9) "Airman or airwoman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances, and any individual who serves in the capacity of aircraft dispatcher or air-traffic control tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, airframes, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the person.

(10) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics, but excludes any instructor in a public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, while in the performance of his or her duties at such school, university, or institution.

(11) "Air school" means any person who advertises, represents, or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(12) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(13) "Municipal" means pertaining to a municipality, and "municipality" means any county, city, town, authority, district, or other political subdivision or public corporation of this state.

(14) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off.

(15) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the department as a route suitable for air navigation. [1993 c 208 § 4; 1984 c 7 § 342; 1947 c 165 § 1; Rem. Supp. 1947 § 10964-81. Formerly RCW 14.04.020.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.060 Offices. Suitable offices and office equipment shall be provided by the state for the aeronautics division of the department of transportation in a city in the state that it may designate, and the department may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the administration of this chapter. [1984 c 7 § 343; 1947 c 165 § 6; Rem. Supp. 1947 § 10964-86. Formerly RCW 14.04.060.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.070 General powers. The department has general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the department in the development of aeronautics and aeronautical facilities in this state. [1984 c 7 § 344; 1947 c 165 § 7; Rem. Supp. 1947 § 10964-87. Formerly RCW 14.04.070.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.080 Drafts of legislation, other duties. The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics, represent the state in aeronautical matters before federal agencies and other state agencies, and participate as party plaintiff or defendant or as intervener on behalf of the state or any municipality or citizen thereof in any controversy which involves the interest of the state in aeronautics. [1984 c 7 § 345; 1947 c 165 § 8; 1945 c 252 § 5; Rem. Supp. 1947 § 10964-88. Formerly RCW 14.04.080.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.090 Aid to municipalities, Indian tribes—Federal aid. The department of transportation may make available its engineering and other technical services, with or without charge, to any municipality or person desiring them in connection with the planning, acquisition, construction, improvement, maintenance or operation of airports or air navigation facilities.

The department may render financial assistance by grant or loan or both to any municipality or municipalities acting jointly in the planning, acquisition, construction, improvement, maintenance, or operation of an airport owned or controlled, or to be owned or controlled by such municipality or municipalities, or to any Indian tribe recognized as such by the federal government or such tribes acting jointly in the planning, acquisition, construction, improvement, maintenance or operation of an airport, owned or controlled, or to be owned or controlled by such tribe or tribes and to be held available for the general use of the public, out of appropriations made by the legislature for such purposes. Such financial assistance may be furnished in connection with federal or other financial aid for the same purposes: PROVIDED, That no grant or loan or both shall be in excess of two hundred fifty thousand dollars for any one project: PROVIDED FURTHER, That no grant or loan or both shall be granted unless the municipality or municipalities acting jointly, or the tribe or tribes acting jointly shall from their own funds match any funds made available by the department upon such ratio as the department may prescribe.

The department is authorized to act as agent of any municipality or municipalities acting jointly or any tribe or tribes acting jointly, upon the request of such municipality or municipalities, or such tribe or tribes in accepting, receiving, receipting for and disbursing federal moneys, and other moneys public or private, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance or operation of an airport or air navigation facility; and if requested by such municipality or municipalities, or tribe or tribes, may act as its or their agent in contracting for and supervising such planning, acquisition, construction, improvement, maintenance, or operation; and all municipalities and tribes are authorized to designate the department as their agent for the foregoing purposes. The department, as principal on behalf of the state, and any municipality on its own behalf, may enter into any contracts, with each other or with the United States or with any person, which may be required in connection with a grant or loan of federal moneys for airport or air navigation facility purposes. All federal moneys accepted under this section shall be accepted and transferred or expended by the department upon such terms

and conditions as are prescribed by the United States. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available: PROVIDED, That any landing fee or charge imposed by any Indian tribe or tribes for the privilege of use of an airport facility planned, acquired, constructed, improved, maintained, or operated with financial assistance from the department pursuant to this section must apply equally to tribal and nontribal members: PROVIDED FURTHER, That in the event any municipality or municipalities or Indian tribe or tribes, or any distributor of aircraft fuel as defined by RCW 82.42.020 which operates in any airport facility which has received financial assistance pursuant to this section, fails to collect the aircraft fuel excise tax as specified in chapter 82.42 RCW, all funds or value of technical assistance given or paid to such municipality or municipalities or Indian tribe or tribes under the provisions of this section shall revert to the department, and shall be due and payable to the department immediately. [1980 c 67 § 1; 1975 1st ex.s. c 161 § 1; 1947 c 165 § 9; Rem. Supp. 1947 § 10964-89. Formerly RCW 14.04.090.]

Distributor of aircraft fuel defined: RCW 82.42.010(7).

47.68.100 Acquisition and disposal of airports, facilities, etc. The department is authorized on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports, air navigation facilities, and air markers and/or air marking systems, either within or without the state, including the construction, installation, equipment, maintenance, and operation at the airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes the department may by purchase, gift, devise, lease, condemnation, or otherwise, acquire property, real or personal, or any interest therein, including easements or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or to permit the removal, elimination, marking, or lighting of obstructions or airport hazards, or to prevent the establishment of airport hazards. In like manner the department may acquire existing airports and air navigation facilities. However, it shall not acquire or take over any airport or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality. The department may by sale, lease, or otherwise, dispose of any property, airport, air navigation facility, or portion thereof or interest therein. The disposal by sale, lease, or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposals to any municipality or state government or the United States for aeronautical purposes incident thereto, the

sale, lease, or other disposal may be effected in such manner and upon such terms as the department deems in the best interest of the state. The department may exercise any powers granted by this section jointly with any municipalities, agencies, or departments of the state government, with other states or their municipalities, or with the United States. [1984 c 7 § 346; 1947 c 165 § 10; Rem. Supp. 1947 § 10964-90. Formerly RCW 14.04.100.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.110 Zoning powers not interfered with. Nothing contained in this chapter shall be construed to limit any right, power or authority of the state or a municipality to regulate airport hazards by zoning. [1947 c 165 § 11; Rem. Supp. 1947 § 10964-91. Formerly RCW 14.04.110.]

Planning commissions: Chapter 35.63 RCW.

47.68.120 Condemnation, how exercised. In the condemnation of property authorized by this chapter, the department shall proceed in the name of the state in the manner that property is acquired by the department for public uses. [1984 c 7 § 347; 1947 c 165 § 12; Rem. Supp. 1947 § 10964-92. Formerly RCW 14.04.120.]

Severability—1984 c 7: See note following RCW 47.01.141.

Acquisition of highway property: Chapter 47.12 RCW.

Eminent domain by state: Chapter 8.04 RCW.

47.68.130 Contracts or leases of facilities in operating airports. In operating an airport or air navigation facility owned or controlled by the state, the department may enter into contracts, leases, and other arrangements for a term not exceeding twenty-five years with any persons. The department may grant the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes, confer the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility, or make available services to be furnished by the department or its agents at the airport or air navigation facility. In each case the department may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the cost of operation to the state. In no case shall the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion or facility thereof. [1984 c 7 § 348; 1947 c 165 § 13; Rem. Supp. 1947 § 10964-93. Formerly RCW 14.04.130.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.140 Lease of airports. The department may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed twenty-five years the privilege of operating, as agent of the state or otherwise, any airport owned or controlled by the state: PROVIDED, That no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which

the department might not have undertaken under RCW 47.68.130. [1983 c 3 § 141; 1947 c 165 § 14; Rem. Supp. 1947 § 10964-94. Formerly RCW 14.04.140.]

47.68.150 Lien for state's charges. To enforce the payment of any charges for repairs to, improvements, storage, or care of any personal property made or furnished by the department or its agents in connection with the operation of an airport or air navigation facility owned or operated by the state, the state shall have liens on such property, which shall be enforceable by the department as provided by law. [1984 c 7 § 349; 1947 c 165 § 15; Rem. Supp. 1947 § 10964-95. Formerly RCW 14.04.150.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.160 Acceptance of federal moneys. The department is authorized to accept, receive, receipt for, disburse, and expend federal moneys, and other moneys public or private, made available to accomplish, in whole or in part, any of the purposes of this section. All federal moneys accepted under this section shall be accepted and expended by the department upon such terms and conditions as are prescribed by the United States. In accepting federal moneys under this section, the department shall have the same authority to enter into contracts on behalf of the state as is granted to the department under RCW 47.68.090 with respect to federal moneys accepted on behalf of municipalities. All moneys received by the department pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purpose of which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available. [1983 c 3 § 142; 1947 c 165 § 16; 1945 c 252 § 7; Rem. Supp. 1947 § 10964-96. Formerly RCW 14.04.160.]

47.68.170 State airways system. The department may designate, design, and establish, expand, or modify a state airways system that will best serve the interest of the state. It may chart the airways system and arrange for publication and distribution of such maps, charts, notices, and bulletins relating to the airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, if the facilities conform to federal safety standards. [1984 c 7 § 350; 1947 c 165 § 17; Rem. Supp. 1947 § 10964-97. Formerly RCW 14.04.170.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.180 Execution of necessary contracts. The department may enter into any contracts necessary to the execution of the powers granted it by this chapter. All contracts made by the department, either as the agent of the state or as the agent of any municipality, shall be made pursuant to the laws of the state governing the making of like contracts. Where the planning, acquisition, construction, improvement,

maintenance, or operation of any airport or air navigation facility is financed wholly or partially with federal moneys, the department as agent of the state or of any municipality, may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder. [1984 c 7 § 351; 1947 c 165 § 18; Rem. Supp. 1947 § 10964-98. Formerly RCW 14.04.180.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.185 Establishment of procedures required by conditions of federal transfers of facilities. The department is authorized to establish the necessary accounts or administrative procedures required by conditions attached to transfers of airport facilities from the federal government to the state of Washington. [1984 c 7 § 352; 1963 c 73 § 1. Formerly RCW 14.04.185.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.190 Exclusive grants prohibited. The department shall not grant any exclusive right for the use of any landing area or air navigation facility under its jurisdiction. This section shall not be construed to prevent the making of contracts, leases, and other arrangements pursuant to this chapter. [1984 c 7 § 353; 1947 c 165 § 19; Rem. Supp. 1947 § 10964-99. Formerly RCW 14.04.190.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.200 Exercise of powers, public and governmental purpose. The acquisition of any lands or interest therein pursuant to this chapter, the planning, acquisition, establishment, construction, improvement, maintenance, equipment, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipality or municipalities, and the exercise of any other powers herein granted to the department are public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this chapter shall and are declared to be acquired and used for public and governmental purposes and as a matter of public necessity. [1984 c 7 § 354; 1947 c 165 § 20; Rem. Supp. 1947 § 10964-100. Formerly RCW 14.04.200.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.210 Rules—Standards. The department of transportation may perform such acts, issue and amend such orders, make, promulgate, and amend such reasonable general rules, and procedures, and establish such minimum standards, consistent with the provisions of this chapter, as it shall deem necessary to perform its duties hereunder; all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons operating, using or traveling in aircraft or persons receiving instruction in flying or ground subjects pertaining to aeronautics, and the safety of persons and property on land or water, and developing and promoting aeronautics in this state. No rule of the department shall apply to airports or air navigation facilities owned or operated by the United States.

The department shall keep on file with the code reviser, and at the principal office of the department, a copy of all its rules for public inspection.

The department shall provide for the publication and general distribution of all its orders, rules, and procedures having general effect. [1982 c 35 § 198; 1947 c 165 § 21; Rem. Supp. 1947 § 10964-101. Formerly RCW 14.04.210.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Notice of meetings: Chapter 42.30 RCW.

47.68.220 Operating aircraft recklessly or under influence of intoxicants or drugs. It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless may consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. [1947 c 165 § 22; Rem. Supp. 1947 § 10964-102. Formerly RCW 14.04.220.]

47.68.230 Aircraft, airman, and airwoman certificates required. It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit, or license issued by the United States, if such certificate, permit, or license is required by the United States, and a current registration certificate issued by the secretary of transportation, if registration of the aircraft with the department of transportation is required by this chapter. It shall be unlawful for any person to engage in aeronautics as an airman or airwoman in the state unless the person has an appropriate effective airman or airwoman certificate, permit, rating, or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such certificate, permit, rating, or license is required by the United States.

Where a certificate, permit, rating, or license is required for an airman or airwoman by the United States, it shall be kept in his or her personal possession when he or she is operating within the state. Where a certificate, permit, or license is required by the United States or by this chapter for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state and shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official, or employee of the department of transportation authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager, or person in charge of any airport, or upon the reasonable request of any person. [2005 c 341 § 1; 1993 c 208 § 5; 1987 c 220 § 1; 1979 c 158 § 205; 1967 ex.s. c 68 § 2; 1967 ex.s. c 9 § 7; 1949 c 49 § 11; 1947 c 165 § 23; Rem. Supp. 1949 § 10964-103. Formerly RCW 14.04.230.]

Effective date—2005 c 341: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

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ernment and its existing public institutions, and takes effect July 1, 2005." [2005 c 341 § 6.]

47.68.235 License or certificate suspension—Non-compliance with support order—Reissuance. The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 859.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

47.68.240 Penalties for violations. (1) Except as provided in subsection (2) of this section, any person violating any of the provisions of this chapter, or any of the rules, regulations, or orders issued pursuant thereto, is guilty of a misdemeanor.

(2)(a) Any person violating any of the provisions of RCW 47.68.220, 47.68.230, or 47.68.255 is guilty of a gross misdemeanor.

(b) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, for violations of RCW 47.68.220 and 47.68.230, the court in its discretion may prohibit the violator from operating an aircraft within the state for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as a contempt of court.

(3) In addition to the provisions of subsections (1) and (2) of this section, failure to register an aircraft, as required by this chapter is subject to the following civil penalties:

(a) If the aircraft registration is sixty days to one hundred nineteen days past due, the civil penalty is one hundred dollars.

(b) If the aircraft registration is one hundred twenty days to one hundred eighty days past due, the civil penalty is two hundred dollars.

(c) If the aircraft registration is over one hundred eighty days past due, the civil penalty is four hundred dollars.

(4) The revenue from penalties prescribed in subsection (3) of this section must be deposited into the aeronautics account under RCW 82.42.090. [2005 c 341 § 2. Prior: 2003 c 375 § 3; 2003 c 53 § 265; 2000 c 229 § 2; 1999 c 277 § 5; 1993 c 238 § 3; 1987 c 202 § 216; 1983 c 3 § 145; 1947 c 165

§ 24; Rem. Supp. 1947 § 10964-104. Formerly RCW 14.04.240.]

Effective date—2005 c 341: See note following RCW 47.68.230.

Effective date—2003 c 375: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 375 § 7.]

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

Effective date—2000 c 229: See note following RCW 46.16.010.

Intent—1987 c 202: See note following RCW 2.04.190.

47.68.250 Registration of aircraft. Every aircraft shall be registered with the department for each calendar year in which the aircraft is operated or is based within this state. A fee of fifteen dollars shall be charged for each such registration and each annual renewal thereof.

Possession of the appropriate effective federal certificate, permit, rating, or license relating to ownership and airworthiness of the aircraft, and payment of the excise tax imposed by Title 82 RCW for the privilege of using the aircraft within this state during the year for which the registration is sought, and payment of the registration fee required by this section shall be the only requisites for registration of an aircraft under this section.

The registration fee imposed by this section shall be payable to and collected by the secretary. The fee for any calendar year must be paid during the month of January, and shall be collected by the secretary at the time of the collection by him or her of the said excise tax. If the secretary is satisfied that the requirements for registration of the aircraft have been met, he or she shall thereupon issue to the owner of the aircraft a certificate of registration therefor. The secretary shall pay to the state treasurer the registration fees collected under this section, which registration fees shall be credited to the aeronautics account in the transportation fund.

It shall not be necessary for the registrant to provide the secretary with originals or copies of federal certificates, permits, ratings, or licenses. The secretary shall issue certificates of registration, or such other evidences of registration or payment of fees as he or she may deem proper; and in connection therewith may prescribe requirements for the possession and exhibition of such certificates or other evidences.

The provisions of this section shall not apply to:

(1) An aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

(2) An aircraft registered under the laws of a foreign country;

(3) An aircraft which is owned by a nonresident and registered in another state: PROVIDED, That if said aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

(4) An aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(5) An aircraft owned by the commercial manufacturer thereof while being operated for test or experimental pur-

poses, or for the purpose of training crews for purchasers of the aircraft;

(6) An aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

(7) An aircraft based within the state that is in an unairworthy condition, is not operated within the registration period, and has obtained a written exemption issued by the secretary.

The secretary shall be notified within thirty days of any change in ownership of a registered aircraft. The notification shall contain the N, NC, NR, NL, or NX number of the aircraft, the full name and address of the former owner, and the full name and address of the new owner. For failure to so notify the secretary, the registration of that aircraft may be canceled by the secretary, subject to reinstatement upon application and payment of a reinstatement fee of ten dollars by the new owner.

A municipality or port district that owns, operates, or leases an airport, as defined in RCW 47.68.020, with the intent to operate, shall require from an aircraft owner proof of aircraft registration as a condition of leasing or selling tiedown or hanger space for an aircraft. It is the responsibility of the lessee or purchaser to register the aircraft. The airport shall work with the aviation division to assist in its efforts to register aircraft by providing information about based aircraft on an annual basis as requested by the division. [2003 c 375 § 4; 1999 c 302 § 2; 1998 c 188 § 1; 1995 c 170 § 3; 1993 c 208 § 7; 1987 c 220 § 3; 1979 c 158 § 206; 1967 ex.s. c 9 § 8; 1955 c 150 § 11; 1949 c 49 § 12; 1947 c 165 § 25; Rem. Supp. 1949 § 10964-105. Formerly RCW 14.04.250.]

Effective date—2003 c 375: See note following RCW 47.68.240.

Severability—1987 c 220: See note following RCW 47.68.230.

Aircraft dealers: Chapter 14.20 RCW.

Definition of terms: RCW 14.20.010, 47.68.020.

47.68.255 Evasive registration. A person who is required to register an aircraft under this chapter and who registers an aircraft in another state or foreign country evading the Washington aircraft excise tax is guilty of a gross misdemeanor. For a second or subsequent offense, the person convicted is also subject to a fine equal to four times the amount of avoided taxes and fees, no part of which may be suspended or deferred. Excise taxes owed and fines assessed will be deposited in the manner provided under RCW 46.16.010(4). [2003 c 53 § 266; 2000 c 229 § 3; 1999 c 277 § 6; 1996 c 184 § 3; 1993 c 238 § 2.]

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

Effective date—2000 c 229: See note following RCW 46.16.010.

Effective date—1996 c 184: See note following RCW 46.16.010.

47.68.280 Investigations, hearings, etc.—Subpoenas—Compelling attendance. The department or any officer or employee of the department designated by it has the power to hold investigations, inquiries, and hearings concerning matters covered by this chapter including accidents in aeronautics within this state. Hearings shall be open to the public and, except as hereinafter provided, shall be held upon

such call or notice as the department deems advisable. The department and every officer or employee of the department designated by it to hold any inquiry, investigation, or hearing has the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and order the attendance of witnesses and the production of papers, books and documents. In case of the failure of a person to comply with a subpoena or order issued under the authority of this section, the department or its authorized representatives may invoke the aid of a competent court of general jurisdiction. The court may thereupon order the person to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof. [1984 c 7 § 356; 1947 c 165 § 28; Rem. Supp. 1947 § 10964-108. Formerly RCW 14.04.280.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.290 Joint hearings—Cooperation. The department may confer with or hold joint hearings with any agency of the United States in connection with any matter arising under this chapter or relating to the development of aeronautics.

The department may avail itself of the cooperation, services, records, and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter, and shall furnish to the agencies of the United States such services, records, and facilities as are practicable.

The department shall report to the appropriate agency of the United States all accidents in aeronautics in this state of which it is informed, and shall in so far as is practicable preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until the federal agency institutes an investigation. [1984 c 7 § 357; 1947 c 165 § 29; Rem. Supp. 1947 § 10964-109. Formerly RCW 14.04.290.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.300 State and municipal agencies to cooperate. In carrying out this chapter the department may use the facilities and services of other agencies of the state and of the municipalities of the state to the utmost extent possible, and the agencies and municipalities are authorized and directed to make available their facilities and services. [1984 c 7 § 358; 1947 c 165 § 30; Rem. Supp. 1947 § 10964-110. Formerly RCW 14.04.300.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.310 Enforcement of aeronautics laws. It is the duty of the secretary, the department, the officers and employees of the department, and every state and municipal officer charged with the enforcement of state and municipal laws to enforce and assist in the enforcement of this chapter and of all other laws of this state relating to aeronautics. The secretary and those officers or employees of the department designated by the secretary in writing are granted police powers solely for the enforcement of state aeronautics laws and the rules having the effect of law. [1984 c 7 § 359; 1955 c

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204 § 1; 1947 c 165 § 31; Rem. Supp. 1947 § 10964-111. Formerly RCW 14.04.310.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.320 Service of orders—Hearings—Review. Every order of the department requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate, or license shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the department will be given or the approval, license, or certificate granted or restored, or the order modified or changed. Orders issued by the department under this chapter shall be served upon the persons affected either by certified mail or in person. In every case where notice and opportunity for a hearing are required under this chapter, the order of the department shall, on not less than ten days notice, specify a time when and place where the person affected may be heard, or the time within which the person may request a hearing, and the order shall become effective upon the expiration of the time for exercising the opportunity for a hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the department affirms, disaffirms, or modifies the order after a hearing has been held or default by the person has been affected. To the extent practicable, hearings on the orders shall be in the county where the affected person resides or does business. Any person aggrieved by an order of the department or by the grant, denial, or revocation of an approval, license, or certificate may have the action of the department reviewed by the courts of this state under chapter 34.05 RCW. [1984 c 7 § 360; 1947 c 165 § 32; Rem. Supp. 1947 § 10964-112. Formerly RCW 14.04.320.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.330 Exchange of data, reports of violations, etc. The department is authorized to report to the appropriate federal agencies and agencies of other states all proceedings instituted charging violation of RCW 47.68.220 and 47.68.230 and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the law of this state relating to aeronautics or for violations of the rules, regulations, or orders of the department. The department is authorized to receive reports of penalties and other data from agencies of the federal government and other states and, when necessary, to enter into agreements with federal agencies and the agencies of other states governing the delivery, receipt, exchange, and use of reports and data. The department may make the reports and data of the federal agencies, the agencies of other states, and the courts of this state available, with or without request therefor, to any and all courts of this state. [1983 c 3 § 146; 1947 c 165 § 33; Rem. Supp. 1947 § 10964-113. Formerly RCW 14.04.330.]

47.68.340 Hazardous structures and obstacles—Marking—Hearing to determine hazard. A structure or obstacle that obstructs the air space above ground or water level, when determined by the department after a hearing to be a hazard or potential hazard to the safe flight of aircraft,

shall be plainly marked, illuminated, painted, lighted, or designated in a manner to be approved in accordance with the general rules of the department so that the structure or obstacle will be clearly visible to airmen. In determining which structures or obstacles constitute a safety hazard, or a hazard to flight, the department shall take into account those obstacles located at a river, lake, or canyon crossing, and in other low-altitude flight paths usually traveled by aircraft including, but not limited to, airport areas and runway departure and approach areas as defined by federal air regulations. [1995 c 153 § 2; 1984 c 7 § 361; 1961 c 263 § 2. Formerly RCW 14.04.340.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.350 Hazardous structures and obstacles—Reporting location—Subpoenas. The secretary may require owners, operators, lessees, or others having the control or management of structures or obstacles over one hundred fifty feet above ground or water level and that are or may become a hazard to air flight to report the location of the existing or proposed structures or obstacles to the department. For that purpose the secretary may issue subpoenas and subpoenas duces tecum returnable within twenty days to the department. If a person refuses to obey the secretary's subpoena, the department may certify to the superior court all facts of the refusal. The court shall summarily hear evidence on the refusal, and, if the evidence warrants, punish the person refusing in the same manner and to the same extent as a contempt committed before the court. [1984 c 7 § 362; 1961 c 263 § 3. Formerly RCW 14.04.350.]

Severability—1984 c 7: See note following RCW 47.01.141.

47.68.360 Hazardous structures and obstacles—Exemption of structures required by federal law to be marked. RCW 47.68.340 and 47.68.350 shall not apply to structures required to be marked by federal regulations. [1983 c 3 § 147; 1961 c 263 § 4. Formerly RCW 14.04.360.]

47.68.380 Aerial search and rescue—Liability—Definition. (1) The aviation division of the department is responsible for the conduct and management of all aerial search and rescue within the state. This includes search and rescue efforts involving aircraft and airships. The division is also responsible for search and rescue activities involving electronic emergency signaling devices such as emergency locator transmitters (ELT's) and emergency position indicating radio beacons (EPIRB's).

(2) An act or omission by any person registered with the aviation division of the department for the purpose of engaging in aerial search and rescue activities, while engaged in such activities, shall not impose any liability on the department or the person for civil damages resulting from the act or omission. However, the immunity provided under this subsection shall not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct. For the purpose of this subsection, "aerial search and rescue activities" includes, but is not limited to, training and training-related activities, but does not include appropriate search and rescue activities conducted under the authority of RCW 38.52.400. [2008 c 34 § 1; 1995 c 153 § 1.]

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47.68.390 Airport capacity and facilities assessment.

(1) The aviation division of the department of transportation shall conduct a statewide airport capacity and facilities assessment. The assessment must include a statewide analysis of existing airport facilities, and passenger and air cargo transportation capacity, regarding both commercial aviation and general aviation; however, the primary focus of the assessment must be on commercial aviation. The assessment must at a minimum address the following issues:

(a) Existing airport facilities, both commercial and general aviation, including air side, land side, and airport service facilities;

(b) Existing air and airport capacity, including the number of annual passengers and air cargo operations;

(c) Existing airport services, including fixed based operator services, fuel services, and ground services; and

(d) Existing airspace capacity.

(2) The department shall consider existing information, technical analyses, and other research the department deems appropriate. The department may contract and consult with private independent professional and technical experts regarding the assessment.

(3) The department shall submit the assessment to the appropriate standing committees of the legislature, the governor, the transportation commission, and regional transportation planning organizations by July 1, 2006. [2005 c 316 § 1.]

47.68.400 Airport capacity and facilities market analysis. (1) After submitting the assessment under RCW 47.68.390, the aviation division of the department of transportation shall conduct a statewide airport capacity and facilities market analysis. The analysis must include a statewide needs analysis of airport facilities, passenger and air cargo transportation capacity, and demand and forecast market needs over the next twenty-five years with a more detailed analysis of the Puget Sound, southwest Washington, Spokane, and Tri-Cities regions. The analysis must address the forecasted needs of both commercial aviation and general aviation; however, the primary focus of the analysis must be on commercial aviation. The analysis must at a minimum address the following issues:

(a) A forecast of future airport facility needs based on passenger and air cargo operations and demand, airline planning, and a determination of aviation trends, demographic, geographic, and market factors that may affect future air travel demand;

(b) A determination of when the state's existing commercial service airports will reach their capacity;

(c) The factors that may affect future air travel and when capacity may be reached and in which location;

(d) The role of the state, metropolitan planning organizations, regional transportation planning organizations, the federal aviation administration, and airport sponsors in addressing statewide airport facilities and capacity needs; and

(e) Whether the state, metropolitan planning organizations, regional transportation planning organizations, the federal aviation administration, or airport sponsors have identified options for addressing long-range capacity needs at airports, or in regions, that will reach capacity before the year 2030.

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(2) The department shall consider existing information, technical analyses, and other research the department deems appropriate. The department may contract and consult with private independent professional and technical experts regarding the analysis.

(3) The department shall submit the analysis to the appropriate standing committees of the legislature, the governor, the transportation commission, and regional transportation planning organizations by July 1, 2007. [2005 c 316 § 2.]

47.68.410 Aviation planning council. (Expires July 1, 2009.) (1) Upon completion of both the statewide assessment and analysis required under RCW 47.68.390 and 47.68.400, and to the extent funds are appropriated to the department for this purpose, the governor shall appoint an aviation planning council to consist of the following members: (a) The director of the aviation division of the department of transportation, or a designee; (b) the director of the department of community, trade, and economic development, or a designee; (c) a member of the transportation commission, who shall be the chair of the council; (d) two members of the general public familiar with airport issues, including the impacts of airports on communities, one of whom must be from western Washington and one of whom must be from eastern Washington; (e) a technical expert familiar with federal aviation administration airspace and control issues; (f) a commercial airport operator; (g) a member of a growth management hearings board; (h) a representative of the Washington airport management association; and (i) an airline representative. The chair of the council may designate another councilmember to serve as the acting chair in the absence of the chair. The department of transportation shall provide all administrative and staff support for the council.

(2) The purpose of the council is to make recommendations, based on the findings of the assessment and analysis completed under RCW 47.68.390 and 47.68.400, regarding how best to meet the statewide commercial and general aviation capacity needs, as determined by the council. The council shall determine which regions of the state are in need of improvement regarding the matching of existing, or projected, airport facilities, and the long-range capacity needs at airports within the region expected to reach capacity before the year 2030. After determining these areas, the council shall make recommendations regarding the placement of future commercial and general aviation airport facilities designed to meet the need for improved aviation planning in the region. The council shall include public input in making final recommendations.

(3) The council shall submit its recommendations to the appropriate standing committees of the legislature, the governor, the transportation commission, and applicable regional transportation planning organizations.

(4) This section expires July 1, 2009. [2005 c 316 § 3.]

47.68.900 Severability—1947 c 165. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to

this end the provisions of this act are declared to be severable. [1947 c 165 § 35. Formerly RCW 14.04.900.]

Chapter 47.72 RCW

NAVIGATION CANALS

(Formerly: Chapter 91.12 RCW, Canal commission)

Sections

47.72.010	Declaration of purpose.
47.72.050	Powers and duties.
47.72.060	"Canal" defined.

47.72.010 Declaration of purpose. The purposes of this chapter are to aid commerce and navigation, including the development of recreational facilities related thereto, and to otherwise promote the general welfare by the development of navigation canals within the boundaries of the state of Washington. [1965 ex.s. c 123 § 1. Formerly RCW 91.12.010.]

47.72.050 Powers and duties. In its capacity as successor to the canal commission, the department of transportation may:

(1) Adopt rules and regulations necessary to carry out the purposes of this chapter.

(2) Make such investigations, surveys, and studies it deems necessary to determine the feasibility of the development of a navigation canal, or systems of navigation canals within the state of Washington.

(3) Construct, maintain, and/or operate any navigation canal, or navigation canal systems deemed feasible by the department of transportation.

(4) Acquire by gift, purchase, or condemnation from any person, municipal, public, or private corporation, or the state of Washington, or lease from the United States of America, any lands, rights-of-way, easements, or property rights in, over, or across lands or waters necessary for the construction, operation, or maintenance of any navigation canal, or navigation canal system. The acquisition of such rights is for a public use. The exercise of the right of eminent domain shall be in the manner provided by chapter 8.04 RCW, and all actions initiated thereunder shall be brought in the name of the department of transportation.

(5) Hold public hearings. Prior to a determination of feasibility for any proposed project, the department shall hold a public hearing so that members of the public may present their views thereon.

(6) Accept and expend moneys appropriated by the legislature or received from any public or private source, including the federal government, in carrying out the purposes of this chapter.

(7) Negotiate and cooperate with the United States of America for the purpose of inducing the United States to undertake the construction, operation, or maintenance of any navigation canal, or navigation canal system provided for in this chapter.

(8) As a local sponsor cooperate, contract, and otherwise fully participate on behalf of the state of Washington with the United States of America, in any study relating to a determination of feasibility of a navigation canal or navigation canal system, and in any project relating to the construction, opera-

tion, or maintenance of a navigation canal, or navigation canal system to be undertaken by the United States of America.

The authority granted herein includes, but is not limited to, contributing such moneys to the United States of America as may be required and appropriated for that purpose by the legislature and furnishing without cost to the United States of America all lands, easements, and rights-of-way, performing all necessary alterations to utilities arising from any project, and holding the United States of America free from any claims for damages arising out of the construction of any project. [1977 ex.s. c 151 § 75; 1965 ex.s. c 123 § 5. Formerly RCW 91.12.050.]

47.72.060 "Canal" defined. For the purposes of this chapter, "canal" is defined as any waterway for navigation created by construction of reservoirs or construction of channels by excavation in dry ground, in streams, rivers or in tidal waters and any existing waterway incorporated into such a canal and including any appurtenant features necessary for operation and maintenance of the canal. [1965 ex.s. c 123 § 6. Formerly RCW 91.12.060.]

Chapter 47.76 RCW RAIL FREIGHT SERVICE

Sections

47.76.200	Legislative findings.
47.76.210	State freight rail program.
47.76.220	State rail plan—Contents.
47.76.230	Freight rail planning—Railroad safety.
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47.76.280	Sale or lease for use as rail service—Time limit.
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47.76.300	Sale for other use—Governmental entity.
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47.76.410	Produce railcar pool—Definition.
47.76.420	Produce railcar pool—Departmental authority.
47.76.430	Produce railcar pool—Funding.
47.76.440	Produce railcar pool—Management.
47.76.450	Produce railcar pool account.
47.76.900	Captions not law—2003 c 191.

47.76.200 Legislative findings. The legislature finds that a balanced multimodal transportation system is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The state's freight rail system, including branch lines, mainlines, rail corridors, terminals, yards, and equipment, is an important element of this multimodal system. Washington's economy relies heavily upon the freight rail system to ensure movement of the state's agricultural, chemical, and natural resources and manufactured products to local, national, and international markets and thereby contributes to the economic vitality of the state.

Since 1970, Washington has lost over one-third of its rail miles to abandonment and bankruptcies. The combination of rail abandonments and rail system capacity constraints may alter the delivery to market of many commodities. In addition,

the resultant motor vehicle freight traffic increases the burden on state highways and county roads. In many cases, the cost of maintaining and upgrading the state highways and county roads exceeds the cost of maintaining rail freight service. Thus, the economy of the state will be best served by a policy of maintaining and encouraging a healthy rail freight system by creating mechanisms that keep rail freight lines operating if the benefits of the service outweigh the cost.

Recognizing the implications of this trend for freight mobility and the state's economic future, the legislature finds that better freight rail planning, better cooperation to preserve rail lines, and increased financial assistance from the state are necessary to maintain and improve the freight rail system within the state. [1995 c 380 § 1; 1993 c 224 § 1; 1983 c 303 § 4. Formerly RCW 47.76.010.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.210 State freight rail program. The Washington state department of transportation shall implement a state freight rail program that supports the freight rail service objectives identified in the state's multimodal transportation plan required under chapter 47.06 RCW. The support may be in the form of projects and strategies that support branch lines and light-density lines, provide access to ports, maintain adequate mainline capacity, and preserve or restore rail corridors and infrastructure. [1995 c 380 § 2; 1990 c 43 § 2. Formerly RCW 47.76.110.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.220 State rail plan—Contents. (1) The department of transportation shall prepare and periodically update a state rail plan, the objective of which is to identify, evaluate, and encourage essential rail services. The plan shall:

- (a) Identify and evaluate mainline capacity issues;
- (b) Identify and evaluate port-to-rail access and congestion issues;
- (c) Identify and evaluate those rail freight lines that may be abandoned or have recently been abandoned;
- (d) Quantify the costs and benefits of maintaining rail service on those lines that are likely to be abandoned;
- (e) Establish priorities for determining which rail lines should receive state support. The priorities should include the anticipated benefits to the state and local economy, the anticipated cost of road and highway improvements necessitated by the abandonment or capacity constraints of the rail line, the likelihood the rail line receiving funding can meet operating costs from freight charges, surcharges on rail traffic, and other funds authorized to be raised by a county or port district, and the impact of abandonment or capacity constraints on changes in energy utilization and air pollution;
- (f) Identify and describe the state's rail system;
- (g) Prepare a state freight rail system map;
- (h) Identify and evaluate rail commodity flows and traffic types;
- (i) Identify lines and corridors that have been rail banked or preserved; and
- (j) Identify and evaluate other issues affecting the state's rail traffic.

(2) The state rail plan may be prepared in conjunction with the rail plan prepared by the department pursuant to the

federal Railroad Revitalization and Regulatory Reform Act. [1995 c 380 § 3; 1993 c 224 § 2; 1985 c 432 § 1; 1983 c 303 § 5. Formerly RCW 47.76.020.]

Severability—1983 c 303: See RCW 36.60.905.

47.76.230 Freight rail planning—Railroad safety. (1)

The department of transportation shall continue its responsibility for the development and implementation of the state rail plan and programs, and the utilities and transportation commission shall continue its responsibility for railroad safety issues.

(2) The department of transportation shall maintain an enhanced data file on the rail system. Proprietary annual station traffic data from each railroad and the modal use of major shippers must be obtained to the extent that such information is available.

(3) The department of transportation shall provide technical assistance, upon request, to state agencies and local interests. Technical assistance includes, but is not limited to, the following:

(a) Rail project cost-benefit analyses conducted in accordance with methodologies recommended by the federal railroad administration;

(b) Assistance in the formation of county rail districts and port districts; and

(c) Feasibility studies for rail service continuation or rail service assistance, or both.

(4) With funding authorized by the legislature, the department of transportation, in collaboration with the department of community, trade, and economic development, and local economic development agencies, and other interested public and private organizations, shall develop a cooperative process to conduct community and business information programs and to regularly disseminate information on rail matters. [2007 c 234 § 94; 1995 c 380 § 4; 1990 c 43 § 3. Formerly RCW 47.76.120.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.240 Rail preservation program. The state, counties, local communities, ports, railroads, labor, and shippers all benefit from continuation of rail service and should participate in its preservation. Lines that provide benefits to the state and local jurisdictions, such as avoided roadway costs, reduced traffic congestion, economic development potential, environmental protection, and safety, should be assisted through the joint efforts of the state, local jurisdictions, and the private sector.

State funding for rail service, rail preservation, and corridor preservation projects must benefit the state's interests. The state's interest is served by reducing public roadway maintenance and repair costs, increasing economic development opportunities, increasing domestic and international trade, preserving jobs, and enhancing safety. State funding for projects is contingent upon appropriate local jurisdiction and private sector participation and cooperation. Before spending state moneys on projects, the department shall seek federal, local, and private funding and participation to the greatest extent possible.

(1) The department of transportation shall continue to monitor the status of the state's mainline and branchline com-

mon carrier railroads and preserved rail corridors through the state rail plan and various analyses, and shall seek alternatives to abandonment prior to interstate commerce commission proceedings, where feasible.

(2) The utilities and transportation commission shall intervene in proceedings of the surface transportation board, or its successor agency, on abandonments, when necessary, to protect the state's interest.

(3) The department of transportation, in consultation with the Washington state freight rail policy advisory committee, shall establish criteria for evaluating rail projects and corridors of significance to the state.

(4) Local jurisdictions may implement rail service preservation projects in the absence of state participation.

(5) The department of transportation shall continue to monitor projects for which it provides assistance. [2007 c 234 § 95; 1995 c 380 § 5; 1993 c 224 § 3; 1990 c 43 § 4. Formerly RCW 47.76.130.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.250 Essential rail assistance account—Purposes. (1) The essential rail assistance account is created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to cities, county rail districts, counties, economic development councils, and port districts for the purpose of:

(a) Acquiring, rebuilding, rehabilitating, or improving rail lines;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Constructing railroad improvements to mitigate port access or mainline congestion;

(d) Construction of loading facilities to increase business on light density lines or to mitigate the impacts of abandonment;

(e) Preservation, including operation, of light density lines, as identified by the Washington state department of transportation, in compliance with this chapter; or

(f) Preserving rail corridors for future rail purposes by purchase of rights-of-way. The department shall first pursue transportation enhancement program funds, available under the federal surface transportation program, to the greatest extent practicable to preserve rail corridors. Purchase of rights-of-way may include track, bridges, and associated elements, and must meet the following criteria:

(i) The right-of-way has been identified and evaluated in the state rail plan prepared under this chapter;

(ii) The right-of-way may be or has been abandoned; and

(iii) The right-of-way has potential for future rail service.

(3) The department or the participating local jurisdiction is responsible for maintaining any right-of-way acquired under this chapter, including provisions for drainage management, fire and weed control, and liability associated with ownership.

(4) Nothing in this section impairs the reversionary rights of abutting landowners, if any, without just compensation.

(5) The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired under this chapter.

(6) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(7) If rail lines or rail rights-of-way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights-of-way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or until compensation has been made to the underlying fee title holder or reversionary rights holder.

(8) The department of transportation shall develop criteria for prioritizing freight rail projects that meet the minimum eligibility requirements for state assistance under RCW 47.76.240. The department shall develop criteria in consultation with the Washington state freight rail policy advisory committee. Project criteria should consider the level of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially to the greatest extent practicable.

(9) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department. The repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys.

(10) The state shall maintain a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage, or use it in any other manner subordinating the state's interest without permission from the department.

(11) Moneys distributed under this chapter should be provided as loans wherever practicable. Except as provided by section 3, chapter 73, Laws of 1996, for improvements on or to privately owned railroads, railroad property, or other private property, moneys distributed shall be provided solely as loans. [1996 c 73 § 2; 1995 c 380 § 6; 1993 c 224 § 4; 1991 sp.s. c 13 § 22; 1991 c 363 § 125; 1990 c 43 § 11. Prior: 1985 c 432 § 2; 1985 c 57 § 64; 1983 c 303 § 6. Formerly RCW 47.76.030.]

Effective date—1996 c 73: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 1996]." [1996 c 73 § 4.]

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

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

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

Severability—1983 c 303: See RCW 36.60.905.

County rail districts: Chapter 36.60 RCW.

Port districts, acquisition and operation of facilities: RCW 53.08.020.

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47.76.270 Essential rail banking account merged into essential rail assistance account. The essential rail banking account is merged into the essential rail assistance account created under RCW 47.76.250. Any appropriations made to the essential rail banking account are transferred to the essential rail assistance account, and are subject to the restrictions of that account. [1995 c 380 § 7; 1993 c 224 § 6; 1991 sp.s. c 13 § 120; 1991 c 363 § 127; 1990 c 43 § 7. Formerly RCW 47.76.160.]

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

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.280 Sale or lease for use as rail service—Time limit. The department may sell or lease property acquired under this chapter to a county rail district established under chapter 36.60 RCW, a county, a port district, or any other public or private entity authorized to operate rail service. Any public or private entity that originally donated funds to the department under this chapter shall receive credit against the purchase price for the amount donated to the department, less management costs, in the event such public or private entity purchases the property from the department.

If no county rail district, county, port district, or other public or private entity authorized to operate rail service purchases or leases the property within six years after its acquisition by the department, the department may sell or lease such property in the manner provided in RCW 47.76.290. Failing this, the department may sell or convey all such property in the manner provided in RCW 47.76.300 or 47.76.320. [1995 c 380 § 8; 1993 c 224 § 7; 1991 sp.s. c 15 § 61; 1991 c 363 § 126; 1985 c 432 § 3. Formerly RCW 47.76.040.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

47.76.290 Sale or lease for other use—Authorized buyers, notice, terms, deed, deposit of moneys. (1) If real property acquired by the department under this chapter is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may sell or lease the property at fair market value to any of the following governmental entities or persons:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) The former owner, heir, or successor of the property from whom the property was acquired;
- (e) Any abutting private owner or owners.

(2) Notice of intention to sell under this section shall be given by publication in one or more newspapers of general circulation in the area in which the property is situated not less than thirty days prior to the intended date of sale.

(3) Sales to purchasers may, at the department's option, be for cash or by real estate contract.

(4) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) All moneys received under this section shall be deposited in the essential rail banking account of the general fund. [1993 c 224 § 8; 1991 sp.s. c 15 § 62; 1985 c 432 § 4. Formerly RCW 47.76.050.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.300 Sale for other use—Governmental entity. If real property acquired by the department under this chapter is not sold to a public or private entity authorized to operate rail service within six years of its acquisition by the department, the department may transfer and convey the property to the United States, its agencies or instrumentalities, to any other state agency, or to any county or city or port district of this state when, in the judgment of the secretary, the transfer and conveyance is consistent with the public interest. Whenever the secretary makes an agreement for any such transfer or conveyance, the secretary shall execute and deliver to the grantee a deed of conveyance, easement, or other instrument, duly acknowledged, as necessary to fulfill the terms of the agreement. All moneys paid to the state of Washington under this section shall be deposited in the essential rail banking account of the general fund. [1993 c 224 § 9; 1991 sp.s. c 15 § 63; 1985 c 432 § 5. Formerly RCW 47.76.060.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.310 Rent or lease of lands. The department is authorized subject to the provisions and requirements of zoning ordinances of political subdivisions of government, to rent or lease any lands acquired under this chapter, upon such terms and conditions as the department determines. [1993 c 224 § 10; 1991 sp.s. c 15 § 64; 1985 c 432 § 6. Formerly RCW 47.76.070.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.320 Sale at public auction. (1) If real property acquired by the department under this chapter is not sold, conveyed, or leased to a public or private entity within six years of its acquisition by the department, the department may, in its discretion, sell the property at public auction in accordance with subsections (2) through (5) of this section.

(2) The department shall first give notice of the sale by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks before the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) In accordance with the terms set forth in the notice, the department shall sell the property at the public auction to the highest and best bidder if the bid is equal to or higher than the appraised fair market value of the property.

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(4) If no bids are received at the auction or if all bids are rejected, the department may, in its discretion, enter into negotiations for the sale of the property or may list the property with a licensed real estate broker. No property may be sold by negotiations or through a broker for less than the property's appraised fair market value. Any offer to purchase real property under this subsection shall be in writing and may be rejected at any time before written acceptance by the department.

(5) Conveyances made under this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(6) All moneys received under this section shall be deposited in the essential rail banking account of the general fund. [1993 c 224 § 11; 1991 sp.s. c 15 § 65; 1985 c 432 § 7. Formerly RCW 47.76.080.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.330 Eminent domain exemptions. Transfers of ownership of property acquired under this chapter are exempt from chapters 8.25 and 8.26 RCW. [1993 c 224 § 12; 1991 sp.s. c 15 § 66; 1985 c 432 § 8. Formerly RCW 47.76.090.]

Construction—Severability—1991 sp.s. c 15: See note following RCW 46.68.110.

47.76.350 Monitoring federal rail policies. The department of transportation shall continue to monitor federal rail policies and congressional action and communicate to Washington's congressional delegation and federal transportation agencies the need for a balanced transportation system and associated funding. [1990 c 43 § 10. Formerly RCW 47.76.190.]

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

47.76.400 Produce railcar pool—Findings—Intent. The legislature finds that an actively coordinated and cooperatively facilitated railcar pool for transportation of perishable agricultural commodities is necessary for the continued viability and competitiveness of Washington's agricultural industry. The legislature also finds that the rail transportation model established by the Washington Grain Train program has been successful in serving the shipping needs of the wheat industry.

It is, therefore, the intent of the legislature to authorize and direct the Washington department of transportation to develop a railcar program for Washington's perishable commodity industries to be known as the Washington Produce Railcar Pool. This railcar program should be modeled from the Washington Grain Train program, but be made flexible enough to work with entities outside state government in order to fulfill its mission, including, but not limited to, the federal and local governments, commodity commissions, and private entities. [2003 c 191 § 1.]

47.76.410 Produce railcar pool—Definition. As used in RCW 47.76.400 through 47.76.450 "short line railroad" means a Class II or Class III railroad as defined by the United States Surface Transportation Board. [2003 c 191 § 2.]

47.76.420 Produce railcar pool—Departmental authority. In addition to powers otherwise granted by law, the department may establish a Washington Produce Railcar Pool to promote viable, cost-effective rail service for Washington produce, including but not limited to apples, onions, pears, and potatoes, both processed and fresh.

To the extent that funds are appropriated, the department may:

- (1) Operate the Washington Produce Railcar Pool program while working in close coordination with the department of agriculture, interested commodity commissions, port districts, and other interested parties;
- (2) For the purposes of this program:
 - (a) Purchase or lease new or used refrigerated railcars;
 - (b) Accept donated refrigerated railcars; and
 - (c) Refurbish and remodel the railcars;
- (3) Hire, in consultation with affected stakeholders, including but not limited to short line railroads, commodity commissions, and port districts, a transportation management firm to perform the function outlined in RCW 47.76.440; and
- (4) Contribute the efforts of a short line rail-financing expert to find funding for the project to help interested short line railroads in this state to accomplish the necessary operating arrangements once the railcars are ready for service. [2003 c 191 § 3.]

47.76.430 Produce railcar pool—Funding. To the extent that funds are appropriated, the department shall fund the program as follows: The department may accept funding from the federal government, or other public or private sources, to purchase or lease new or used railcars and to refurbish and remodel the railcars as needed. Nothing in this section precludes other entities, including but not limited to short line railroads, from performing the remodeling under RCW 47.76.400 through 47.76.450. [2003 c 191 § 4.]

47.76.440 Produce railcar pool—Management. (1) The transportation management firm hired under RCW 47.76.420(3) shall manage the day-to-day operations of the railcars, such as monitoring the location of the cars, returning them to this state, distributing them, arranging for pretrips and repairs, and arranging for per diem, mileage allowances, and other freight billing charges with the railroads.

(2) The railcar pool must be managed over the life of the railcars so that the railcars will be distributed to railroads and port districts around the state for produce loadings as market conditions warrant or to other users, including out-of-state users by contractual agreement, during times of excess capacity.

(3) To maximize railcar availability and use, the department or the transportation management firm may make agreements with the transcontinental railroad systems to pool Washington-owned or Washington-managed railcars with those of the railroads. In such instances, the railroad must agree to provide immediately an equal number of railcars to the Washington railcar pool.

(4) The department shall act in an oversight role to verify that the railcar pool is managed in accordance with subsections (2) and (3) of this section. [2003 c 191 § 5.]

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47.76.450 Produce railcar pool account. The produce railcar pool account is created in the custody of the state treasurer. All receipts from per diem charges, mileage charges, and freight billing charges paid by railroads and shippers that use the railcars in the Washington Produce Railcar Pool must be deposited into the account. Expenditures from the account may be used only for the purposes of RCW 47.76.400 through 47.76.440. Only the secretary of transportation or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2003 c 191 § 6.]

47.76.900 Captions not law—2003 c 191. Section captions used in this act are not part of the law. [2003 c 191 § 8.]

Chapter 47.78 RCW HIGH CAPACITY TRANSPORTATION DEVELOPMENT (Formerly: Rail service development)

Sections

47.78.010 High capacity transportation account.

47.78.010 High capacity transportation account. There is hereby established in the state treasury the high capacity transportation account. Money in the account shall be used, after appropriation, for local high capacity transportation purposes including rail freight, activities associated with freight mobility, and commute trip reduction activities. [1997 c 457 § 513; (1995 2nd sp.s. c 14 § 528 expired June 30, 1997); 1991 sp.s. c 13 §§ 66, 121; 1990 c 43 § 47; 1987 c 428 § 1.]

Severability—1997 c 457: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 457 § 701.]

Effective date—1997 c 457: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 457 § 702.]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

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

Construction—Severability—Headings—1990 c 43: See notes following RCW 81.100.010.

Effective date—1987 c 428: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 428 § 4.]

Chapter 47.79 RCW HIGH-SPEED GROUND TRANSPORTATION

Sections

47.79.010 Legislative declaration.
47.79.020 Program established—Goals.
47.79.030 Project priority—Funding sources.

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- 47.79.040 Rail passenger plan.
- 47.79.050 Facility acquisition and management.
- 47.79.060 Gifts.
- 47.79.070 Adjacent real property.
- 47.79.110 King Street station—Findings.
- 47.79.120 King Street station—Acquisition.
- 47.79.130 King Street station—Department’s powers and duties.
- 47.79.140 King Street station—Leases and contracts for multimodal terminal.
- 47.79.150 King Street railroad station facility account.
- 47.79.900 Effective date—1993 c 381.

47.79.010 Legislative declaration. The legislature recognizes that major intercity transportation corridors in this state are becoming increasingly congested. In these corridors, population is expected to grow by nearly forty percent over the next twenty years, while employment will grow by nearly fifty percent. The estimated seventy-five percent increase in intercity travel demand must be accommodated to ensure state economic vitality and protect the state’s quality of life.

The legislature finds that high-speed ground transportation offers a safer, more efficient, and environmentally responsible alternative to increasing highway capacity. High-speed ground transportation can complement and enhance existing air transportation systems. High-speed ground transportation can be compatible with growth management plans in counties and cities served by such a system. Further, high-speed ground transportation offers a reliable, all-weather service capable of significant energy savings over other intercity modes. [1993 c 381 § 1.]

47.79.020 Program established—Goals. The legislature finds that there is substantial public benefit to establishing a high-speed ground transportation program in this state. The program shall implement the recommendations of the high-speed ground transportation steering committee report dated October 15, 1992. The program shall be administered by the department of transportation in close cooperation with the utilities and transportation commission and affected cities and counties.

The high-speed ground transportation program shall have the following goals:

- (1) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Portland, Oregon by 2020. This would be accomplished by meeting the intermediate objectives of a maximum travel time between downtown Portland and downtown Seattle of two hours and thirty minutes by the year 2000 and maximum travel time of two hours by the year 2010;
- (2) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Everett and Vancouver, B.C. by 2025;
- (3) Implement high-speed ground transportation service offering top speeds over 150 m.p.h. between Seattle and Spokane by 2030.

The department of transportation shall, subject to legislative appropriation, implement such projects as necessary to achieve these goals in accordance with the implementation plans identified in RCW 47.79.030 and 47.79.040. [1993 c 381 § 2.]

47.79.030 Project priority—Funding sources. The legislature finds it important to develop public support and

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awareness of the benefits of high-speed ground transportation by developing high-quality intercity passenger rail service as a first step. This high-quality intercity passenger rail service shall be developed through incremental upgrading of the existing service. The department of transportation shall, subject to legislative appropriation, develop a prioritized list of projects to improve existing passenger rail service and begin new passenger rail service, to include but not be limited to:

- (1) Improvement of depots;
- (2) Improved grade crossing protection or grade crossing elimination;
- (3) Enhanced train signals to improve rail corridor capacity and increase train speeds;
- (4) Revised track geometry or additional trackage to improve ride quality and increase train speeds; and
- (5) Contract for new or improved service in accordance with federal requirements to improve service frequency.

Service enhancements and station improvements must be based on the extent to which local comprehensive plans contribute to the viability of intercity passenger rail service, including providing efficient connections with other transportation modes such as transit, intercity bus, and roadway networks. Before spending state moneys on these projects, the department of transportation shall seek federal, local, and private funding participation to the greatest extent possible. Funding priorities for station improvements must also be based on the level of local and private in-kind and cash contributions. [1993 c 381 § 3.]

47.79.040 Rail passenger plan. The legislature recognizes the need to plan for the high-speed ground transportation service and the high-quality intercity rail passenger service set forth in RCW 47.79.020 and 47.79.030. The department of transportation shall, subject to legislative appropriation, develop a rail passenger plan through the conduct of studies addressing, but not limited to, the following areas:

- (1) Refined ridership estimates;
- (2) Preliminary location and environmental analysis on new corridors;
- (3) Detailed station location assessments in concert with affected local jurisdictions;
- (4) Coordination with the air transportation commission on statewide air transportation policy and its effects on high-speed ground transportation service; and
- (5) Coordination with the governments of Oregon and British Columbia, when appropriate, on alignment, station location, and environmental analysis. [1993 c 381 § 4.]

47.79.050 Facility acquisition and management. Subject to appropriation, the department is authorized to acquire by purchase, lease, condemnation, gift, devise, bequest, grant, or exchange, title to or any interests or rights in real property adjacent to or used in association with state intercity passenger rail service which may include, but are not limited to, depots, platforms, parking areas, and maintenance facilities. The department is authorized to contract with a public or private entity for the operation, maintenance, and/or management of these facilities. [1999 c 253 § 1.]

47.79.060 Gifts. Subject to appropriation, the department is authorized to accept and expend or use gifts, grants, and donations for the benefit of any depot, platform, parking area, maintenance facility, or other associated rail facility. However, such an expenditure shall be for the public benefit of the state's intercity passenger rail service. [1999 c 253 § 2.]

47.79.070 Adjacent real property. Subject to appropriation, the department is authorized to exercise all the powers and perform all the duties necessary, convenient, or incidental to the planning, designing, constructing, improving, repairing, operating, and maintaining real property adjacent to or used in association with the state intercity passenger rail service which may include, but are not limited to, depots, platforms, parking areas, and maintenance facilities, even if such real property is owned or controlled by another entity. However, any expenditure of public funds for these purposes shall be directly related to public benefit of the state's intercity passenger rail service. The department shall enter into a written contract with the affected real property owners to secure the public's investment. [1999 c 253 § 3.]

47.79.110 King Street station—Findings. The legislature finds that a balanced, multimodal transportation system is an essential element of the state's infrastructure, and that effective rail passenger service is an integral part of a balanced, multimodal transportation system. The legislature further finds that the King Street railroad station is the key hub for both Puget Sound's intermodal passenger transportation system and the state's rail passenger system. The legislature recognizes that the redevelopment of the King Street railroad station depot, along with necessary and related properties, is critical to its continued functioning as a transportation hub and finds that innovative funding arrangements can materially assist in furthering the redevelopment at reduced public expense. [2001 c 62 § 1.]

Effective date—2001 c 62: "Due to the irrevocable expiration of federal and Amtrak funds critical to the redevelopment of the King Street railroad station on or before June 30, 2001, sections 1 through 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 18, 2001]." [2001 c 62 § 7.]

47.79.120 King Street station—Acquisition. The department may acquire, or contract to acquire, by purchase, lease, option to lease or purchase, condemnation, gift, devise, bequest, grant, or exchange of title, the King Street railroad station depot located in Seattle, or any interests or rights in it, and other real property and improvements adjacent to, or used in association with, the King Street railroad station depot. The property may include, but not be limited to, the depot, platforms, parking areas, pedestrian and vehicle access areas, and maintenance facilities. These properties, in the aggregate, will be known as the King Street railroad station. [2001 c 62 § 2.]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.130 King Street station—Department's powers and duties. During all periods that the department contracts to own or lease some, or all, of the King Street railroad station

properties, the department may exercise all the powers and perform all the duties necessary, convenient, or incidental for planning, designing, constructing, improving, repairing, renovating, restoring, operating, and maintaining the King Street railroad station properties. These powers also include authority to lease or sell, assign, sublease, or otherwise transfer all, or portions of, the King Street railroad station properties for transportation or other public or private purposes and to contract with other public or private entities for the operation, administration, maintenance, or improvement of the King Street railroad station properties after the department takes possession of some, or all, of the properties, as the secretary deems appropriate. If the department transfers any of its fee ownership interests in the King Street railroad station properties, proceeds from the transaction must be placed in an account that supports multimodal programs, but not into an account restricted by Article II, section 40 of the state Constitution. [2001 c 62 § 3.]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.140 King Street station—Leases and contracts for multimodal terminal. To facilitate tax exempt financing for the acquisition and improvement of the King Street railroad station, the department may lease from or contract with public or private entities for the acquisition, lease, operation, maintenance, financing, renovation, restoration, or management of some, or all, of the King Street railroad station properties as a multimodal terminal that supports the state intercity passenger rail service. The leases or contracts are not subject to either chapter 39.94 or 43.82 RCW. The leases and contracts will expire no later than fifty years from the time they are executed, and at that time the department will either receive title or have the right to receive title to the financed property without additional obligation to compensate the owner of those properties for the acquisition of them. The secretary may take all actions necessary, convenient, or incidental to the financing. [2001 c 62 § 4.]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.150 King Street railroad station facility account. (1) The department may establish the King Street railroad station facility account as an interest-bearing local account. Receipts from the sources listed in subsection (2) of this section must be deposited into the account. Nothing in this section is a pledge of funds deposited to the account for repayment of tax exempt financing related to the King Street railroad station. The department may invest funds from the account as permitted by law and may enter into contracts with financial advisors as deemed necessary for that purpose. Only the secretary or the secretary's designee may authorize expenditures from the account.

(2) All funds appropriated to the King Street railroad station facility account by the legislature; all contributions, payments, grants, gifts, and donations to the account from other public or private entities; all receipts from departmental transactions involving capital facility sales, transfers, property leases and rents, incomes, and parking fees associated with the King Street railroad station; as well as all investment income associated with the account must be deposited into

the King Street railroad station facility account for purposes specified in subsection (3) of this section.

(3) All funds deposited into the King Street railroad station facility account must be expended by the department solely to pay the following expenses:

(a) Costs for management of the account;

(b) Purchase and acquisition costs for King Street railroad station properties;

(c) Payments, including incidental expenses, relating to the King Street railroad station depot as required by a lease or contract under RCW 47.79.140;

(d) Maintenance and operating costs for the King Street railroad station properties; and

(e) Capital improvement projects initiated by the department associated with, and for the benefit of, the King Street railroad station depot occurring after the date of the department's beneficial occupancy of the renovated King Street railroad station depot, and for capital improvement projects initiated at any time by the department for the benefit of King Street railroad station properties other than the depot including, but not limited to, improvements to associated platforms, parking areas, temporary buildings, maintenance facilities, pedestrian access, and other improvements essential to the operation of the station as a multimodal terminal.

(4) Nothing in this section is intended to restrict the right of the department from otherwise funding purchase, acquisition, capital improvement, maintenance, rental, operational, and other incidental costs relating to the King Street railroad station from appropriations and resources that are not designated for deposit in the King Street railroad station facility account. [2001 c 62 § 5.]

Effective date—2001 c 62: See note following RCW 47.79.110.

47.79.900 Effective date—1993 c 381. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 381 § 5.]

Chapter 47.80 RCW

REGIONAL TRANSPORTATION PLANNING ORGANIZATIONS

Sections

47.80.010	Findings—Declaration.
47.80.011	Legislative intent.
47.80.020	Regional transportation planning organizations authorized.
47.80.023	Duties.
47.80.026	Comprehensive plans, transportation guidelines, and principles.
47.80.030	Regional transportation plan—Contents, review, use.
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47.80.050	Allocation of regional transportation planning funds.
47.80.060	Executive board membership.
47.80.070	Statewide consistency.
47.80.080	Majority vote on state matters.
47.80.900	Severability—1990 1st ex.s. c 17.
47.80.901	Part, section headings not law—1990 1st ex.s. c 17.
47.80.902	Captions not part of law—1994 c 158.
47.80.903	Severability—1994 c 158.
47.80.904	Effective date—1994 c 158.

47.80.010 Findings—Declaration. The legislature finds that while the transportation system in Washington is owned and operated by numerous public jurisdictions, it

should function as one interconnected and coordinated system. Transportation planning, at all jurisdictional levels, should be coordinated with local comprehensive plans. Further, local jurisdictions and the state should cooperate to achieve both statewide and local transportation goals. To facilitate this coordination and cooperation among state and local jurisdictions, the legislature declares it to be in the state's interest to establish a coordinated planning program for regional transportation systems and facilities throughout the state. [1990 1st ex.s. c 17 § 53.]

47.80.011 Legislative intent. The legislature recognizes that recent legislative enactments have significantly added to the complexity of and to the potential for benefits from integrated transportation and comprehensive planning and that there is currently a unique opportunity for integration of local comprehensive plans and regional goals with state and local transportation programs. Further, approaches to transportation demand management initiatives and local and state transportation funding can be better coordinated to insure an efficient, effective transportation system that insures mobility and accessibility, and addresses community needs.

The legislature further finds that transportation and land use share a critical relationship that policy makers can better utilize to address regional strategies.

Prudent and cost-effective investment by the state and by local governments in highway facilities, local streets and arterials, rail facilities, marine facilities, nonmotorized transportation facilities and systems, public transit systems, transportation system management, transportation demand management, and the development of high capacity transit systems can help to effectively address mobility needs. Such investment can also enhance local and state objectives for effective comprehensive planning, economic development strategies, and clean air policies.

The legislature finds that addressing public initiatives regarding transportation and comprehensive planning necessitates an innovative approach. Improved integration between transportation and comprehensive planning among public institutions, particularly in the state's largest metropolitan areas is considered by the state to be imperative, and to have significant benefit to the citizens of Washington. [1994 c 158 § 1.]

47.80.020 Regional transportation planning organizations authorized. The legislature hereby authorizes creation of regional transportation planning organizations within the state. Each regional transportation planning organization shall be formed through the voluntary association of local governments within a county, or within geographically contiguous counties. Each organization shall:

- (1) Encompass at least one complete county;
- (2) Have a population of at least one hundred thousand, or contain a minimum of three counties; and
- (3) Have as members all counties within the region, and at least sixty percent of the cities and towns within the region representing a minimum of seventy-five percent of the cities' and towns' population.

The state department of transportation must verify that each regional transportation planning organization conforms with the requirements of this section.

In urbanized areas, the regional transportation planning organization is the same as the metropolitan planning organization designated for federal transportation planning purposes. [1990 1st ex.s. c 17 § 54.]

47.80.023 Duties. Each regional transportation planning organization shall have the following duties:

(1) Prepare and periodically update a transportation strategy for the region. The strategy shall address alternative transportation modes and transportation demand management measures in regional corridors and shall recommend preferred transportation policies to implement adopted growth strategies. The strategy shall serve as a guide in preparation of the regional transportation plan.

(2) Prepare a regional transportation plan as set forth in RCW 47.80.030 that is consistent with county-wide planning policies if such have been adopted pursuant to chapter 36.70A RCW, with county, city, and town comprehensive plans, and state transportation plans.

(3) Certify by December 31, 1996, that the transportation elements of comprehensive plans adopted by counties, cities, and towns within the region reflect the guidelines and principles developed pursuant to RCW 47.80.026, are consistent with the adopted regional transportation plan, and, where appropriate, conform with the requirements of RCW 36.70A.070.

(4) Where appropriate, certify that county-wide planning policies adopted under RCW 36.70A.210 and the adopted regional transportation plan are consistent.

(5) Develop, in cooperation with the department of transportation, operators of public transportation services and local governments within the region, a six-year regional transportation improvement program which proposes regionally significant transportation projects and programs and transportation demand management measures. The regional transportation improvement program shall be based on the programs, projects, and transportation demand management measures of regional significance as identified by transit agencies, cities, and counties pursuant to RCW 35.58.2795, 35.77.010, and 36.81.121, respectively. The program shall include a priority list of projects and programs, project segments and programs, transportation demand management measures, and a specific financial plan that demonstrates how the transportation improvement program can be funded. The program shall be updated at least every two years for the ensuing six-year period.

(6) Designate a lead planning agency to coordinate preparation of the regional transportation plan and carry out the other responsibilities of the organization. The lead planning agency may be a regional organization, a component county, city, or town agency, or the appropriate Washington state department of transportation district office.

(7) Review level of service methodologies used by cities and counties planning under chapter 36.70A RCW to promote a consistent regional evaluation of transportation facilities and corridors.

(8) Work with cities, counties, transit agencies, the department of transportation, and others to develop level of

service standards or alternative transportation performance measures.

(9) Submit to the agency council on coordinated transportation, as provided in chapter 47.06B RCW, beginning on July 1, 2007, and every four years thereafter, an updated plan that includes the elements identified by the council. Each regional transportation planning organization must submit to the council every two years a prioritized regional human service and transportation project list. [2007 c 421 § 5; 1998 c 171 § 8; 1994 c 158 § 2.]

47.80.026 Comprehensive plans, transportation guidelines, and principles.

Each regional transportation planning organization, with cooperation from component cities, towns, and counties, shall establish guidelines and principles by July 1, 1995, that provide specific direction for the development and evaluation of the transportation elements of comprehensive plans, where such plans exist, and to assure that state, regional, and local goals for the development of transportation systems are met. These guidelines and principles shall address at a minimum the relationship between transportation systems and the following factors: Concentration of economic activity, residential density, development corridors and urban design that, where appropriate, supports high capacity transit, freight transportation and port access, development patterns that promote pedestrian and nonmotorized transportation, circulation systems, access to regional systems, effective and efficient highway systems, the ability of transportation facilities and programs to retain existing and attract new jobs and private investment and to accommodate growth in demand, transportation demand management, joint and mixed use developments, present and future railroad right-of-way corridor utilization, and intermodal connections.

Examples shall be published by the organization to assist local governments in interpreting and explaining the requirements of this section. [1994 c 158 § 3.]

47.80.030 Regional transportation plan—Contents, review, use.

(1) Each regional transportation planning organization shall develop in cooperation with the department of transportation, providers of public transportation and high capacity transportation, ports, and local governments within the region, adopt, and periodically update a regional transportation plan that:

(a) Is based on a least cost planning methodology that identifies the most cost-effective facilities, services, and programs;

(b) Identifies existing or planned transportation facilities, services, and programs, including but not limited to major roadways including state highways and regional arterials, transit and nonmotorized services and facilities, multimodal and intermodal facilities, marine ports and airports, railroads, and noncapital programs including transportation demand management that should function as an integrated regional transportation system, giving emphasis to those facilities, services, and programs that exhibit one or more of the following characteristics:

(i) Crosses member county lines;

(ii) Is or will be used by a significant number of people who live or work outside the county in which the facility, service, or project is located;

(iii) Significant impacts are expected to be felt in more than one county;

(iv) Potentially adverse impacts of the facility, service, program, or project can be better avoided or mitigated through adherence to regional policies;

(v) Transportation needs addressed by a project have been identified by the regional transportation planning process and the remedy is deemed to have regional significance; and

(vi) Provides for system continuity;

(c) Establishes level of service standards for state highways and state ferry routes, with the exception of transportation facilities of statewide significance as defined in RCW 47.06.140. These regionally established level of service standards for state highways and state ferries shall be developed jointly with the department of transportation, to encourage consistency across jurisdictions. In establishing level of service standards for state highways and state ferries, consideration shall be given for the necessary balance between providing for the free interjurisdictional movement of people and goods and the needs of local commuters using state facilities;

(d) Includes a financial plan demonstrating how the regional transportation plan can be implemented, indicating resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommending any innovative financing techniques to finance needed facilities, services, and programs;

(e) Assesses regional development patterns, capital investment and other measures necessary to:

(i) Ensure the preservation of the existing regional transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit, railroad systems and corridors, and nonmotorized facilities; and

(ii) Make the most efficient use of existing transportation facilities to relieve vehicular congestion and maximize the mobility of people and goods;

(f) Sets forth a proposed regional transportation approach, including capital investments, service improvements, programs, and transportation demand management measures to guide the development of the integrated, multimodal regional transportation system. For regional growth centers, the approach must address transportation concurrency strategies required under RCW 36.70A.070 and include a measurement of vehicle level of service for off-peak periods and total multimodal capacity for peak periods; and

(g) Where appropriate, sets forth the relationship of high capacity transportation providers and other public transit providers with regard to responsibility for, and the coordination between, services and facilities.

(2) The organization shall review the regional transportation plan biennially for currency and forward the adopted plan along with documentation of the biennial review to the state department of transportation.

(3) All transportation projects, programs, and transportation demand management measures within the region that have an impact upon regional facilities or services must be consistent with the plan and with the adopted regional growth and transportation strategies. [2005 c 328 § 2; 1998 c 171 § 9; 1994 c 158 § 4; 1990 1st ex.s. c 17 § 55.]

47.80.040 Transportation policy boards. Each regional transportation planning organization shall create a transportation policy board. Transportation policy boards shall provide policy advice to the regional transportation planning organization and shall allow representatives of major employers within the region, the department of transportation, transit districts, port districts, and member cities, towns, and counties within the region to participate in policy making. Any members of the house of representatives or the state senate whose districts are wholly or partly within the boundaries of the regional transportation planning organization are considered ex officio, nonvoting policy board members of the regional transportation planning organization. This does not preclude legislators from becoming full-time, voting board members. [2003 c 351 § 1; 1990 1st ex.s. c 17 § 56.]

47.80.050 Allocation of regional transportation planning funds. Biennial appropriations to the department of transportation to carry out the regional transportation planning program shall set forth the amounts to be allocated as follows:

(1) A base amount per county for each county within each regional transportation planning organization, to be distributed to the lead planning agency;

(2) An amount to be distributed to each lead planning agency on a per capita basis; and

(3) An amount to be administered by the department of transportation as a discretionary grant program for special regional planning projects, including grants to allow counties which have significant transportation interests in common with an adjoining region to also participate in that region's planning efforts. [1990 1st ex.s. c 17 § 57.]

47.80.060 Executive board membership. In order to qualify for state planning funds available to regional transportation planning organizations, the regional transportation planning organizations containing any county with a population in excess of one million shall provide voting membership on its executive board to the state transportation commission, the state department of transportation, the four largest public port districts within the region as determined by gross operating revenues, any incorporated principal city of a metropolitan statistical area within the region, as designated by the United States census bureau, and any incorporated city within the region with a population in excess of eighty thousand. It shall further assure that at least fifty percent of the county and city local elected officials who serve on the executive board also serve on transit agency boards or on a regional transit authority. [2007 c 511 § 1; 2005 c 334 § 1; 1992 c 101 § 31.]

Section headings not part of law—Severability—Effective date—1992 c 101: See RCW 81.112.900 through 81.112.902.

47.80.070 Statewide consistency. In order to ensure statewide consistency in the regional transportation planning process, the state department of transportation, in conformance with chapter 34.05 RCW, shall:

(1) In cooperation with regional transportation planning organizations, establish minimum standards for development of a regional transportation plan;

(2) Facilitate coordination between regional transportation planning organizations; and

(3) Through the regional transportation planning process, and through state planning efforts as required by RCW 47.01.071, identify and jointly plan improvements and strategies within those corridors important to moving people and goods on a regional or statewide basis. [1994 c 158 § 5.]

47.80.080 Majority vote on state matters. When voting on matters solely affecting Washington state, a regional transportation planning organization must obtain a majority vote of the Washington residents serving as members of the regional transportation planning organization before a matter may be adopted. [2003 c 351 § 2.]

47.80.900 Severability—1990 1st ex.s. c 17. See RCW 36.70A.900.

47.80.901 Part, section headings not law—1990 1st ex.s. c 17. See RCW 36.70A.901.

47.80.902 Captions not part of law—1994 c 158. Captions used in this act do not constitute any part of the law. [1994 c 158 § 11.]

47.80.903 Severability—1994 c 158. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 158 § 12.]

47.80.904 Effective date—1994 c 158. This act shall take effect July 1, 1994. [1994 c 158 § 13.]

Chapter 47.82 RCW

AMTRAK

Sections

47.82.010	Service improvement program.
47.82.020	Depot upgrading.
47.82.030	Service extension.
47.82.040	Coordination with other rail systems and common carriers.
47.82.900	Construction—Severability—Headings—1990 c 43.

47.82.010 Service improvement program. The department, in conjunction with local jurisdictions, shall coordinate as appropriate with the designated metropolitan planning organizations to develop a program for improving Amtrak passenger rail service. The program may include:

(1) Determination of the appropriate level of Amtrak passenger rail service;

(2) Implementation of higher train speeds for Amtrak passenger rail service, where safety considerations permit;

[Title 47 RCW—page 242]

(3) Recognition, in the state's long-range planning process, of potential higher speed intercity passenger rail service, while monitoring socioeconomic and technological conditions as indicators for higher speed systems; and

(4) Identification of existing intercity rail rights-of-way which may be used for public transportation corridors in the future. [1990 c 43 § 36.]

47.82.020 Depot upgrading. The department shall, when feasible, assist local jurisdictions in upgrading Amtrak depots. Multimodal use of these facilities shall be encouraged. [1990 c 43 § 37.]

47.82.030 Service extension. (1) The department, in conjunction with local jurisdictions, shall coordinate as appropriate with designated metropolitan and provincial transportation organizations to pursue resumption of Amtrak service from Seattle to Vancouver, British Columbia, via Everett, Mount Vernon, and Bellingham.

(2) The department, in conjunction with local jurisdictions, shall study potential Amtrak service on the following routes:

(a) Daytime Spokane-Wenatchee-Seattle service;

(b) Daytime Spokane-Tri-Cities-Vancouver-Portland service;

(c) Tri-Cities-Yakima-Ellensburg-Seattle service, if the Stampede Pass route is reopened; and

(d) More frequent Portland-Vancouver-Kelso-Centralia-Olympia-Tacoma-Seattle service or increments thereof. [1990 c 43 § 38.]

47.82.040 Coordination with other rail systems and common carriers. The department, with other state and local agencies shall coordinate as appropriate with designated metropolitan planning organizations to provide public information with respect to common carrier passenger transportation. This information may include maps, routes, and schedules of passenger rail service, local transit agencies, air carriers, private ground transportation providers, and international, state, and local ferry services.

The state shall continue its cooperative relationship with Amtrak and Canadian passenger rail systems. [1990 c 43 § 39.]

47.82.900 Construction—Severability—Headings—1990 c 43. See notes following RCW 81.100.010.

Chapter 47.98 RCW

CONSTRUCTION

Sections

47.98.010	Continuation of existing law.
47.98.020	Provisions to be construed in pari materia.
47.98.030	Title, chapter, section headings not part of law.
47.98.040	Invalidity of part of title not to affect remainder.
47.98.041	Severability—1963 ex.s. c 3.
47.98.042	Severability—1965 ex.s. c 170.
47.98.043	Severability—1967 ex.s. c 145.
47.98.044	Severability—1967 c 108.
47.98.045	Severability—1969 ex.s. c 281.
47.98.050	Repeals and saving.
47.98.060	Emergency—1961 c 13.

47.98.070 Federal requirements.
 47.98.080 Severability—1977 ex.s. c 151.
 47.98.090 Liberal construction.

47.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. Nothing in this 1961 reenactment of this title shall be construed as authorizing any new bond issues or new or additional appropriations of moneys but the bond issue authorizations herein contained shall be construed only as continuations of bond issues authorized by prior laws herein repealed and reenacted, and the appropriations of moneys herein contained are continued herein for historical purposes only and this act shall not be construed as a reappropriation thereof and no appropriation contained herein shall be deemed to be extended or revived hereby and such appropriation shall lapse or shall have lapsed in accordance with the original enactment: PROVIDED, That this act shall not operate to terminate, extend, or otherwise affect any appropriation for the biennium commencing July 1, 1959 and ending June 30, 1961. [1961 c 13 § 47.98.010.]

47.98.020 Provisions to be construed in pari materia. The provisions of this title shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 46 RCW, and with other laws relating to highways, roads, streets, bridges, ferries and vehicles. This section shall not operate retroactively. [1961 c 13 § 47.98.020.]

47.98.030 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 13 § 47.98.030.]

47.98.040 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 13 § 47.98.040.]

47.98.041 Severability—1963 ex.s. c 3. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1963 ex.s. c 3 § 57.]

47.98.042 Severability—1965 ex.s. c 170. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 170 § 70.]

47.98.043 Severability—1967 ex.s. c 145. If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 145 § 73.]

47.98.044 Severability—1967 c 108. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 108 § 14.]

47.98.045 Severability—1969 ex.s. c 281. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 281 § 64.]

47.98.050 Repeals and saving. See 1961 c 13 § 47.98.050.

47.98.060 Emergency—1961 c 13. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing institutions and shall take effect immediately: PROVIDED, That the effective date of sections *47.16.160, 47.20.110, and 47.20.380 shall be July 1, 1961. [1961 c 13 § 47.98.060.]

**Reviser's note:* RCW 47.16.160, 47.20.110, and 47.20.380 were repealed by 1970 ex.s. c 51.

47.98.070 Federal requirements. If any part of this title or any section of this 1977 amendatory act is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds to the state, or to any department or agencies thereof, such conflicting part or section is declared to be inoperative solely to the extent of the conflict. No such ruling shall affect the operation of the remainder of the act. Any internal reorganization carried out under the terms of this title or any section of this 1977 amendatory act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1977 ex.s. c 151 § 76.]

47.98.080 Severability—1977 ex.s. c 151. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 151 § 77.]

47.98.090 Liberal construction. The rule of strict construction shall have no application to this title, and it shall be liberally construed in order to carry out the objectives for which it is designed. Any ambiguities arising from its interpretation should be resolved consistently with the broad purposes set forth in *RCW 47.01.011. [1977 ex.s. c 151 § 78.]

**Reviser's note:* RCW 47.01.011 was decodified pursuant to 1985 c 6 § 26.

Title 48

INSURANCE

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Chapter 48.01 RCW INITIAL PROVISIONS

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48.01.010 Short title. Title 48 RCW constitutes the insurance code. [1975 1st ex.s. c 266 § 2; 1947 c 79 § .01.01; Rem. Supp. 1947 § 45.01.01.]

Severability—1975 1st ex.s. c 266: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 266 § 21.]

48.01.020 Scope of code. All insurance and insurance transactions in this state, or affecting subjects located wholly or in part or to be performed within this state, and all persons having to do therewith are governed by this code. [1947 c 79 § .01.02; Rem. Supp. 1947 § 45.01.02.]

48.01.030 Public interest. The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance. [1995 c 285 § 16; 1947 c 79 § .01.03; Rem. Supp. 1947 § 45.01.03.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.01.035 "Developmental disability" defined. The term "developmental disability" as used in this title means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological condition closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, which disability originates before such individual attains age eighteen,

which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to such individual. [1985 c 264 § 1.]

48.01.040 "Insurance" defined. Insurance is a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. [1947 c 79 § .01.04; Rem. Supp. 1947 § 45.01.04.]

48.01.050 "Insurer" defined. "Insurer" as used in this code includes every person engaged in the business of making contracts of insurance, other than a fraternal benefit society. A reciprocal or interinsurance exchange is an "insurer" as used in this code. Two or more hospitals that join and organize as a mutual corporation pursuant to chapter 24.06 RCW for the purpose of insuring or self-insuring against liability claims, including medical liability, through a contributing trust fund are not an "insurer" under this code. Two or more local governmental entities, under any provision of law, that join together and organize to form an organization for the purpose of jointly self-insuring or self-funding are not an "insurer" under this code. Two or more persons engaged in the business of commercial fishing who enter into an arrangement with other such persons for the pooling of funds to pay claims or losses arising out of loss or damage to a vessel or machinery used in the business of commercial fishing and owned by a member of the pool are not an "insurer" under this code. [2003 c 248 § 1; 1990 c 130 § 1; 1985 c 277 § 9; 1979 ex.s. c 256 § 13; 1975-'76 2nd ex.s. c 13 § 1; 1947 c 79 § .01.05; Rem. Supp. 1947 § 45.01.05.]

Retrospective application—1985 c 277: "This act applies retrospectively to group self-funded plans formed on or after January 1, 1983." [1985 c 277 § 10.]

"Domestic," "foreign," "alien" insurers defined: RCW 48.05.010.

Merger, rehabilitation, liquidation situations—"Insurer" defined: RCW 48.31.020, 48.99.010.

"Reciprocal insurance, insurer" defined: RCW 48.10.010, 48.10.020.

48.01.053 "Issuer" defined. "Issuer" as used in this title and chapter 26.18 RCW means insurer, fraternal benefit society, certified health plan, health maintenance organization, and health care service contractor. [1995 c 34 § 1.]

48.01.060 "Insurance transaction" defined. "Insurance transaction" includes any:

- (1) Solicitation.
- (2) Negotiations preliminary to execution.
- (3) Execution of an insurance contract.
- (4) Transaction of matters subsequent to execution of the contract and arising out of it.
- (5) Insuring. [1947 c 79 § .01.06; Rem. Supp. 1947 § 45.01.06.]

48.01.070 "Person" defined. "Person" means any individual, company, insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation. [1947 c 79 § .01.07; Rem. Supp. 1947 § 45.01.07.]

(2008 Ed.)

48.01.080 Penalties. Except as otherwise provided in this code, any person violating any provision of this code is guilty of a gross misdemeanor and will, upon conviction, be fined not less than ten dollars nor more than one thousand dollars, or imprisoned for not more than one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law. [2003 c 250 § 1; 1947 c 79 § .01.08; Rem. Supp. 1947 § 45.01.08.]

Severability—2003 c 250: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 250 § 15.]

48.01.090 Severability—1947 c 79. If any provision of this code or the application thereof to any circumstance is held invalid, the remainder of the code, or the application of the provision to other circumstances, is not affected thereby. [1947 c 79 § .01.09; Rem. Supp. 1947 § 45.01.09.]

48.01.100 Existing officers. Continuation by this code of any office existing under any act repealed herein preserves the tenure of the individual holding the office at the effective date of this code. [1947 c 79 § .01.10; Rem. Supp. 1947 § 45.01.10.]

48.01.110 Existing licenses. Every license or certificate of authority in force immediately prior to the effective date of this code and existing under any act herein repealed is valid until its original expiration date, unless earlier terminated in accordance with this code. [1947 c 79 § .01.11; Rem. Supp. 1947 § 45.01.11.]

48.01.120 Existing insurance forms. Every form of insurance document in use at the effective date of this code in accordance with the commissioner's approval pursuant to any act herein repealed, may continue to be so used unless the commissioner otherwise prescribes in accordance with this code. [1947 c 79 § .01.12; Rem. Supp. 1947 § 45.01.12.]

48.01.130 Existing actions, violations. No action or proceeding commenced, and no violation of law existing, under any act herein repealed is affected by the repeal, but all procedure hereafter taken in reference thereto shall conform to this code as far as possible. [1947 c 79 § .01.13; Rem. Supp. 1947 § 45.01.13.]

48.01.140 Headings. The meaning or scope of any provision is not affected by chapter, section, or paragraph headings. [1947 c 79 § .01.14; Rem. Supp. 1947 § 45.01.14.]

48.01.150 Particular provisions prevail. Provisions of this code relating to a particular kind of insurance or a particular type of insurer or to a particular matter prevail over provisions relating to insurance in general or insurers in general or to such matter in general. [1947 c 79 § .01.15; Rem. Supp. 1947 § 45.01.15.]

48.01.160 Repealed acts not revived. Repeal by this code of any act shall not revive any law heretofore repealed or superseded. [1947 c 79 § .01.16; Rem. Supp. 1947 § 45.01.16.]

48.01.170 Effective date—1947 c 79. This code shall become effective on the first day of October, 1947. [1947 c 79 § .01.17; Rem. Supp. 1947 § 45.01.17.]

48.01.180 Adopted children—Insurance coverage.

(1) A child of an insured, subscriber, or enrollee shall be considered a dependent child for insurance purposes under this title upon assumption by the insured, subscriber, or enrollee of a legal obligation for total or partial support of a child in anticipation of adoption of the child. Upon the termination of such legal obligations, the child shall not be considered a dependent child for insurance purposes.

(2) Every policy or contract providing coverage for health benefits to a resident of this state shall provide coverage for dependent children placed for adoption under the same terms and conditions as apply to the natural, dependent children of the insured, subscriber, or enrollee whether or not the adoption has become final.

(3) No policy or contract may restrict coverage of any dependent child adopted by, or placed for adoption with, an insured, subscriber, or enrollee solely on the basis of a preexisting condition of the child at the time that the child would otherwise become eligible for coverage under the plan if the adoption or placement for adoption occurs while the insured, subscriber, or enrollee is eligible for coverage under the plan. [1995 c 34 § 4; 1986 c 140 § 1.]

Effective date, application—1986 c 140: "This act shall take effect January 1, 1987, and shall apply to all contracts or agreements issued, renewed, or delivered on or after January 1, 1987." [1986 c 140 § 6.]

Severability—1986 c 140: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 140 § 7.]

48.01.190 Immunity from civil liability. (1) Any person who files reports, or furnishes other information, required under Title 48 RCW, required by the commissioner under authority granted by Title 48 RCW, useful to the commissioner in the administration of Title 48 RCW, or furnished to the National Association of Insurance Commissioners at the request of the commissioner or pursuant to Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(2) The commissioner and the National Association of Insurance Commissioners, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletin or dissemination of information related to the official activities of the commissioner or the National Association of Insurance Commissioners, unless actual malice, fraud, or bad faith is shown.

(3) Any licensee under chapter 48.17 RCW and any trade association of the licensees under chapter 48.15 RCW, and any officer, director, employee, agent, or committee of the licensee or association who furnishes information to or for the commissioner or to or for the association regarding unauthorized insurers or regarding attempts by any person to place or actual placement by any person of business with the insurers, whether in compliance with chapter 48.15 RCW or not,

shall be immune from each and every kind of liability in any civil action or suit arising in whole or in part from the information or from the furnishing of the information.

(4) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity. [1995 c 10 § 1; 1987 c 51 § 1.]

48.01.220 Mental health regional support networks—Limited exemption. The activities and operations of mental health regional support networks, to the extent they pertain to the operation of a medical assistance managed care system in accordance with chapters 71.24 and 74.09 RCW, are exempt from the requirements of this title. [1993 c 462 § 104.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.01.230 Eligibility for coverage or making payments may not be contingent on eligibility for medical assistance. An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not consider the availability of eligibility for medical assistance in this state under medical assistance, RCW 74.09.500, or any other state under 42 U.S.C. Sec. 1396a, section 1902 of the social security act, in considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders, or certificate holders. [1995 c 34 § 2.]

48.01.235 Enrollment of a child under the health plan of the child's parent—Requirements—Restrictions.

(1) An issuer and an employee welfare benefit plan, whether insured or self funded, as defined in the employee retirement income security act of 1974, 29 U.S.C. Sec. 1101 et seq. may not deny enrollment of a child under the health plan of the child's parent on the grounds that:

- (a) The child was born out of wedlock;
- (b) The child is not claimed as a dependent on the parent's federal tax return; or
- (c) The child does not reside with the parent or in the issuer's, or insured or self funded employee welfare benefit plan's service area.

(2) Where a child has health coverage through an issuer, or an insured or self funded employee welfare benefit plan of a noncustodial parent, the issuer, or insured or self funded employee welfare benefit plan, shall:

- (a) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;
- (b) Permit the provider or the custodial parent to submit claims for covered services without the approval of the noncustodial parent. If the provider submits the claim, the provider will obtain the custodial parent's assignment of insurance benefits or otherwise secure the custodial parent's approval.

For purposes of this subsection the department of social and health services as the state medicaid agency under RCW

74.09.500 may reassign medical insurance rights to the provider for custodial parents whose children are eligible for services under RCW 74.09.500; and

(c) Make payments on claims submitted in accordance with (b) of this subsection directly to the custodial parent, to the provider, or to the department of social and health services as the state medicaid agency under RCW 74.09.500.

(3) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(4) Where a parent is required by a court order to provide health coverage for a child, and the parent is eligible for family health coverage, the issuer, or insured or self funded employee welfare benefit plan, shall:

(a) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(b) Enroll the child under family coverage upon application of the child's other parent, department of social and health services as the state medicaid agency under RCW 74.09.500, or child support enforcement program, if the parent is enrolled but fails to make application to obtain coverage for such child; and

(c) Not disenroll, or eliminate coverage of, such child who is otherwise eligible for the coverage unless the issuer or insured or self funded employee welfare benefit plan is provided satisfactory written evidence that:

(i) The court order is no longer in effect; or

(ii) The child is or will be enrolled in comparable health coverage through another issuer, or insured or self funded employee welfare benefit plan, which will take effect not later than the effective date of disenrollment.

(5) An issuer, or insured or self funded employee welfare benefit plan, that has been assigned the rights of an individual eligible for medical assistance under medicaid and coverage for health benefits from the issuer, or insured or self funded employee welfare benefit plan, may not impose requirements on the department of social and health services that are different from requirements applicable to an agent or assignee of any other individual so covered. [2003 c 248 § 2; 1995 c 34 § 3.]

48.01.250 Assistance or services in exchange for dues, assessments, or periodic or lump-sum payments—Certificate of authority required—Certain travel or automobile services excepted—Violations. (1) Any person, firm, partnership, corporation, or association promising, in exchange for dues, assessments, or periodic or lump-sum payments, to furnish members or subscribers with assistance in matters relating to trip cancellation, bail bond service or any accident, sickness, or death insurance benefit program must:

(a) Have a certificate of authority, issued by the insurance commissioner, authorizing the person, firm, partnership, corporation, or association to sell that coverage in this state; or

(b) Purchase the service or insurance from a company that holds a certificate of authority, issued by the insurance

commissioner, authorizing the company to sell that coverage in this state. If coverage cannot be procured from an authorized insurer holding a certificate of authority issued by the insurance commissioner, insurance may be procured from an unauthorized insurer subject to chapter 48.15 RCW.

(2) Travel or automobile related products or assistance including but not limited to community traffic safety service, travel and touring service, theft or reward service, map service, towing service, emergency road service, lockout or lost key service, reimbursement of emergency expenses due to a vehicle disabling accident, or legal fee reimbursement service in the defense of traffic offenses shall not be considered to be insurance for the purposes of Title 48 RCW.

(3) Violation of this section is subject to the enforcement provisions of RCW 48.02.080 and to the hearing and appeal provisions of chapter 48.04 RCW. [1998 c 303 § 1.]

48.01.260 Health benefit plans—Carriers—Clarification. (1) Except as required in RCW 48.21.045, 48.44.023, and 48.46.066, nothing in this title shall be construed to require a carrier, as defined in RCW 48.43.005, to offer any health benefit plan for sale.

(2) Nothing in this title shall prohibit a carrier as defined in RCW 48.43.005 from ceasing sale of any or all health benefit plans to new applicants if the closed plans are closed to all new applicants.

(3) This section is intended to clarify, and not modify, existing law. [2000 c 79 § 40.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.01.270 PACE programs—Exemption. The activities and operations of PACE programs, as defined in RCW 74.09.523 and as authorized under sections 1894, 1905(a), and 1934 of the social security act, when registered, certified, licensed, or otherwise recognized or designated as a PACE program by the Washington state department of social and health services, are exempt from the requirements of this title. [2001 c 191 § 3.]

Finding—Effective date—2001 c 191: See notes following RCW 74.09.523.

48.01.280 Private air ambulance service—Exempt when conditions are met. A private air ambulance service that solicits membership subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services, to subscription members and designated members of their household is not an insurer under RCW 48.01.050, a health carrier under chapter 48.43 RCW, a health care services contractor under chapter 48.44 RCW, or a health maintenance organization under chapter 48.46 RCW if the private air ambulance service:

(1) Is licensed in accordance with RCW 18.73.130;

(2) Attains and maintains accreditation by the commission on accreditation of medical transport services or another accrediting organization approved by the department of health as having equivalent requirements as the commission for aeromedical transport;

(3) Has been in operation in Washington for at least two years; and

(4) Has submitted evidence of its compliance with this section, the licensing requirements of RCW 18.73.130, and accreditation from the commission or another accrediting organization approved by the department of health as having equivalent requirements as the commission for aeromedical transport to the commissioner. [2006 c 61 § 1.]

Chapter 48.02 RCW
INSURANCE COMMISSIONER

Sections

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48.02.010 Insurance commissioner. (1) There shall be an insurance commissioner of this state who shall be elected at the time and in the manner that other state officers are elected.

(2) The commissioner in office at the effective date of this code shall continue in office for the remainder of the term for which he was elected and until his successor is duly elected and qualified.

(3) "Commissioner," where used in this code, means the insurance commissioner of this state. [1947 c 79 § .02.01; Rem. Supp. 1947 § 45.02.01.]

48.02.020 Term of office. The term of office of the commissioner shall be four years, commencing on the Wednesday after the second Monday in January after his election. [1947 c 79 § .02.02; Rem. Supp. 1947 § 45.02.02.]

48.02.030 Bond. Before entering upon his duties the commissioner shall execute a bond to the state in the sum of twenty-five thousand dollars, to be approved by the state treasurer and the attorney general, conditioned upon the faithful performance of the duties of his office. [1947 c 79 § .02.03; Rem. Supp. 1947 § 45.02.03.]

48.02.050 Seal. The official seal of the commissioner shall be a vignette of George Washington, with the words "Insurance Commissioner, State of Washington" surrounding the vignette. [1947 c 79 § .02.05; Rem. Supp. 1947 § 45.02.05.]

48.02.060 General powers and duties. (1) The commissioner shall have the authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(2) The commissioner shall execute his duties and shall enforce the provisions of this code.

(3) The commissioner may:

(a) Make reasonable rules and regulations for effectuating any provision of this code, except those relating to his election, qualifications, or compensation. No such rules and regulations shall be effective prior to their being filed for public inspection in the commissioner's office.

(b) Conduct investigations to determine whether any person has violated any provision of this code.

(c) Conduct examinations, investigations, hearings, in addition to those specifically provided for, useful and proper for the efficient administration of any provision of this code. [1947 c 79 § .02.06; Rem. Supp. 1947 § 45.02.06.]

48.02.062 Mental health services—Rules. The insurance commissioner may adopt rules to implement RCW 48.21.241, 48.44.341, and 48.46.291, except that the rules do not apply to health benefit plans administered or operated under chapter 41.05 or 70.47 RCW. [2005 c 6 § 10.]

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

48.02.065 Confidentiality of documents, materials, or other information—Public disclosure. (1) Documents, materials, or other information as described in either subsection (5) or (6), or both, of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.56 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and *RCW 42.56.400(9) applies only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.

(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this sec-

tion, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(b) May receive documents, materials, or information, including otherwise either confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.

(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c) agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.

(6) Working papers, documents, materials, or information produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial or market conduct examination, or in the course of financial analysis or market conduct desk audit, are not required to be disclosed by the commissioner unless cited by the commissioner in connection with an agency action as defined in RCW 34.05.010(3). The commissioner shall notify a party that produced the documents, materials, or information five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington state superior court to prevent disclosure of any documents, materials, or information it believes is confidential or privileged. In civil actions between private parties or in criminal actions, disclosure to the commissioner under this section does not create any privilege or claim of confidentiality or waive any existing privilege or claim of confidentiality.

(7)(a) After receipt of a public disclosure request, the commissioner shall disclose the documents, materials, or information under subsection (6) of this section that relate to a financial or market conduct examination undertaken as a result of a proposed change of control of a nonprofit or mutual health insurer governed in whole or in part by chapter 48.31B or 48.31C RCW.

(b) The commissioner is not required to disclose the documents, materials, or information in (a) of this subsection if:

(i) The documents, materials, or information are otherwise privileged or exempted from public disclosure; or

(ii) The commissioner finds that the public interest in disclosure of the documents, materials, or information is outweighed by the public interest in nondisclosure in that particular instance.

(8) Any person may petition a Washington state superior court to allow inspection of information exempt from public disclosure under subsection (6) of this section when the information is connected to allegations of negligence or malfeasance by the commissioner related to a financial or market conduct examination. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the petitioner maintains the confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a regular hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and the exemption of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy or any vital governmental function. [2007 c 126 § 1. Prior: 2005 c 274 § 309; 2005 c 126 § 1; 2001 c 57 § 1.]

***Reviser's note:** RCW 42.56.400 was amended by 2007 c 197 § 7, changing subsection (9) to subsection (8).

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

48.02.080 Enforcement. (1) The commissioner may prosecute an action in any court of competent jurisdiction to enforce any order made by him pursuant to any provision of this code.

(2) If the commissioner has cause to believe that any person has violated any penal provision of this code or of other laws relating to insurance he shall certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.

(3) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this code or any regulation or order of the commissioner, he may:

(a) issue a cease and desist order; and/or

(b) bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.

(4) The attorney general and the several prosecuting attorneys throughout the state shall prosecute or defend all proceedings brought pursuant to the provisions of this code when requested by the commissioner. [1967 c 150 § 1; 1947 c 79 § .02.08; Rem. Supp. 1947 § 45.02.08.]

48.02.090 Deputies—Employees. (1) The commissioner may appoint a chief deputy commissioner, who shall have power to perform any act or duty conferred upon the commissioner. The chief deputy commissioner shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the certificate of his appointment and filed in the office of the secretary of state.

(2) The commissioner may appoint additional deputy commissioners for such purposes as he may designate.

(3) The commissioner shall be responsible for the official acts of his deputies, and may revoke at will the appointment of any deputy.

(4) The commissioner may employ examiners, and such actuarial, technical, and administrative assistants and clerks as he may need for proper discharge of his duties.

(5) The commissioner, or any deputy or employee of the commissioner, shall not be interested, directly or indirectly, in any insurer except as a policyholder; except, that as to such matters wherein a conflict of interests does not exist on the part of any such person, the commissioner may employ insurance actuaries or other technicians who are independently practicing their professions even though such persons are similarly employed by insurers.

(6) The commissioner may require any deputy or employee to be bonded as he shall deem proper but not to exceed in amount the sum of twenty-five thousand dollars. The cost of any such bond shall be borne by the state. [1949 c 190 § 1; 1947 c 79 § .02.09; Rem. Supp. 1949 § 45.02.09.]

48.02.100 Commissioner may delegate authority.

Any power or duty vested in the commissioner by any provision of this code may be exercised or discharged by any deputy, assistant, examiner, or employee of the commissioner acting in his name and by his authority. [1947 c 79 § .02.10; Rem. Supp. 1947 § 45.02.10.]

48.02.110 Office. The commissioner shall have an office at the state capital, and may maintain such offices elsewhere in this state as he may deem necessary. [1947 c 79 § .02.11; Rem. Supp. 1947 § 45.02.11.]

48.02.120 Records. (1) The commissioner shall preserve in permanent form records of his or her proceedings, hearings, investigations, and examinations, and shall file such records in his or her office.

(2) The records of the commissioner and insurance filings in his or her office shall be open to public inspection, except as otherwise provided by this code.

(3) Actuarial formulas, statistics, and assumptions submitted in support of a rate or form filing by an insurer, health care service contractor, or health maintenance organization or submitted to the commissioner upon his or her request shall be withheld from public inspection in order to preserve trade secrets or prevent unfair competition. [1985 c 264 § 2; 1979 ex.s. c 130 § 1; 1947 c 79 § .02.12; Rem. Supp. 1947 § 45.02.12.]

48.02.122 Filings or actions affecting corporate or company name—Notice to secretary of state. Whenever any documents are filed with the insurance commissioner which affect a corporate or company name, the insurance commissioner shall immediately notify the secretary of state of the filing. If any other action is taken by the insurance commissioner which affects a corporate or company name, the insurance commissioner shall immediately notify the secretary of state of the action. The insurance commissioner shall cooperate with the secretary of state to ascertain that

there is no duplication of corporate or company names. [1998 c 23 § 19.]

48.02.130 Certificates—Copies—Evidentiary effect.

(1) Any certificate or license issued by the commissioner shall bear the seal of his office.

(2) Copies of records or documents in his office certified to by the commissioner shall be received as evidence in all courts in the same manner and to the same effect as if they were the originals.

(3) When required for evidence in court, the commissioner shall furnish his certificate as to the authority of an insurer or other licensee in this state on any particular date, and the court shall receive the certificate in lieu of the commissioner's testimony. [1947 c 79 § .02.13; Rem. Supp. 1947 § 45.02.13.]

48.02.140 Interstate cooperation. (1) The commissioner shall to the extent he deems useful for the proper discharge of his responsibilities under the provisions of this code:

(a) Consult and cooperate with the public officials having supervision over insurance in other states.

(b) Share jointly with other states in the employment of actuaries, statisticians, and other insurance technicians whose services or the products thereof are made available and are useful to the participating states and to the commissioner.

(c) Share jointly with other states in establishing and maintaining offices and clerical facilities for purposes useful to the participating states and to the commissioner.

(2) All arrangements made jointly with other states under items (b) and (c) of subsection (1) of this section shall be in writing executed on behalf of this state by the commissioner. Any such arrangement, as to participation of this state therein, shall be subject to termination by the commissioner at any time upon reasonable notice.

(3) For the purposes of this code "National Association of Insurance Commissioners" means that voluntary organization of the public officials having supervision of insurance in the respective states, districts, and territories of the United States, whatever other name such organization may hereafter adopt, and in the affairs of which each of such public officials is entitled to participate subject to the constitution and bylaws of such organization. [1947 c 79 § .02.14; Rem. Supp. 1947 § 45.02.14.]

48.02.150 Supplies—"Convention blanks." The commissioner shall purchase at the expense of the state and in the manner provided by law:

(1) Printing, books, reports, furniture, equipment, and supplies as he deems necessary to the proper discharge of his duties under this code.

(2) "Convention form" insurers' annual statement blanks, which he may purchase from any printer manufacturing the forms for the various states. [1947 c 79 § .02.15; Rem. Supp. 1947 § 45.02.15.]

48.02.160 Special duties. The commissioner shall:

(1) Obtain and publish for the use of courts and appraisers throughout the state, tables showing the average expect-

ancy of life and values of annuities and of life and term estates.

(2) Disseminate information concerning the insurance laws of this state.

(3) Provide assistance to members of the public in obtaining information about insurance products and in resolving complaints involving insurers and other licensees. [1988 c 248 § 1; 1947 c 79 § .02.16; Rem. Supp. 1947 § 45.02.16.]

48.02.170 Annual report. The commissioner shall, as soon as accurate preparation enables, prepare a report of his official transactions during the preceding fiscal year, containing information relative to insurance as the commissioner deems proper. [1987 c 505 § 53; 1977 c 75 § 69; 1947 c 79 § .02.17; Rem. Supp. 1947 § 45.02.17.]

48.02.180 Publication of insurance code and related statutes, manuals, etc.—Distribution—Sale. (1) The commissioner may periodically prepare and publish:

(a) Title 48 RCW, Title 284 WAC, insurance bulletins and technical assistance advisories, and other laws, rules, or regulations relevant to the regulation of insurance;

(b) Manuals and other material relating to examinations for licensure; and

(c) Any other publications authorized under Title 48 RCW.

(2) The commissioner may provide copies of the publications referred to in subsection (1)(a) of this section free of charge to:

(a) Public offices and officers in this state;

(b) Public officials of other states and jurisdictions that regulate insurance;

(c) The library of congress; and

(d) Officers of the armed forces of the United States of America located at military installations in this state who are concerned with insurance transactions at or involving the military installations.

(3) Except as provided in subsection (2) of this section, the commissioner shall sell the publications referred to in subsection (1) of this section. The commissioner may charge a reasonable price that is not less than the cost of publication, handling, and distribution. The commissioner shall promptly deposit all funds received under this subsection with the state treasurer to the credit of the insurance commissioner's regulatory account. For appropriation purposes, the funds received and deposited by the commissioner are a recovery of a previous expenditure. [2005 c 223 § 1; 1981 c 339 § 1; 1977 c 75 § 70; 1959 c 225 § 1.]

48.02.190 Operating costs of office—Insurance commissioner's regulatory account—Regulatory surcharge.

(1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state, every health care service contractor, as defined in RCW 48.44.010, every health maintenance organization, as defined in RCW 48.46.020, or self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, registered to do business in this state. "Class

one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapters 48.44 and 48.46 RCW. "Class three" organizations shall consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors, as defined in RCW 48.44.010, health maintenance organizations, as defined in RCW 48.46.020, or participant contributions to self-funded multiple employer welfare arrangements, as defined in RCW 48.125.010, less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(c) "Regulatory surcharge" means the fees imposed by this section.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations as a regulatory surcharge. Each class of organization shall contribute a sufficient amount to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) The regulatory surcharge shall be calculated separately for each class of organization. The regulatory surcharge collected from each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year. However, the regulatory surcharge must not exceed one-eighth of one percent of receipts and the minimum regulatory surcharge shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1st, calculate and bill each organization for the amount of the regulatory surcharge. The regulatory surcharge shall be due and payable no later than June 15th of each year. However, if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such regulatory surcharge within the time specified, the commissioner may use the regulatory surcharge factors for the prior year as the basis for the regulatory surcharge and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. Any organization failing to pay the regulatory surcharges by June 30th shall pay the same penalties as the penalties for failure to pay taxes when due under RCW 48.14.060. The regulatory surcharge required by

this section is in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future regulatory surcharges. During the 2007-2009 fiscal biennium, the legislature may transfer from the insurance commissioner's regulatory account to the Washington state heritage center account such amounts as reflect excess fund balance in the account.

(7)(a) Each insurer may annually collect regulatory surcharges remitted in preceding years by means of a policyholder surcharge on premiums charged for all kinds of insurance. The recoupment shall be at a uniform rate reasonably calculated to collect the regulatory surcharge remitted by the insurer.

(b) If an insurer fails to collect the entire amount of the recoupment in the first year under this section, it may repeat the recoupment procedure provided for in this subsection (7) in succeeding years until the regulatory surcharge is fully collected or a de minimis amount remains uncollected. Any such de minimis amount may be collected as provided in (d) of this subsection.

(c) The amount and nature of any recoupment shall be separately stated on either a billing or policy declaration sent to an insured. The amount of the recoupment must not be considered a premium for any purpose, including the premium tax or agents' commissions.

(d) An insurer may elect not to collect the regulatory surcharge from its insured. In such a case, the insurer may recoup the regulatory surcharge through its rates, if the following requirements are met:

(i) The insurer remits the amount of surcharge not collected by election under this subsection; and

(ii) The surcharge is not considered a premium for any purpose, including the premium tax or agents' commission. [2008 c 328 § 6003. Prior: 2007 c 468 § 1; 2007 c 153 § 3; 2004 c 260 § 22; 2003 1st sp.s. c 25 § 923; 2002 c 371 § 913; 1987 c 505 § 54; 1986 c 296 § 7.]

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

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

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

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Chapter 48.03 RCW EXAMINATIONS

Sections

48.03.005	Application.
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48.03.020	Examination of agents, managers, promoters.
48.03.025	Examiners—Scope of examination—Examiners' handbook.

48.03.030	Access to records on examination—Correction of accounts.
48.03.040	Examination reports—Consideration by commissioner—Orders—Confidentiality.
48.03.050	Reports withheld.
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48.03.065	Appointments by commissioner—Examiners—Exceptions.
48.03.070	Witnesses—Subpoenas—Depositions—Oaths.
48.03.075	Legal protection for commissioner, authorized representatives, and examiners—Good faith—Attorneys' fees—Payment by commissioner.

48.03.005 Application. This chapter applies to the financial analysis and examination of insurers and other regulated entities. [2007 c 82 § 1.]

48.03.010 Examination of insurers, bureaus. (1) The commissioner shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as he or she deems advisable. The commissioner shall so examine each insurer holding a certificate of authority or certificate of registration not less frequently than every five years. Examination of an alien insurer may be limited to its insurance transactions in the United States. In scheduling and determining the nature, scope, and frequency of an examination, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiner's handbook adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

(2) As often as the commissioner deems advisable and at least once in five years, the commissioner shall fully examine each rating organization and examining bureau licensed in this state. As often as he or she deems it advisable the commissioner may examine each advisory organization and each joint underwriting or joint reinsurance group, association, or organization.

(3) The commissioner shall in like manner examine each insurer or rating organization applying for authority to do business in this state.

(4) In lieu of making an examination under this chapter, the commissioner may accept a full report of the last recent examination of a nondomestic rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization, as prepared by the insurance supervisory official of the state of domicile or of entry. In lieu of an examination under this chapter of a foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, an examination report may be accepted only if: (a) That insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' financial regulation standards and accreditation program; or (b) the examination was performed either under the supervision of an accredited insurance department or with the participation of one or more examiners employed by an accredited state insurance department who, after a review of the examination work papers and report, state under oath that the examination

was performed in a manner consistent with the standards and procedures required by their insurance department.

(5) The commissioner may elect to accept and rely on an audit report made by an independent certified public accountant for the insurer in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his or her report of the examination.

(6) For the purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any managing general agent or any other person, or the business of any managing general agent or other person, insofar as that examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company. [1993 c 462 § 43; 1982 c 181 § 1; 1979 c 139 § 1; 1947 c 79 § .03.01; Rem. Supp. 1947 § 45.03.01.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Severability—1982 c 181: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 181 § 28.]

48.03.020 Examination of agents, managers, promoters. (Effective until July 1, 2009.) For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he deems advisable examine the accounts, records, documents, and transactions of:

(1) Any insurance agent, solicitor, broker or adjuster.

(2) Any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.

(3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.

(4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer. [1947 c 79 § .03.02; Rem. Supp. 1947 § 45.03.02.]

48.03.020 Examination of producers, adjusters, title insurance agents, managers, or promoters. (Effective July 1, 2009.) For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he or she deems advisable examine the accounts, records, documents, and transactions of:

(1) Any insurance producer, adjuster, or title insurance agent.

(2) Any person having a contract under which he or she enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.

(3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.

(2008 Ed.)

(4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer. [2008 c 217 § 1; 1947 c 79 § .03.02; Rem. Supp. 1947 § 45.03.02.]

Severability—2008 c 217: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 217 § 101.]

Effective date—2008 c 217: "This act takes effect July 1, 2009." [2008 c 217 § 102.]

48.03.025 Examiners—Scope of examination—Examiners' handbook. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate. [1993 c 462 § 44.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.030 Access to records on examination—Correction of accounts. (1) Every person being examined, its officers, employees, and representatives shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in his possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.

(2) If the commissioner finds the accounts to be inadequate, or improperly kept or posted, he may employ experts to rewrite, post or balance them at the expense of the person being examined. [1947 c 79 § .03.03; Rem. Supp. 1947 § 45.03.03.]

48.03.040 Examination reports—Consideration by commissioner—Orders—Confidentiality. (1) No later than sixty days after completion of each examination, the commissioner shall make a full written report of each examination made by him or her containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(2) The report shall be certified by the commissioner or by his or her examiner in charge of the examination, and shall be filed in the commissioner's office subject to subsection (3) of this section.

(3) The commissioner shall furnish a copy of the examination report to the person examined not less than ten days and, unless the time is extended by the commissioner, not more than thirty days prior to the filing of the report for public inspection in the commissioner's office. If such person so requests in writing within such period, the commissioner shall hold a hearing to consider objections of such person to

the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(4) Within thirty days of the end of the period described in subsection (3) of this section, unless extended by order of the commissioner, the commissioner shall consider the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule, or order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation;

(b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile under this section; or

(c) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(5) All orders entered under subsection (4) of this section must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Such an order is considered a final administrative decision and may be appealed under the Administrative Procedure Act, chapter 34.05 RCW, and must be served upon the company by certified mail or certifiable electronic means, together with a copy of the adopted examination report. A copy of the adopted examination report must be sent by certified mail or certifiable electronic means to each director at the director's residence address or to a personal e-mail account.

(6)(a) Upon the adoption of the examination report under subsection (4) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of five days except that the order may be disclosed to the person examined. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(b) Nothing in this title prohibits the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, he or she may initiate any proceedings or actions as provided by law.

(d) Nothing contained in this section requires the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency. [2008 c 100 § 1; 1993

c 462 § 45; 1965 ex.s. c 70 § 1; 1947 c 79 § .03.04; Rem. Supp. 1947 § 45.03.04.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.050 Reports withheld. The commissioner may withhold from public inspection any examination or investigation report for so long as he or she deems it advisable, subject to RCW 48.32.080. [1993 c 462 § 46; 1947 c 79 § .03.05; Rem. Supp. 1947 § 45.03.05.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.060 Examination expense. (1) Examinations within this state of any insurer or self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by the commissioner and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(3) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.

(4) The person examined and liable therefor shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the National Association of Insurance Commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.

The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination are prima facie evidence

in any legal or regulatory action. [2004 c 260 § 23; 1995 c 152 § 2. Prior: 1993 c 462 § 47; 1993 c 281 § 55; 1981 c 339 § 2; 1979 ex.s. c 35 § 1; 1947 c 79 § .03.06; Rem. Supp. 1947 § 45.03.06.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Intent—1995 c 152: "The only intent of the legislature in chapter 152, Laws of 1995 is to correct double amendments. It is not the intent of the legislature to change the substance or effect of any statute previously enacted." [1995 c 152 § 1.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1993 c 281: See note following RCW 41.06.022.

48.03.065 Appointments by commissioner—Examiners—Exceptions. (1) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter. This section does not automatically preclude an examiner from being:

(a) A policyholder or claimant under an insurance policy;

(b) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) An investment owner in shares of regulated diversified investment companies; or

(d) A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of subsection (1) of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter. [1993 c 462 § 48.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.03.070 Witnesses—Subpoenas—Depositions—Oaths. (1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and adjudicative proceedings.

(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(2008 Ed.)

(4) Enforcement of subpoenas shall be in accord with RCW 34.05.588. [1989 c 175 § 112; 1967 c 237 § 15; 1963 c 195 § 1; 1949 c 190 § 2; 1947 c 79 § .03.07; Rem. Supp. 1949 § 45.03.07.]

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

48.03.075 Legal protection for commissioner, authorized representatives, and examiners—Good faith—Attorneys' fees—Payment by commissioner. (1) No cause of action may arise nor may any liability be imposed against the commissioner, the commissioner's authorized representatives, or an examiner appointed by the commissioner for statements made or conduct performed in good faith while carrying out this chapter.

(2) No cause of action may arise nor may any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if that act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) This section does not modify a privilege or immunity previously enjoyed by a person identified in subsection (1) of this section.

(4) A person identified in subsection (1) of this section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other tort arising out of activities in carrying out this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(5) If a claim is made or threatened of the sort described in subsection (1) of this section, the commissioner shall provide or pay for the defense of himself or herself, the examiner or representative, and shall pay a judgment or settlement, until it is determined that the person did not act in good faith or did act with fraudulent intent or the intent to deceive.

(6) The immunity, indemnification, and other protections under this section are in addition to those now or hereafter existing under other law. [1993 c 462 § 49.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.04 RCW HEARINGS AND APPEALS

Sections

48.04.010	Hearings—Waiver—Administrative law judge.
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48.04.030	Place of hearing.
48.04.050	Show cause notice.
48.04.060	Adjourned hearings.
48.04.070	Nonattendance, effect of.
48.04.140	Stay of action on appeal.

48.04.010 Hearings—Waiver—Administrative law judge. (1) The commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The commissioner shall hold a hearing:

(a) If required by any provision of this code; or

(b) Except under RCW 48.13.475, upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

(2) Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

(3) Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, or in the case of a licensee under Title 48 RCW within ninety days after the commissioner has mailed the order to the licensee at the most recent address shown in the commissioner's licensing records for the licensee, the right to such hearing shall conclusively be deemed to have been waived.

(4) If a hearing is demanded by a licensee whose license has been temporarily suspended pursuant to RCW 48.17.540, the commissioner shall hold such hearing demanded within thirty days after receipt of the demand or within thirty days of the effective date of a temporary license suspension issued after such demand, unless postponed by mutual consent.

(5) A licensee under this title may request that a hearing authorized under this section be presided over by an administrative law judge assigned under chapter 34.12 RCW. Any such request shall not be denied.

(6) Any hearing held relating to RCW 48.20.025, 48.44.017, or 48.46.062 shall be presided over by an administrative law judge assigned under chapter 34.12 RCW. [2000 c 221 § 8; 2000 c 79 § 1; 1990 1st ex.s. c 3 § 1; 1988 c 248 § 2; 1967 c 237 § 16; 1963 c 195 § 2; 1947 c 79 § .04.01; Rem. Supp. 1947 § 45.04.01.]

Reviser's note: This section was amended by 2000 c 79 § 1 and by 2000 c 221 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2000 c 79: "Except for sections 26, 38, and 39 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2000]." [2000 c 79 § 51.]

Severability—2000 c 79: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 79 § 48.]

48.04.020 Stay of action. (1) Such demand for a hearing received by the commissioner prior to the effective date of action taken or proposed to be taken by him or her shall stay such action pending the hearing, except as to action taken or proposed

- (a) under an order on hearing, or
- (b) under an order pursuant to an order on hearing, or
- (c) under an order to make good an impairment of the assets of an insurer, or
- (d) under an order of temporary suspension of license issued pursuant to RCW 48.17.540 as now or hereafter amended.

(2) In any case where an automatic stay is not provided for, and if the commissioner after written request therefor fails to grant a stay, the person aggrieved thereby may apply to the superior court for Thurston county for a stay of the commissioner's action.

(3) A stay of action is not available for actions taken by the commissioner under RCW 48.13.475. [2000 c 221 § 9; 1982 c 181 § 2; 1949 c 190 § 3; 1947 c 79 § .04.02; Rem. Supp. 1949 § 45.04.02.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.04.030 Place of hearing. The hearing shall be held at the place designated by the commissioner, and at his discretion it may be open to the public. [1947 c 79 § .04.03; Rem. Supp. 1947 § 45.04.03.]

48.04.050 Show cause notice. If any person is entitled to a hearing by any provision of this code before any proposed action is taken, the notice of the proposed action may be in the form of a notice to show cause stating that the proposed action may be taken unless such person shows cause at a hearing to be held as specified in the notice, why the proposed action should not be taken, and stating the basis of the proposed action. [1947 c 79 § .04.05; Rem. Supp. 1947 § 45.04.05.]

48.04.060 Adjourned hearings. The commissioner may adjourn any hearing from time to time and from place to place without other notice of the adjourned hearing than announcement thereof at the hearing. [1947 c 79 § .04.06; Rem. Supp. 1947 § 45.04.06.]

48.04.070 Nonattendance, effect of. The validity of any hearing held in accordance with the notice thereof shall not be affected by failure of any person to attend or to remain in attendance. [1947 c 79 § .04.07; Rem. Supp. 1947 § 45.04.07.]

48.04.140 Stay of action on appeal. (1) The taking of an appeal shall not stay any action taken or proposed to be taken by the commissioner under the order appealed from unless a stay is granted by the court at a hearing held as part of the proceedings on appeal.

(2) A stay shall not be granted by the court in any case where the granting of a stay would tend to injure the public interest. In granting a stay, the court may require of the person taking the appeal such security or other conditions as it deems proper. [1988 c 248 § 3; 1947 c 79 § .04.14; Rem. Supp. 1947 § 45.04.14.]

Chapter 48.05 RCW

INSURERS—GENERAL REQUIREMENTS

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Unauthorized insurers: Chapter 48.15 RCW.

Unfair practices: Chapter 48.30 RCW.

48.05.010 "Domestic," "foreign," "alien" insurers defined. (1) A "domestic" insurer is one formed under the laws of this state.

(2) A "foreign" insurer is one formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(3) An "alien" insurer is one formed under the laws of a nation other than the United States.

(4) For the purposes of this code, "United States," when used to signify place, means only the states of the United States, the government of Puerto Rico and the District of Columbia. [1961 c 194 § 1; 1947 c 79 § .05.01; Rem. Supp. 1947 § 45.05.01.]

"Insurer" defined: RCW 48.01.050.

48.05.030 Certificate of authority required. (1) No person shall act as an insurer and no insurer shall transact insurance in this state other than as authorized by a certificate of authority issued to it by the commissioner and then in force; except, as to such transactions as are expressly otherwise provided for in this code.

(2) Every certificate of authority shall specify the name of the insurer, the location of its principal office, the name and location of the principal office of its attorney-in-fact if a reciprocal insurer, and the kind or kinds of insurance it is authorized to transact in this state.

(3) The investigation and adjustment of any claim in this state arising under an insurance contract issued by an unauthorized insurer, shall not be deemed to constitute the transacting of insurance in this state. [1947 c 79 § .05.03; Rem. Supp. 1947 § 45.05.03.]

48.05.040 Certificate of authority—Qualifications. To qualify for and hold a certificate of authority an insurer must:

(1) Be a stock, mutual, or reciprocal insurer of the same general type as may be formed as a domestic insurer under the provisions of chapter 48.06 RCW of this code, but this requirement shall not apply as to domestic mutual property insurers which, as of January 1, 1957, were lawfully transacting insurance on the assessment plan; and

(2) Have capital funds as required by this code, based upon the type and domicile of the insurer and the kinds of insurance proposed to be transacted; and

(3) Transact or propose to transact in this state insurances authorized by its charter, and only such insurance as meets the standards and requirements of this code; and

(4) Fully comply with, and qualify according to, the other provisions of this code. [1957 c 193 § 1; 1947 c 79 § .05.04; Rem. Supp. 1947 § 45.05.04.]

48.05.045 Certificate of authority not to be issued to governmentally owned insurer. No certificate of authority shall be issued to or exist with respect to any insurer which is owned and controlled, in whole or in substantial part, by any government or governmental agency. [1957 c 193 § 2.]

48.05.050 "Charter" defined. "Charter" means articles of incorporation, articles of agreement, articles of association of a corporation, or other basic constituent document of a corporation, or subscribers' agreement and attorney-in-fact agreement of a reciprocal insurer. [1947 c 79 § .05.05; Rem. Supp. 1947 § 45.05.05.]

48.05.060 "Capital funds" defined. "Capital funds" means the excess of the assets of an insurer over its liabilities. Capital stock, if any, shall not be deemed to be a liability for the purposes of this section. [1947 c 79 § .05.06; Rem. Supp. 1947 § 45.05.06.]

48.05.070 Application for certificate of authority. To apply for an original certificate of authority an insurer shall:

(1) File with the commissioner its request therefor showing:

(a) Its name, home office location, type of insurer, organization date, and state or country of its domicile.

(b) The kinds of insurance it proposes to transact.

(c) Additional information as the commissioner may reasonably require.

(2) File with the commissioner:

(a) A copy of its charter as amended, certified, if a foreign or alien insurer, by the proper public officer of the state or country of domicile.

(b) A copy of its bylaws, certified by its proper officer.

(c) A statement of its financial condition, management, and affairs on a form satisfactory to or furnished by the commissioner.

(d) If a foreign or alien insurer, or a domestic reciprocal insurer, an appointment of the commissioner as its attorney to receive service of legal process.

(e) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its proper officer.

(f) If a foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly organized and is authorized to transact the kinds of insurance proposed to be transacted.

(g) If a domestic reciprocal insurer, the declaration required by RCW 48.10.090 of this code.

(h) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with the provisions of this code.

(3) Deposit with the commissioner the fees required by this code to be paid for filing the accompanying documents, and for the certificate of authority, if granted. [1947 c 79 § .05.07; Rem. Supp. 1947 § 45.05.07.]

48.05.073 Filing of financial statements. Every insurer holding a certificate of authority from the commissioner shall file its financial statements as required by this code and by the commissioner in accordance with the

accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [1999 c 33 § 1.]

48.05.080 Foreign insurers—Deposit. (1) Prior to the issuance of a certificate of authority to a foreign insurer, it shall make a deposit of assets with the commissioner for the protection of all its policyholders, or of all of its policyholders and obligees or its policyholders and obligees within the United States, in amount and kind, subject to RCW 48.14.040, the same as is required of a like domestic insurer transacting like kinds of insurance.

(2) In lieu of such deposit or part thereof the commissioner may accept the certificate of the public official having supervision over insurers in any other state to the effect that a like deposit by such insurer or like part thereof in equal or greater amount is held in public custody in such state. [1955 c 86 § 1; 1947 c 79 § .05.08; Rem. Supp. 1947 § 45.05.08.]

Effective date—1955 c 86: "This act shall become effective on January 1, 1956." [1955 c 86 § 18.]

Supervision of transfers—1955 c 86: "All transfers authorized under this act shall be made under the supervision of the state auditor." [1955 c 86 § 19.]

48.05.090 Alien insurers—Assets required—Trust deposit. (1) An alien insurer shall not be authorized to transact insurance in this state unless it maintains within the United States assets in amount not less than its outstanding liabilities arising out of its insurance transactions in the United States, nor unless it maintains a trust deposit in an amount not less than the required reserves under its policies resulting from such transactions (after deducting, in the case of a life insurer, the amount of outstanding policy loans on such policies) plus assets equal to the larger of the following sums:

(a) The largest amount of deposit required under this title to be made in this state by any type of domestic insurer transacting like kinds of insurance; or

(b) Two hundred thousand dollars.

(2) The trust deposit shall be for the security of all policyholders or policyholders and obligees of the insurer in the United States. It shall not be subject to diminution below the amount currently determined in accordance with subsection (1) of this section so long as the insurer has outstanding any liabilities arising out of its business transacted in the United States.

(3) The trust deposit shall be maintained with public depositories or trust institutions within the United States approved by the commissioner. [1949 c 190 § 4; 1947 c 79 § .05.09; Rem. Supp. 1949 § 45.05.09.]

48.05.100 Alien insurers—Deposit resolution. An alien insurer shall file with the commissioner a certified copy of the resolution of its governing board by which the trust deposit was established, together with a certified copy of any trust agreement under which the deposit is held. [1947 c 79 § .05.10; Rem. Supp. 1947 § 45.05.10.]

48.05.105 Foreign or alien insurers—Three years active transacting required—Exception. No certificate of authority shall be granted to a foreign or alien applicant that

has not actively transacted for three years the classes of insurance for which it seeks to be admitted; except, the foregoing shall not apply to any subsidiary of a seasoned, reputable insurer that has held a certificate of authority in this state for at least three years. [1967 c 150 § 2.]

48.05.110 Issuance of certificate of authority. If the commissioner finds that an insurer has met the requirements for and is fully entitled thereto under this code, he shall issue to it a proper certificate of authority. If the commissioner does not so find, the authority shall be refused within a reasonable length of time following completion by the insurer of the application therefor. [1947 c 79 § .05.11; Rem. Supp. 1947 § 45.05.11.]

48.05.120 Certificate of authority—Duration, renewal, amendment. (1) All certificates of authority shall continue in force until suspended, revoked, or not renewed. A certificate shall be subject to renewal annually on the first day of July upon application of the insurer and payment of the fee therefor. If not so renewed, the certificate shall expire as of the thirtieth day of June next preceding.

(2) The commissioner may amend a certificate of authority at any time in accordance with changes in the insurer's charter or insuring powers. [1957 c 193 § 3; 1955 c 31 § 1; 1947 c 79 § .05.12; Rem. Supp. 1947 § 45.05.12.]

48.05.130 Certificate of authority—Mandatory refusal, revocation, suspension. The commissioner shall refuse to renew or shall revoke or suspend an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Is a foreign or alien insurer and no longer qualifies or meets the requirements for the authority; or, is a domestic mutual or domestic reciprocal insurer, and fails to make good a deficiency of assets as required by the commissioner.

(2) Is a domestic stock insurer and has assets less in amount than its liabilities, including its capital stock as a liability, and has failed to make good such deficiency as required by the commissioner.

(3) Knowingly exceeds its charter powers or its certificate of authority. [1947 c 79 § .05.13; Rem. Supp. 1947 § 45.05.13.]

48.05.140 Certificate of authority—Discretionary refusal, revocation, suspension. (Effective until July 1, 2009.) The commissioner may refuse, suspend, or revoke an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is mandatory, or fails to comply with any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such condition that its further transaction of insurance in this state would be hazardous to policyholders and the people in this state.

(3) Refuses to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(4) Usually compels claimants under policies either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance in this state without having a certificate of authority therefor, except as is permitted by this code.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any policy, bond, recognition, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in insurance company managerial experience as to make a proposed operation hazardous to the insurance-buying public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance.

(9) Does business through agents or brokers in this state or in any other state who are not properly licensed under applicable laws and duly enacted regulations adopted pursuant thereto. [1973 1st ex.s. c 152 § 1; 1969 ex.s. c 241 § 3; 1967 c 150 § 4; 1947 c 79 § .05.14; Rem. Supp. 1947 § 45.04.14.]

Severability—1973 1st ex.s. c 152: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 152 § 7.]

48.05.140 Certificate of authority—Discretionary refusal, revocation, suspension. (Effective July 1, 2009.) The commissioner may refuse, suspend, or revoke an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer:

(1) Fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is mandatory, or fails to comply with any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such condition that its further transaction of insurance in this state would be hazardous to policyholders and the people in this state.

(3) Refuses to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude.

(4) Usually compels claimants under policies either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another insurer which transacts insurance in this state without having a certificate of authority therefor, except as is permitted by this code.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any policy, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in insurance company managerial experience as to make a proposed operation hazardous to the insurance-buying public; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance.

(9) Does business through insurance producers or title insurance agents in this state or in any other state who are not properly licensed under applicable laws and duly enacted regulations adopted pursuant thereto. [2008 c 217 § 2; 1973 1st ex.s. c 152 § 1; 1969 ex.s. c 241 § 3; 1967 c 150 § 4; 1947 c 79 § .05.14; Rem. Supp. 1947 § 45.04.14.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—1973 1st ex.s. c 152: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 152 § 7.]

48.05.150 Notice of intention to refuse, revoke, or suspend. The commissioner shall give an insurer notice of his intention to suspend, revoke, or refuse to renew its certificate of authority not less than ten days before the order of suspension, revocation or refusal is to become effective; except that no advance notice of intention is required where the order results from a domestic insurer's failure to make good a deficiency of assets as required by the commissioner. [1947 c 79 § .05.15; Rem. Supp. 1947 § 45.05.15.]

48.05.160 Period of suspension. The commissioner shall not suspend an insurer's certificate of authority for a period in excess of one year, and he shall state in his order of suspension the period during which it shall be effective. [1947 c 79 § .05.16; Rem. Supp. 1947 § 45.05.16.]

48.05.170 Reauthorization, limitation upon. No insurer whose certificate of authority has been suspended, revoked, or refused shall subsequently be authorized unless the grounds for such suspension, revocation, or refusal no longer exist and the insurer is otherwise fully qualified. [1947 c 79 § .05.17; Rem. Supp. 1947 § 45.05.17.]

48.05.180 Notice of refusal, revocation, suspension—Effect upon agents' authority. (*Effective until July 1, 2009.*) Upon the suspension, revocation or refusal of an insurer's certificate of authority, the commissioner shall give notice thereof to the insurer and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1947 c 79 § .05.18; Rem. Supp. 1947 § 45.05.18.]

48.05.180 Notice of refusal, revocation, suspension—Effect upon insurance producers' or title insurance agents' authority. (*Effective July 1, 2009.*) Upon the suspension, revocation or refusal of an insurer's certificate of authority, the commissioner shall give notice thereof to the insurer and shall likewise suspend, revoke or refuse the authority of its appointed insurance producers or title insurance agents to represent it in this state and give notice thereof to these insurance producers or title insurance agents. [2008 c 217 § 3; 1947 c 79 § .05.18; Rem. Supp. 1947 § 45.05.18.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.05.185 Fine in addition or in lieu of suspension, revocation, or refusal. After hearing or with the consent of the insurer and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of authority the commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the certificate of authority of the insurer if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1980 c 102 § 1; 1975 1st ex.s. c 266 § 3; 1965 ex.s. c 70 § 3.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.05.190 Name of insurer. (1) Every insurer shall conduct its business in its own legal name.

(2) No insurer shall assume or use a name deceptively similar to that of any other authorized insurer. [1947 c 79 § .05.19; Rem. Supp. 1947 § 45.05.19.]

48.05.200 Commissioner as attorney for service of process—Exception. (1) Each authorized foreign or alien insurer shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as

attorney shall constitute service upon the insurer. Service of legal process against such insurer can be had only by service upon the commissioner, except actions upon contractor bonds pursuant to RCW 18.27.040, where service may be upon the department of labor and industries.

(2) With the appointment the insurer shall designate by name and address the person to whom the commissioner shall forward legal process so served upon him or her. The insurer may change such person by filing a new designation.

(3) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state any contract made by the insurer or liabilities or duties arising therefrom. [1985 c 264 § 3; 1947 c 79 § .05.20; Rem. Supp. 1947 § 45.05.20.]

48.05.210 Service of process—Procedure. (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney shall be served upon him either by a person competent to serve a summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(2) The commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the insurer in its most recent such designation filed with the commissioner.

(3) The commissioner shall keep a record of the day and hour of service upon him of all legal process. No proceedings shall be had against the insurer, and the insurer shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1981 c 339 § 3; 1947 c 79 § .05.21; Rem. Supp. 1947 § 45.05.21.]

48.05.215 Unauthorized foreign or alien insurers—Jurisdiction of state courts—Service of process—Procedure. (1) Any foreign or alien insurer not thereunto authorized by the commissioner, whether it be a surplus lines insurer operating under chapter 48.15 RCW or not, who, by mail or otherwise, solicits insurance business in this state or transacts insurance business in this state as defined by RCW 48.01.060, thereby submits itself to the jurisdiction of the courts of this state in any action, suit or proceeding instituted by or on behalf of an insured, beneficiary or the commissioner arising out of such unauthorized solicitation of insurance business, including, but not limited to, an action for injunctive relief by the commissioner.

(2) In any such action, suit or proceeding instituted by or on behalf of an insured or beneficiary, service of legal process against such unauthorized foreign or alien insurer may be made by service of duplicate copies of legal process on the commissioner by a person competent to serve a summons or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action. The commissioner shall forthwith mail one of the copies of the process, by registered mail with return receipt requested, to the defendant at its last known principal place of business. The defendant insurer shall have forty days from

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the date of the service on the commissioner within which to plead, answer or otherwise defend the action.

(3) In any such action, suit or proceeding by the commissioner, service of legal process against such unauthorized foreign or alien insurer may be made by personal service of legal process upon any officer of such insurer at its last known principal place of business outside the state of Washington. The summons upon such unauthorized foreign or alien insurer shall contain the same requisites and be served in like manner as personal summons within the state of Washington; except, the insurer shall have forty days from the date of such personal service within which to plead, answer or otherwise defend the action. [1981 c 339 § 4; 1967 c 150 § 3.]

48.05.220 Venue of actions against insurer. Suit upon causes of action arising within this state against an insurer upon an insurance contract shall be brought in the county where the cause of action arose. [1947 c 79 § .05.22; Rem. Supp. 1947 § 45.05.22.]

48.05.250 Annual statement. (1) Each domestic insurer shall annually, on or before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of the thirty-first day of December preceding. The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by this code and by the commissioner. The statement shall be verified by the oaths of at least two of the insurer's officers.

(2) The annual statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(3) The commissioner shall suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant. [2006 c 25 § 5; 1983 c 85 § 1; 1947 c 79 § .05.25; Rem. Supp. 1947 § 45.05.25.]

Advertising of financial condition: RCW 48.30.070.

Assets and liabilities: Chapter 48.12 RCW.

False financial statements: RCW 48.30.030.

48.05.270 Alien insurer—Capital funds, determination. (1) The capital funds of an alien insurer shall be deemed to be the amount by which its assets, deposited and otherwise held as provided in RCW 48.05.090 exceed its liabilities with respect to its business transacted in the United States.

(2) Assets of such insurer held in any state for the special protection of policyholders and obligees in such state shall not constitute assets of the insurer for the purposes of this code. Liabilities of the insurer so secured by such assets, but not exceeding the amount of such assets, may be deducted in computing the insurer's liabilities for the purpose of this section. [1947 c 79 § .05.27; Rem. Supp. 1947 § 45.05.27.]

48.05.280 Records and accounts of insurers. Every insurer shall keep full and adequate accounts and records of its assets, obligations, transactions, and affairs. [1947 c 79 § .05.28; Rem. Supp. 1947 § 45.05.28.]

48.05.290 Withdrawal of insurer—Reinsurance. (1) No insurer shall withdraw from this state until its direct liability to its policyholders and obligees under all its insurance contracts then in force in this state has been assumed by another authorized insurer under an agreement approved by the commissioner. In the case of a life insurer, its liability pursuant to contracts issued in this state in settlement of proceeds under its policies shall likewise be so assumed.

(2) The commissioner may waive this requirement if he finds upon examination that a withdrawing insurer is then fully solvent and that the protection to be given its policyholders in this state will not be impaired by the waiver.

(3) The assuming insurer shall within a reasonable time replace the assumed insurance contracts with its own, or by endorsement thereon acknowledge its liability thereunder. [1947 c 79 § .05.29; Rem. Supp. 1947 § 45.05.29.]

48.05.310 General agents, managers—Appointment—Powers—Licensing. *(Effective until July 1, 2009.)*

(1) An insurer appointing any person as its general agent or manager to represent it as such in this state shall file notice of the appointment with the commissioner on forms prescribed and furnished by the commissioner.

(2) Any such general agent or manager shall have such authority, consistent with this code, as may be conferred by the insurer. A general agent resident in this state and licensed, as in this section provided, may exercise the powers conferred by this code upon agents licensed for the kinds of insurance which the general agent is authorized to transact for the insurer so appointing him.

(3) Any such general agent may accept applications for insurance from licensed agents who are not appointed by the insurer of such general agent where the risk involved is placed in a nonstandard or specialty market of an authorized insurer as defined by regulation of the commissioner. Such nonstandard or specialty business shall not be bound by any agent not appointed by the insurer. A general agent may supply such licensed, nonappointed agent with material to write nonstandard or specialty insurance business including, but not limited to, applications for insurance, underwriting criteria, and rates. A general agent shall not provide any licensed, nonappointed agent with indicia of authority to bind an insurance risk and the general agent and nonappointed agent shall provide written disclaimers of binding authority to an applicant or prospective insured in such form as prescribed by the commissioner.

(4) The appointment of a resident general agent shall not be effective unless the person so appointed is licensed as the general agent of such insurer by the commissioner upon application and payment of the fee therefor as provided in RCW 48.14.010.

(5) A general agent’s license and its renewal shall be in accordance with chapter 48.17 RCW as applicable to agents and brokers.

(6) The commissioner may deny, suspend, or revoke any such license for any cause specified in RCW 48.17.530 and in

the manner provided in RCW 48.17.540. [1995 c 338 § 1; 1982 c 181 § 17; 1947 c 79 § .05.31; Rem. Supp. 1947 § 45.05.31.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.320 Reports of fire losses. (1) Each authorized insurer shall promptly report to the chief of the Washington state patrol, through the director of fire protection, upon forms as prescribed and furnished by him or her, each fire loss of property in this state reported to it and whether the loss is due to criminal activity or to undetermined causes.

(2) Each such insurer shall likewise report to the chief of the Washington state patrol, through the director of fire protection, upon claims paid by it for loss or damage by fire in this state. Copies of all reports required by this section shall be promptly transmitted to the state insurance commissioner. [1995 c 369 § 24; 1986 c 266 § 66; 1985 c 470 § 16; 1947 c 79 § .05.32; Rem. Supp. 1947 § 45.05.32.]

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

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

Severability—Effective date—1985 c 470: See notes following RCW 43.44.010.

48.05.330 Insurers—Combination of kinds of insurance authorized—Exceptions.

An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combinations of kinds of insurance as defined in chapter 48.11 RCW, except:

(1) A life insurer may grant annuities and may be authorized to transact in addition only disability insurance; except, that the commissioner may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 13, 1963 was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability insurances and annuity business.

(2) A reciprocal insurer shall not transact life insurance.

(3) A title insurer shall be a stock insurer and shall not transact any other kind of insurance. This provision shall not prohibit the ceding of reinsurance by a title insurer to insurers other than mutual or reciprocal insurers. [1963 c 195 § 6.]

48.05.340 Capital and surplus requirements. (1)

Subject to RCW 48.05.350 to qualify for authority to transact any one kind of insurance as defined in chapter 48.11 RCW or combination of kinds of insurance as set forth in this subsection, a foreign or alien insurer, whether stock or mutual, or a domestic insurer must possess unimpaired paid-in capital stock, if a stock insurer, or unimpaired surplus if a mutual insurer, and additional funds in surplus, as follows, and must thereafter maintain unimpaired a combined total of: (a) The paid-in capital stock if a stock insurer or surplus if a mutual insurer, plus (b) additional funds in surplus equal to the total of the following initial requirements:

Kind or kinds of insurance	Paid-in capital stock or basic surplus	Additional surplus
Life	\$2,000,000	\$2,000,000
Disability	2,000,000	2,000,000
Life and disability	2,400,000	2,400,000
Property	2,000,000	2,000,000

Marine & transportation	2,000,000	2,000,000
General casualty	2,400,000	2,400,000
Vehicle	2,000,000	2,000,000
Surety	2,000,000	2,000,000
Ocean marine and foreign trade	2,000,000	2,000,000
Any two of the following kinds of insurance: Property, marine & transportation, general casualty, vehicle, surety, ocean marine and foreign trade, disability	3,000,000	3,000,000
Multiple lines (all insurances except life and title insurance)	3,000,000	3,000,000
Title	2,000,000	2,000,000

(2) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer wherever it operates or proposes to operate, whether or not only a portion of the kinds are to be transacted in this state.

(3) Until December 31, 1996, a foreign or alien insurer holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for that authority. A domestic insurer, except a title insurer, holding a certificate of authority to transact insurance in this state immediately prior to June 9, 1994, may continue to be authorized to transact the same kinds of insurance as long as it is otherwise qualified for such an authority and thereafter maintains unimpaired the amount of paid-in capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, and special or additional surplus as required of it under laws in force immediately prior to June 9, 1994. A domestic insurer that is acquired or merged must, immediately after completion of an acquisition or merger, meet the capital and surplus requirements of subsection (1) of this section. A domestic insurer, upon attaining the capital and surplus requirements of subsection (1) of this section, may not return to the capital and surplus requirements existing before June 9, 1994. [2007 c 127 § 1; 2005 c 223 § 2; 1995 c 83 § 14; 1994 c 171 § 1; 1993 c 462 § 50; 1991 sp.s. c 5 § 1; 1982 c 181 § 3; 1980 c 135 § 1; 1967 c 150 § 5; 1963 c 195 § 7.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date—1991 sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 5 § 3.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.05.350 General casualty insurer combining disability, fidelity, insurance. An insurer authorized to transact general casualty insurance shall be authorized to transact dis-

ability insurance and fidelity insurance without requiring additional financial qualifications. [1963 c 195 § 8.]

48.05.370 Fiduciary relationship to insurer of officers, directors or corporation holding controlling interest. Officers and directors of an insurer or a corporation holding a controlling interest in an insurer shall be deemed to stand in a fiduciary relation to the insurer, and shall discharge the duties of their respective positions in good faith, and with that diligence, care and skill which ordinary prudent men would exercise under similar circumstances in like positions. [1969 ex.s. c 241 § 1.]

48.05.380 Reports by property and casualty insurers—Rules. The insurance commissioner shall adopt rules requiring insurers who are authorized to write property and casualty insurance in the state of Washington to record and report their Washington state loss and expense experiences and other data, as required by RCW 48.05.390. These rules may not require a report to be submitted by any insurer that has no data or experience to report. [2002 c 22 § 1; 1986 c 148 § 1; 1985 c 238 § 1.]

Effective date—1985 c 238: "The requirements of RCW 48.05.380 and 48.05.390 shall commence with the year-end report for the reporting period ending December 31, 1986. In addition, the data required under RCW 48.05.390 shall be provided for the years 1975 through 1985 and shall be filed with the commissioner on or before March 1, 1986." [1985 c 238 § 3.]

Severability—1985 c 238: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 238 § 4.]

48.05.383 Statement of actuarial opinion—Property and casualty insurance. (1) Every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion." This opinion shall be filed in accordance with the property and casualty annual statement instructions as adopted by the national association of insurance commissioners.

(2) Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the property and casualty annual statement instructions as adopted by the national association of insurance commissioners and shall be considered as a document supporting the actuarial opinion required in subsection (1) of this section.

(3) An insurance company authorized but not domiciled in this state shall provide the actuarial opinion summary upon request.

(4) An actuarial report and underlying work papers as required by the property and casualty annual statement instructions as adopted by the national association of insurance commissioners shall be prepared to support each actuarial opinion.

(5) If the insurance company fails to provide either a supporting actuarial report or work papers, or both, at the request of the commissioner or the commissioner determines that the supporting actuarial report or work papers provided

by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(6) The appointed actuary is not liable for damages to any person, other than the insurance company, the commissioner, or both, for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary. [2006 c 25 § 1.]

Short title—2006 c 25 §§ 1-3: "Sections 1 through 3 of this act may be known and cited as the property and casualty actuarial opinion law." [2006 c 25 § 4.]

Effective date—2006 c 25 §§ 1-4: "Sections 1 through 4 of this act take effect December 31, 2007." [2006 c 25 § 18.]

48.05.385 Statement of actuarial opinion—Property and casualty insurance—Confidentiality. (1) The statement of actuarial opinion shall be provided with the annual statement in accordance with the property and casualty annual statement instructions as adopted by the national association of insurance commissioners and shall be treated as a public document.

(2) Documents, materials or other information in the possession or control of the commissioner that are considered an actuarial report, work papers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the insurance company to the commissioner in connection with the actuarial report, work papers, or actuarial opinion summary, is confidential by law and privileged, is not subject to chapter 42.17 or 42.56 RCW, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

(3) Subsection (2) of this section does not limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and the board establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents. Subsection (2) of this section does not limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(4) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (2) of this section.

(5) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (2) of this section with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and

privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;

(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(6) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (5) of this section. [2006 c 25 § 2.]

Short title—2006 c 25 §§ 1-3: See note following RCW 48.05.383.

Effective date—2006 c 25 §§ 1-4: See note following RCW 48.05.383.

48.05.390 Reports by various insurers—Contents.

(1) The report required by RCW 48.05.380 shall include the types of insurance written by the insurer for policies pertaining to:

(a) Medical malpractice for physicians and surgeons, hospitals, other health care professions, and other health care facilities individually;

(b) Products liability. However, if comparable information is included in the annual statement required by RCW 48.05.250, products liability data must not be reported under RCW 48.05.380;

(c) Attorneys' malpractice;

(d) Architects' and engineers' malpractice;

(e) Municipal liability; and

(f) Day care center liability.

(2) The report shall include the following data by the type of insurance for the previous year ending on the thirty-first day of December:

(a) Direct premiums written;

(b) Direct premiums earned;

(c) Net investment income, including net realized capital gain and losses, using appropriate estimates where necessary;

(d) Incurred claims, development as the sum of the following:

(i) Dollar amount of claims closed with payments; plus

(ii) Reserves for reported claims at the end of the current year; minus

(iii) Reserves for reported claims at the end of the previous year; plus

(iv) Reserves for incurred but not reported claims at the end of the current year; minus

(v) Reserves for incurred but not reported claims at the end of the previous year; plus

(vi) Reserves for loss adjustment expense at the end of the current year; minus

(vii) Reserves for loss adjustment expense at the end of the previous year.

(e) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses;

(f) Net underwriting gain or loss;

(g) Net operation gain or loss, including net investment income; and

(h) Other information requested by the insurance commissioner.

(3) The report shall be filed annually with the commissioner, no later than the first day of May. [1994 c 131 § 7; 1988 c 248 § 6; 1986 c 148 § 2; 1985 c 238 § 2.]

Effective date—Severability—1985 c 238: See notes following RCW 48.05.380.

48.05.400 Annual filing and fee to National Association of Insurance Commissioners—Penalty. (1) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this state shall annually, on or before March 1 of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the commissioner for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners.

(2) Coincident with the filing of its annual statement convention blank and other filings, each such insurer shall pay a reasonable fee directly to the National Association of Insurance Commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement convention blank.

(3) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (1) of this section shall be considered to be in compliance with this section.

(4) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected for the filings required under this section.

(5) The commissioner may suspend, revoke, or refuse to renew the certificate of authority of any insurer failing to file its annual statement or pay the fees when due or within any extension of time which the commissioner, for good cause, may have granted. [1987 c 132 § 1.]

48.05.410 Health care practitioner risk management training. Effective July 1, 1994, each health care provider, facility, or health maintenance organization that self-insures

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for liability risks related to medical malpractice and employs physicians or other independent health care practitioners in Washington state shall condition each physician's and practitioner's liability coverage by that entity upon that physician's or practitioner's participation in risk management training offered by the provider, facility, or health maintenance organization to its employees. The risk management training shall provide information related to avoiding adverse health outcomes resulting from substandard practice and minimizing damages associated with those adverse health outcomes that do occur. For purposes of this section, "independent health care practitioner" means those health care practitioner licensing classifications designated by the department of health in rule pursuant to *RCW 18.130.330. [1993 c 492 § 414.]

***Reviser's note:** RCW 18.130.330 was repealed by 1995 c 265 § 27, effective July 1, 1995.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.05.430 Definitions. As used in RCW 48.05.430 through *48.05.490, these terms have the following meanings:

(1) "RBC" means risk-based capital.

(2) "NAIC" means the national association of insurance commissioners.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign or alien insurer" means any insurance company that is licensed to do business in this state under this chapter but is not domiciled in this state.

(5) "Life and disability insurer" means any insurance company authorized to write only life insurance, disability insurance, or both, as defined in chapter 48.11 RCW.

(6) "Property and casualty insurer" means any insurance company authorized to write only property insurance, marine and transportation insurance, general casualty insurance, vehicle insurance, or any combination thereof, including disability insurance, as defined in chapter 48.11 RCW.

(7) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(8) "Negative trend" means, with respect to a life insurer, a disability insurer, or a life and disability insurer, the negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(9) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with RCW 48.05.435(5).

(10) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC.

(11) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product [of] 1.5 and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(12) "RBC plan" means a comprehensive financial plan containing the elements specified in RCW 48.05.440(2). If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(13) "RBC report" means the report required in RCW 48.05.435.

(14) "Total adjusted capital" means the sum of:

(a) An insurer's statutory capital and surplus as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed under RCW 48.05.250; and

(b) Other items, if any, as the RBC instructions may provide. [1995 c 83 § 1.]

*Reviser's note: RCW 48.05.490 was repealed by 2006 c 25 § 11.

48.05.435 Report of RBC levels—Formula for determining levels—Inaccurate reports adjusted by commissioner. (1) Every domestic insurer shall, on or prior to the filing date, which is hereby established as March 1, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing that information required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(i) Fifteen days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A life and disability insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) The risk with respect to the insurer's assets;

(b) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(c) The interest rate risk with respect to the insurer's business; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account and may adjust for the covariance between:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(4) An excess of capital over the amount produced by the RBC requirements and the formulas, schedules, and instructions under RCW 48.05.430 through *48.05.490 is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the RBC requirements.

(5) If a domestic insurer files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. [1995 c 83 § 2.]

*Reviser's note: RCW 48.05.490 was repealed by 2006 c 25 § 11.

48.05.440 Company action level event—Definition—RBC plan—Commissioner's review. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer indicating that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC;

(ii) If a life and disability insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 2.5 and has a negative trend; or

(iii) If a property and casualty insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and met the trend test determined in accordance with the trend test calculation included in the RBC instructions;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460; or

(c) If, under RCW 48.05.460, an insurer challenges an adjusted RBC report that indicates an event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving

effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under RCW 48.05.460, within forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under RCW 48.05.460, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's rights to a hearing under RCW 48.05.460, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to RCW 48.05.465(1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section. [2006 c 25 § 6; 1995 c 83 § 3.]

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48.05.445 Regulatory action level event—Definition—Commissioner's duties—Corrective actions. (1) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460;

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in RCW 48.05.440(3);

(f) Notification by the commissioner to the insurer that:

(i) The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to the insurer, provided the insurer has not challenged the determination under RCW 48.05.460;

(g) If, under RCW 48.05.460, the insurer challenges a determination by the commissioner under (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the insurer has not challenged the determination under RCW 48.05.460; or

(i) If, under RCW 48.05.460, the insurer challenges a determination by the commissioner under (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform the examination or analysis the commissioner deems necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying those corrective actions the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account those factors deemed relevant with respect to the insurer based upon the commissioner's exami-

nation or analysis of the assets, liabilities, and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken under the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the insurer challenges an adjusted RBC report under RCW 48.05.460, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan under RCW 48.05.460, and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner. [1995 c 83 § 4.]

48.05.450 Authorized control level event—Definition—Commissioner's duties. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the insurer indicating that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460;

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the insurer has not challenged the corrective order under RCW 48.05.460; or

(e) If the insurer has challenged a corrective order under RCW 48.05.460 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take those actions required under RCW 48.05.445 regarding an insurer with respect to which a regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take those actions necessary to cause the insurer to be placed under regulatory control under chapter 48.31

RCW. In the event the commissioner takes these actions, the authorized control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. In the event the commissioner takes actions under this subsection pursuant to an adjusted RBC report, the insurer is entitled to those protections afforded to insurers under RCW 48.31.121 pertaining to summary proceedings. [1995 c 83 § 5.]

48.05.455 Mandatory control level event—Definition—Commissioner's duties. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report indicating that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460; or

(c) If, under RCW 48.05.460, the insurer challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event:

(a) With respect to a life and disability insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(b) With respect to a property and casualty insurer, the commissioner shall take those actions necessary to place the insurer under regulatory control under chapter 48.31 RCW, or, in the case of an insurer that is writing no business and that is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW and the commissioner has the rights, powers, and duties with respect to the insurer as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period. [1995 c 83 § 6.]

48.05.460 Insurer's right to a hearing—Request—Commissioner sets date. (1) Upon notification to an insurer by the commissioner of any of the following, the insurer shall have the right to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which the insurer may challenge any determination or action by the commissioner:

(a) Of an adjusted RBC report; or

(b)(i) That the insurer's RBC plan or revised RBC plan is unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to such insurer; or

(c) That the insurer has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Of a corrective order with respect to the insurer.

(2) The insurer shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under this section. Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten nor more than thirty days after the date of the insurer's request. [1995 c 83 § 7.]

48.05.465 Confidentiality of RBC reports and plans—Use of information for comparative purposes—Use of information to monitor solvency. (Effective until July 1, 2009.) (1) All RBC reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer and any corrective order issued by the commissioner, with respect to any domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not a means to rank insurers generally. Therefore, except as otherwise required under the provisions of RCW 48.05.430 through *48.05.490, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels, or any of them, or an

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inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for rate-making nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write. [1995 c 83 § 8.]

*Reviser's note: RCW 48.05.490 was repealed by 2006 c 25 § 11.

48.05.465 Confidentiality of RBC reports and plans—Use of information for comparative purposes—Use of information to monitor solvency. (Effective July 1, 2009.) (1) All RBC reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of an insurer and any corrective order issued by the commissioner, with respect to any domestic insurer or foreign insurer that are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not a means to rank insurers generally. Therefore, except as otherwise required under the provisions of RCW 48.05.430 through 48.05.485, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any insurer, or of any component derived in the calculation, by any insurer, insurance producer, title insurance agent, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its RBC levels, or any of them, or an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the

insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for rate-making nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or any affiliate is authorized to write. [2008 c 217 § 4; 1995 c 83 § 8.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.05.470 Regulation of capital and surplus requirements is supplemental—Commissioner may grant exemptions. (1) The provisions of RCW 48.05.430 through *48.05.490 are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to, chapter 48.31 RCW.

(2) The commissioner may exempt any domestic property and casualty insurer from RCW 48.05.430 through *48.05.490, if the insurer:

- (a) Writes direct business only in this state;
- (b) Writes direct annual premiums of two million dollars or less; and
- (c) Assumes no reinsurance in excess of five percent of direct premiums written. [1995 c 83 § 9.]

***Reviser's note:** RCW 48.05.490 was repealed by 2006 c 25 § 11.

48.05.475 RBC report from foreign or alien insurers—Request of commissioner—Commissioner's options.

(1) Any foreign or alien insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended by the later of:

- (a) The date an RBC report would be required to be filed by a domestic insurer under RCW 48.05.435; or
- (b) Fifteen days after the request is received by the foreign or alien insurer. Any foreign or alien insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign or alien insurer as determined under the RBC statute applicable in the state of domicile of the insurer or, if no RBC statute is in force in that state, under the provisions of RCW 48.05.430 through *48.05.490, if the insurance commissioner of the state of domicile of the foreign or alien insurer fails to require the foreign or alien insurer to file an RBC plan in the manner specified under that state's RBC statute, the commissioner may require the foreign or alien insurer to file an RBC plan. In this event, the failure of the foreign or alien insurer to file an RBC plan is grounds to order the insurer to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign or alien insurer, if no domiciliary receiver has been appointed with respect to the foreign or alien insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign or alien insurer, the commissioner may apply for an order under RCW 48.31.080 or 48.31.090 to conserve the assets within this state of foreign or alien insurers, and the occurrence of the mandatory control level event is considered adequate grounds for the application. [1995 c 83 § 10.]

***Reviser's note:** RCW 48.05.490 was repealed by 2006 c 25 § 11.

48.05.480 No liability for regulation of capital and surplus requirements. There is no liability on the part of, and no cause of action may arise against, the commissioner or insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under RCW 48.05.430 through *48.05.490. [1995 c 83 § 11.]

***Reviser's note:** RCW 48.05.490 was repealed by 2006 c 25 § 11.

48.05.485 Notices by commissioner—When effective. All notices by the commissioner to an insurer that may result in regulatory action are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission are effective upon the insurer's receipt of the notice. [1995 c 83 § 12.]

48.05.510 Disclosure of certain material transactions—Insurer's report—Information is confidential. (1) Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.05.515 through 48.05.535 are exempt from public inspection and copying and are not subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, shareholders, or the public will be served by the publication, in which event

the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 1.]

48.05.515 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported under RCW 48.05.510 if the acquisitions or dispositions are not material. For purposes of RCW 48.05.510 through 48.05.535, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 2.]

48.05.520 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.05.510 through 48.05.535 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such a purpose.

(2) Asset dispositions subject to RCW 48.05.510 through 48.05.535 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether the assignment is for the benefit of creditors or otherwise. [1995 c 86 § 3.]

48.05.525 Report of a material acquisition or disposition of assets—Information required. (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (a) Date of the transaction;
- (b) Manner of acquisition or disposition;
- (c) Description of the assets involved;
- (d) Nature and amount of the consideration given or received;
- (e) Purpose of or reason for the transaction;
- (f) Manner by which the amount of consideration was determined;
- (g) Gain or loss recognized or realized as a result of the transaction; and
- (h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such an insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. [1995 c 86 § 4.]

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48.05.530 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.05.510 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.05.510 through 48.05.535, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a property and casualty insurer's total ceded written premium;
- (b) More than fifty percent of the property and casualty insurer's total ceded indemnity and loss adjustment reserves;
- (c) More than fifty percent of a nonproperty and casualty insurer's total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement;
- (d) More than ten percent of an insurer's total cession when it is replaced by one or more unauthorized reinsurers; or

(e) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if:

(a) A property and casualty insurer's total ceded written premium represents, on an annualized basis, less than ten percent of its total written premium for direct and assumed business; or

(b) A nonproperty and casualty insurer's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 5.]

48.05.535 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (a) The effective date of the nonrenewal, cancellation, or revision;
- (b) The description of the transaction with an identification of the initiator;
- (c) The purpose of or reason for the transaction; and
- (d) If applicable, the identity of the replacement reinsurers.

(2) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer has ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. [1995 c 86 § 6.]

48.05.900 Severability—1995 c 83. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 83 § 15.]

Chapter 48.06 RCW

ORGANIZATION OF DOMESTIC INSURERS

Sections

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48.06.200	Incorporation, articles of—Contents.

48.06.010 Types of domestic insurers permitted. An insurer formed in this state shall be either

- (1) An incorporated stock insurer, or
- (2) An incorporated mutual insurer, or
- (3) An incorporated specific risks mutual property insurer, or
- (4) An incorporated mutual assessment property insurer only, or
- (5) An incorporated farm mutual assessment property insurer only, or
- (6) A reciprocal insurer, with respective powers, duties, and restrictions as provided in this code. [1947 c 79 § .06.01; Rem. Supp. 1947 § 45.06.01.]

48.06.020 Assessment mutuals prohibited—Exceptions. No insurer shall be formed or be authorized in this state to issue contracts of insurance the performance of which is contingent upon the payment of assessments, assessment premiums, or calls made upon its members. Mutual assessment property insurers and farm mutual assessment property insurers shall be the only exception to this provision. [1947 c 79 § .06.02; Rem. Supp. 1947 § 45.06.02.]

48.06.030 Solicitation permit. (1) No person forming or proposing to form in this state an insurer, or insurance holding corporation, or stock corporation to finance an insurer or insurance production therefor, or corporation to manage an insurer, or corporation to be attorney-in-fact for a reciprocal insurer, or a syndicate for any of such purposes, shall advertise, or solicit or receive any funds, agreement, stock subscription, or membership on account thereof unless he or she has applied for and has received from the commissioner a solicitation permit.

(2) Any person violating this section is guilty of a class B felony and shall be subject to a fine of not more than ten

thousand dollars or imprisonment for not more than ten years, or by both fine and imprisonment. [2003 c 53 § 267; 1947 c 79 § .06.03; Rem. Supp. 1947 § 45.06.03.]

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

48.06.040 Application for solicitation permit. To apply for a solicitation permit the person shall:

- (1) File with the commissioner a request showing:
 - (a) Name, type, and purpose of insurer, corporation, or syndicate proposed to be formed;
 - (b) Names, addresses, fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, and business records of each person associated or to be associated in the formation of the proposed insurer, corporation, or syndicate;
 - (c) Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the proposed insurer, corporation, or syndicate, or the formation thereof;
 - (d) The plan according to which solicitations are to be made; and
 - (e) Additional information as the commissioner may reasonably require.

- (2) File with the commissioner:
 - (a) Original and copies in triplicate of proposed articles of incorporation, or syndicate agreement; or, if the proposed insurer is a reciprocal, original and duplicate of the proposed subscribers' agreement and attorney-in-fact agreement;
 - (b) Original and duplicate copy of any proposed bylaws;
 - (c) Copy of any security proposed to be issued and copy of application or subscription agreement for that security;
 - (d) Copy of any insurance contract proposed to be offered and copy of application for that contract;
 - (e) Copy of any prospectus, advertising, or literature proposed to be used; and
 - (f) Copy of proposed form of any escrow agreement required.

(3) Deposit with the commissioner the fees required by law to be paid for the application including fees associated with the state and national criminal history background check, for filing of the articles of incorporation of an insurer, for filing the subscribers' agreement and attorney-in-fact agreement if the proposed insurer is a reciprocal, for the solicitation permit, if granted, and for filing articles of incorporation with the secretary of state. [2002 c 227 § 1; 1967 c 150 § 6; 1947 c 79 § .06.04; Rem. Supp. 1947 § 45.06.04.]

Effective date—2002 c 227: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 227 § 6.]

48.06.050 Procedure upon application. The commissioner shall expeditiously examine the application for a solicitation permit and make any investigation relative thereto deemed necessary. If the commissioner finds that

- (1) the application is complete; and
- (2) the documents therewith filed are equitable in terms and proper in form; and

(3) the management of the company, whether by its directors, officers, or by any other means is competent and trustworthy and not so lacking in managerial experience as to make a proposed operation hazardous to the insurance-buying public; and that there is no reason to believe the company is affiliated, directly or indirectly, through ownership, control, reinsurance, or other insurance or business relations, with any other person or persons whose business operations are or have been marked, to the detriment of the policyholders or stockholders or investors or creditors or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance; and

(4) the agreements made or proposed are equitable to present and future shareholders, subscribers, members or policyholders, he shall give notice to the applicant that he will issue a solicitation permit, stating the terms to be contained therein, upon the filing of the bond required by RCW 48.06.110 of this code.

If the commissioner does not so find, he shall give notice to the applicant that the permit will not be granted, stating the grounds therefor, and shall refund to the applicant all sums so deposited except the application fee. [1967 c 150 § 7; 1947 c 79 § .06.05; Rem. Supp. 1947 § 45.06.05.]

48.06.060 Issuance of permit—Bond. Upon the filing of the bond required by RCW 48.06.110 after notice by the commissioner, the commissioner shall:

(1) File the articles of incorporation of the proposed incorporated insurer or other corporation; and

(2) Issue to the applicant a solicitation permit. [1998 c 23 § 1; 1947 c 79 § .06.06; Rem. Supp. 1947 § 45.06.06.]

48.06.070 Duration of permit—Contents. Every solicitation permit issued by the commissioner shall:

(1) Be for a period of not over two years, subject to the right of the commissioner to grant a reasonable extension for good cause.

(2) State the securities for which subscriptions are to be solicited, the number, classes, par value, and selling price thereof, or identify the insurance contract for which applications and advance premiums or deposits are to be solicited.

(3) Limit the portion of funds received on account of stock or syndicate subscriptions, if any are proposed to be taken, which may be used for promotion and organization expenses to such amount as he deems adequate, but in no event to exceed fifteen percent of such funds as and when actually received.

(4) If to be a mutual or reciprocal insurer, limit the portion of funds received on account of applications for insurance which may be used for promotion or organization expenses to a reasonable commission upon such funds, giving consideration to the kind of insurance and policy involved and to the costs incurred by insurers generally in the production of similar business, and provide that no such commission shall be deemed to be earned nor be paid until the insurer has received its certificate of authority and the policies applied for and upon which such commission is to be based, have been actually issued and delivered.

(5) Contain such other information required by this chapter or reasonable conditions relative to accounting and reports

or otherwise as the commissioner deems necessary. [1953 c 197 § 1; 1947 c 79 § .06.07; Rem. Supp. 1947 § 45.06.07.]

48.06.080 Permit as inducement. The granting of a solicitation permit is permissive only and shall not constitute an endorsement by the commissioner of any person or thing related to the proposed insurer, corporation, or syndicate and the existence of the permit shall not be advertised or used as an inducement in any solicitation. The substance of this section in bold faced type not less than ten point shall be printed at the top of each solicitation permit. [1947 c 79 § .06.08; Rem. Supp. 1947 § 45.06.08.]

48.06.090 Solicitors' licenses. Solicitation for sale of securities to members of the public under a solicitation permit shall be made only by individuals licensed therefor pursuant to the provisions of the securities act. [1949 c 190 § 5; 1947 c 79 § .06.09; Rem. Supp. 1949 § 45.06.09.]

48.06.100 Modification, revocation of permit. (1) The commissioner may, for cause, modify a solicitation permit, or may, after a hearing, revoke any solicitation permit for violation of any provision of this code, or of the terms of the permit, or of any proper order of the commissioner, or for misrepresentation.

(2) The commissioner shall revoke a solicitation permit if requested in writing by a majority of the syndicate members, or by a majority of the incorporators and two-thirds of the subscribers to stock or applicants for insurance in the proposed incorporated insurer or corporation, or if he is so requested by a majority of the subscribers of a proposed reciprocal insurer. [1947 c 79 § .06.10; Rem. Supp. 1947 § 45.06.10.]

48.06.110 Bond—Cash deposit. (1) The commissioner shall not issue a solicitation permit until the person applying therefor files with him a corporate surety bond in the penalty of fifty thousand dollars, in favor of the state and for the use and benefit of the state and of subscribers and creditors of the proposed organization.

The bond shall be conditioned upon the payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the proposed organization before completion of organization or in event a certificate of authority is not granted; and upon a full accounting for funds received until the proposed insurer has been granted its certificate of authority, or until the proposed corporation or syndicate has completed its organization as defined in the solicitation permit.

(2) In lieu of filing such bond, the person may deposit with the commissioner fifty thousand dollars in cash or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond.

(3) The commissioner may waive the requirement for a bond or deposit in lieu thereof if the permit provides that:

(a) The proposed securities are to be distributed solely and finally to those few persons who are the active promoters intimate to the formation of the insurer, or other corporation or syndicate, or

(b) The securities are to be issued in connection with subsequent financing as provided in RCW 48.06.180.

(4) Any bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement or termination of all liabilities against it. [1969 ex.s. c 241 § 2; 1955 c 86 § 2; 1953 c 197 § 2; 1947 c 79 § .06.11; Rem. Supp 1947 § 45.06.11.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.06.120 Escrow of funds. (1) All funds received pursuant to a solicitation permit shall be deposited and held in escrow in a bank or trust company under an agreement approved by the commissioner. No part of any such deposit shall be withdrawn, except:

(a) For the payment of promotion and organization expenses as authorized by the solicitation permit; or

(b) for the purpose of making any deposit with the commissioner required for the issuance of a certificate of authority to an insurer; or

(c) if the proposed organization is not to be an insurer, upon completion of payments on stock or syndicate subscriptions made under the solicitation permit and deposit or appropriation of such funds to the purposes specified in the solicitation permit; or

(d) for making of refunds as provided in RCW 48.06.170.

(2) When the commissioner has issued a certificate of authority to an insurer any such funds remaining in escrow for its account shall be released to the insurer. [1947 c 79 § .06.12; Rem. Supp. 1947 § 45.06.12.]

48.06.130 Liability of organizers—Organization expense. (1) The incorporators of any insurer or other corporation, or the persons proposing to form a reciprocal insurer, or a syndicate, shall be jointly and severally liable for its debts or liabilities until it has secured a certificate of authority, if an insurer, or has completed its organization if a corporation other than an insurer or a syndicate.

(2) Any portion of funds received on account of stock or syndicate subscriptions which is allowed therefor under the solicitation permit, may be applied concurrently toward the payment of promotion and organization expense theretofore incurred. [1947 c 79 § .06.13; Rem. Supp. 1947 § 45.06.13.]

48.06.150 Payment for subscriptions—Forfeiture.

(1) No such proposed stock insurer, corporation, or syndicate shall issue any share of stock or participation agreement except for payment in cash or in securities eligible for investment of funds of insurers. No such shares or agreement shall be issued until all subscriptions received under the solicitation permit have been so fully paid, nor, if an insurer, until a certificate of authority has been issued to it.

(2) Every subscription contract to shares of a stock insurer or other corporation calling for payment in installments, together with all amounts paid thereon may be forfeited at the option of the corporation, upon failure to make good a delinquency in any installment upon not less than forty-five days' notice in writing, and every such contract

shall so provide. [1947 c 79 § .06.15; Rem. Supp. 1947 § 45.06.15.]

48.06.160 Insurance applications—Mutual and reciprocal insurers. All applications for insurance obtained in forming a mutual or reciprocal insurer shall provide that:

(1) Issuance of the policy is contingent upon completion of organization of the insurer and issuance to it of a certificate of authority; and

(2) the prepaid premium or deposit will be refunded in full to the applicant if the organization is not completed and certificate of authority issued prior to the solicitation permit's date of expiration; and

(3) the agreement for insurance is not effective until a policy has been issued under it. [1947 c 79 § .06.16; Rem. Supp. 1947 § 45.06.16.]

48.06.170 Procedure on failure to complete organization or to qualify. The commissioner shall withdraw all funds held in escrow and refund to subscribers or applicants all sums paid in on stock or syndicate subscriptions, less that part of such sums paid in on subscriptions as has been allowed and used for promotion and organization expenses, and all sums paid in on insurance applications, and shall dissolve the proposed insurer, corporation or syndicate if

(1) the proposed insurer, corporation or syndicate fails to complete its organization and obtain full payment for subscriptions and applications, and, if an insurer, it fails to secure its certificate of authority, all before expiration of the solicitation permit; or

(2) the commissioner revokes the solicitation permit. [1947 c 79 § .06.17; Rem. Supp. 1947 § 45.06.17.]

48.06.180 Subsequent financing. (1) No domestic insurer, or insurance holding corporation, or stock corporation for financing operations of a mutual insurer, or attorney-in-fact corporation of a reciprocal insurer, after

(a) it has received a certificate of authority, if an insurer, or

(b) it has completed its initial organization and financing if a corporation other than an insurer, shall solicit or receive funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied to the commissioner for, and has been granted, a solicitation permit.

(2) The commissioner shall issue such a permit unless he finds that:

(a) The funds proposed to be secured are excessive in amount for the purpose intended, or

(b) the proposed securities or the manner of their distribution are inequitable, or

(c) the issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporation.

(3) Any such solicitation permit granted by the commissioner shall be for such duration, and shall contain such terms and be issued upon such conditions as the commissioner may reasonably specify or require. [1949 c 190 § 6; 1947 c 79 § .06.18; Rem. Supp. 1949 § 45.06.18.]

48.06.190 Penalty for exhibiting false accounts, etc.

Every person who, with intent to deceive, knowingly exhibits any false account, or document, or advertisement, relative to the affairs of any insurer, or of any corporation or syndicate of the kind enumerated in RCW 48.06.030, formed or proposed to be formed, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 268; 1947 c 79 § .06.19; Rem. Supp. 1947 § 45.06.19.]

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

48.06.200 Incorporation, articles of—Contents. (1)

This section applies to insurers incorporated in this state, but no insurer heretofore lawfully incorporated in this state is required to reincorporate or change its articles of incorporation by reason of any provisions of this section.

(2) The incorporators shall be individuals who are United States citizens, of whom two-thirds shall be residents of this state. The number of incorporators shall be not less than five if a stock insurer, nor less than ten if a mutual insurer.

(3) The incorporators shall execute articles of incorporation in duplicate, acknowledge their signatures thereunto before an officer authorized to take acknowledgments of deeds, and file both copies with the commissioner.

(4) After approval of the articles by the commissioner, one copy shall be filed in the office of the commissioner and the other copy shall be returned to the insurer.

(5) The articles of incorporation shall state:

First: The names and addresses of the incorporators.

Second: The name of the insurer. If a mutual insurer the name shall include the word "mutual."

Third: (a) The objects for which the insurer is formed;

(b) whether it is a stock or mutual insurer, and if a mutual property insurer only, whether it will insure on the cash premium or assessment plan;

(c) the kinds of insurance it will issue, according to the designations made in this code.

Fourth: If a stock insurer, the amount of its capital, the aggregate number of shares, and the par value of each share, which par value shall be not less than ten dollars, except that after the corporation has transacted business as an authorized insurer in the state for five years or more, its articles of incorporation may be amended, at the option of its stockholders, to provide for a par value of not less than one dollar per share. If a mutual insurer, the maximum contingent liability of its policyholders for the payment of its expenses and losses occurring under its policies.

Fifth: The duration of its existence, which may be perpetual.

Sixth: The names and addresses of the directors, not less than five in number, who shall constitute the board of directors of the insurer for the initial term, not less than two nor more than six months, as designated in the articles of incorporation.

Seventh: The name of the city or town of this state in which the insurer's principal place of business is to be located.

Eighth: Other provisions not inconsistent with law as may be deemed proper by the incorporators. [1998 c 23 § 2;

(2008 Ed.)

1981 c 302 § 37; 1963 c 60 § 1; 1949 c 190 § 7; 1947 c 79 § .06.20; Rem. Supp. 1949 § 45.06.20.]

Severability—1981 c 302: See note following RCW 19.76.100.

Chapter 48.07 RCW**DOMESTIC INSURERS—POWERS**

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48.07.010	Application of code to existing insurers.
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48.07.050	Directors—Qualifications—Removal.
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48.07.180	Continuing operation in event of national emergency—Directors.
48.07.190	Continuing operation in event of national emergency—Officers.
48.07.200	Continuing operation in event of national emergency—Principal office and place of business.
48.07.210	Conversion to domestic insurer.

Business corporations: Title 23B RCW.

Dissolution and winding up business corporation: Chapter 23B.14 RCW.

Interlocking ownership, management: RCW 48.30.250.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

48.07.010 Application of code to existing insurers.

Existing authorized domestic insurers shall continue to insure only in accordance with the provisions of this code. [1947 c 79 § .07.01; Rem. Supp. 1947 § 45.07.01.]

48.07.020 Principal office. Every domestic insurer shall establish and maintain in this state its principal office and place of business. [1947 c 79 § .07.02; Rem. Supp. 1947 § 45.07.02.]

48.07.030 Application of general corporation laws.

The laws of this state relating to private corporations, except where inconsistent with the express provisions of this code, shall govern the corporate powers, duties, and relationships of incorporated domestic insurers and insurance holding corporations formed under the laws of the state of Washington. [1985 c 364 § 1; 1947 c 79 § .07.03; Rem. Supp. 1947 § 45.07.03.]

Severability—1985 c 364: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 364 § 5.]

Provisions as to general business corporations: Title 23B RCW.

48.07.040 Annual, special meetings. Each incorporated domestic insurer shall hold an annual meeting of its shareholders or members at such time and place as may be stated in or fixed in accordance with its bylaws for the pur-

pose of receiving reports of its affairs and to elect directors. Each domestic insurance holding corporation shall hold an annual meeting of its shareholders at such time and place as may be stated in or fixed in accordance with its bylaws. Special meetings of the shareholders of an incorporated domestic insurer or domestic insurance holding corporation shall be called and held by such persons and in such a manner as stated in the articles of incorporation or bylaws. [2002 c 300 § 5; 1985 c 364 § 2; 1965 ex.s. c 70 § 4; 1947 c 79 § .07.04; Rem. Supp. 1947 § 45.07.04.]

Severability—1985 c 364: See note following RCW 48.07.030.

48.07.050 Directors—Qualifications—Removal. Not less than three-fourths of the directors of an incorporated domestic insurer shall be United States or Canadian citizens, and a majority of the board of directors of a mutual life insurer shall be residents of this state. The directors of a domestic insurer or domestic insurance holding corporation may be removed with cause by a vote of a majority of its voting capital stock or members (if a mutual insurer) at a valid meeting and said directors may be removed without cause by a vote of sixty-seven percent of its voting capital stock or members (if a mutual insurer) at a valid meeting. [1989 c 24 § 1; 1985 c 364 § 3; 1957 c 193 § 21; 1947 c 79 § .07.05; Rem. Supp. 1947 § 45.07.05.]

Severability—1985 c 364: See note following RCW 48.07.030.

48.07.060 Corrupt practices—Penalty. No person shall buy or sell or barter a vote or proxy, relative to any meeting of shareholders or members of an incorporated domestic insurer, or engage in any corrupt or dishonest practice in or relative to the conduct of any such meeting. Violation of this section shall constitute a gross misdemeanor. [1947 c 79 § .07.06; Rem. Supp. 1947 § 45.07.06.]

48.07.070 Amendment of articles of incorporation.

(1) Unless a vote of a greater proportion of directors or shares is required by its articles of incorporation, amendments to the articles of incorporation of a domestic insurer or a domestic insurance holding corporation shall be made by a majority vote of its board of directors and the vote or written assent of a majority of its voting capital stock, or two-thirds of the members (if a mutual insurer) voting at a valid meeting of members.

(2) The president and secretary of the insurer shall, under the corporate seal, certify the amendment in duplicate, and file both copies in the office of the commissioner as required under this code for original articles of incorporation. Thereupon, subject to the requirements of RCW 48.08.010 relative to increase of capital stock of a stock insurer, the amendment shall become effective. [1998 c 23 § 3; 1985 c 364 § 4; 1981 c 302 § 38; 1947 c 79 § .07.07; Rem. Supp. 1947 § 45.07.07.]

Severability—1985 c 364: See note following RCW 48.07.030.

Severability—1981 c 302: See note following RCW 19.76.100.

48.07.080 Guarantee of officers' obligations prohibited. No domestic insurer or its affiliates or subsidiaries shall guarantee the financial obligation of any director or officer of such insurer or affiliate or subsidiary in his personal capacity, and any such guaranty attempted shall be void.

This prohibition shall not apply to obligations of the insurer under surety bonds or insurance contracts issued in the regular course of business. [1947 c 79 § .07.08; Rem. Supp. 1947 § 45.07.08.]

48.07.100 Vouchers for expenditures. (1) No domestic insurer shall make any disbursement of twenty-five dollars or more, unless evidenced by a voucher correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

(2) If the disbursement is for services and reimbursement, the voucher shall describe the services and itemize the expenditures.

(3) If the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher shall also correctly describe the nature of the matter and of the insurer's interest therein. [1947 c 79 § .07.10; Rem. Supp. 1947 § 45.07.10.]

48.07.110 Depositaries. The funds of a domestic insurer shall not be deposited in any bank or banking institution which has not first been approved as a depository by the insurer's board of directors or by a committee thereof designated for the purpose. [1947 c 79 § .07.11; Rem. Supp. 1947 § 45.07.11.]

48.07.130 Pecuniary interest of officer or director, restrictions upon.

(1) No person having any authority in the investment or disposition of the funds of a domestic insurer and no officer or director of an insurer shall accept, except for the insurer, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of insurance or of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the insurer, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the insurer direct upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the insurer's funds under this code.

(2) This section does not prohibit a life insurer from making a policy loan to such person on a life insurance contract issued by it and in accordance with the terms thereof.

(3) The commissioner may permit additional exceptions to the prohibition contained in subsection (1) of this section to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director or such corporation or firm.

In addition, the commissioner may permit exceptions to the prohibitions contained in subsection (1) of this section where the payment of a fee, brokerage, gift, commission, or other emolument is fully disclosed to the insurer's officers and directors and is reasonable in relation to the service performed. [1989 c 228 § 1; 1981 c 339 § 5; 1947 c 79 § .07.13; Rem. Supp. 1947 § 45.07.13.]

48.07.140 Compliance with foreign laws. Any domestic insurer doing business in another state, territory or sovereignty may design and issue insurance contracts and transact insurance in such state, territory or sovereignty as required or permitted by the laws thereof, any provision of the insurer's articles of incorporation or bylaws notwithstanding. [1947 c 79 § .07.14; Rem. Supp. 1947 § 45.07.14.]

48.07.150 Solicitations in other states. (1) No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which it is not then licensed as an authorized insurer.

(2) This section shall not prohibit advertising through publications and radio broadcasts originating outside such reciprocating state, if the insurer is licensed in a majority of the states in which such advertising is disseminated, and if such advertising is not specifically directed to residents of such reciprocating state.

(3) This section shall not prohibit insurance, covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed. Nor shall it prohibit insurance effectuated by the insurer as an unauthorized insurer in accordance with the laws of the reciprocating state. Nor shall it prohibit renewal or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section.

(4) A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and is enforced against insurers domiciled in that state.

(5) The commissioner shall suspend or revoke the certificate of authority of a domestic insurer found by him, after a hearing, to have violated this section. [1988 c 248 § 4; 1947 c 79 § .07.15; Rem. Supp. 1947 § 45.07.15.]

48.07.160 Continuing operation in event of national emergency—Declaration of purpose—"Insurer" defined. It is desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants and others that the business of domestic insurers be continued notwithstanding the event of a national emergency. The purpose of this section and RCW 48.07.170 through 48.07.200 is to facilitate the continued operation of domestic insurers in the event that a national emergency is caused by an attack on the United States which is so disruptive of normal business and commerce in this state as to make it impossible or impracticable for a domestic insurer to conduct its business in accord with applicable provisions of law, its bylaws, or its charter. When used in this section and RCW 48.07.170 through 48.07.200 the word "insurer" includes a fraternal benefit society. [1963 c 195 § 25.]

48.07.170 Continuing operation in event of national emergency—Emergency bylaws. The board of directors of any domestic insurer may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for such insurer, which shall be operative during such a national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes, or of such insurer's charter, make any provision that may be reasonably neces-

sary for the operation of such insurer during the period of such emergency. [1963 c 195 § 26.]

48.07.180 Continuing operation in event of national emergency—Directors. In the event that the board of directors of a domestic insurer has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a national emergency as above described:

(1) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.

(2) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(3) If there are no surviving directors, but at least three vice presidents of such insurer survive, the three vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation. By majority vote, such emergency board of directors may elect other directors. If there are not at least three surviving vice presidents, the commissioner or duly designated person exercising the powers of the commissioner shall appoint three persons as directors who shall include any surviving vice presidents and who shall possess all of the powers of the previous board of directors and such powers as are granted herein or by subsequently enacted legislation, and these persons by majority vote may elect other directors. [1963 c 195 § 27.]

48.07.190 Continuing operation in event of national emergency—Officers. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency and in the event of the death or incapacity of the president, the secretary, or the treasurer of such insurer, such officers, or any of them, shall be succeeded in the office by the person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised. [1963 c 195 § 28.]

48.07.200 Continuing operation in event of national emergency—Principal office and place of business. At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a national emergency the principal office and place of business of such insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference. [1963 c 195 § 29.]

48.07.210 Conversion to domestic insurer. (1)(a) Any insurer duly organized under the laws of any other state and admitted to transact insurance business in this state may become a domestic insurer upon complying with all requirements of law for the organization of a domestic insurer in this state and by designating its principal place of business at a location in this state. Such domestic insurer is entitled to a certificate of authority to transact insurance in this state, sub-

ject to the conditions set forth in (b) of this subsection, and is subject to the authority and the jurisdiction of this state.

(b) Before being eligible to become a domestic insurer under this section, an admitted insurer shall advise the commissioner, in writing, thirty days in advance of the proposed date of its plan to become a domestic insurer. The commissioner must approve the plan in advance of the proposed date. The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, the commissioner finds that the plan is consistent with law, and that no reasonable objection to the plan exists. If the commissioner fails to approve the plan, the commissioner shall state his or her reasons for failure to approve the plan in an order issued at the hearing.

(2) After providing thirty days' advance written notice of its plan to the commissioner and upon the written approval of the commissioner in advance of the proposed transfer date, any domestic insurer of this state may transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon transfer of domicile, the insurer ceases to be a domestic insurer of this state. If otherwise qualified under the laws of this state, the commissioner shall admit the insurer to do business in this state as a foreign insurer. The commissioner shall approve any proposed transfer of domicile unless the commissioner determines after a hearing, pursuant to such notice as the commissioner may require, that the transfer is not in the best interests of the public or the insurer's policyholders in this state. If the commissioner fails to approve a proposed transfer of domicile, the commissioner shall state his or her reasons for failure to approve the transfer in an order issued at the hearing.

(3) When a foreign insurer, admitted to transact business in this state, transfers its corporate domicile to this state or to any other state, the certificate of authority, appointment of statutory agent, and all approved licenses, policy forms, rates, filings, and other authorizations and approvals in existence at the time the foreign insurer transfers its corporate domicile shall continue in effect.

(4) Any insurer transferring its corporate domicile under this section shall file any amendments to articles of incorporation, bylaws, or other corporate documents that are required to be filed in this state before the insurer may receive approval of its proposed plan by the commissioner. [1988 c 248 § 5.]

Chapter 48.08 RCW

DOMESTIC STOCK INSURERS

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48.08.160	Equity security—Exemptions—Securities registered or required to be, or no class held by one hundred or more persons.
48.08.170	Equity security—Rules and regulations.
48.08.190	Failure to file required information, documents, or reports—Forfeiture.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Superadded liability of shareholders of domestic stock insurance companies: State Constitution Art. 12 § 11.

48.08.010 Increase of capital stock. (1) Increase of the capital stock of a domestic stock insurer shall be by amendment to its articles of incorporation.

(2) If the increased capital stock is to be distributed as a stock dividend, such increased capital stock may be fully paid in out of any available surplus funds as is provided in RCW 48.08.030, and such payment shall be effected by a transfer on the insurer's books from its surplus account to its capital account.

(3) When the increased capital has been fully paid in, a certificate to such effect shall be made in quadruplicate under oath and the corporate seal by the insurer's president and secretary and filed in the public offices named in RCW 48.07.070. [1953 c 197 § 4; 1947 c 79 § .08.01; Rem. Supp. 1947 § 45.08.01.]

48.08.020 Reduction of capital stock. (1) Reduction of the capital stock of a domestic stock insurer shall be by amendment of its articles of incorporation. No such reduction shall be made which results in capital stock less in amount than the minimum required by this code for the kinds of insurance thereafter to be transacted by the insurer.

(2) No surplus funds of the insurer resulting from a reduction of its capital stock shall be distributed to stockholders, except as a stock dividend on a subsequent increase of capital stock, or upon dissolution of the insurer, or upon approval of the commissioner of a distribution upon proof satisfactory to him that the distribution will not impair the interests of policyholders or the insurer's solvency.

(3) Upon such reduction of capital stock, the insurer's directors shall call in any outstanding stock certificates required to be changed pursuant thereto, and issue proper certificates in their stead. [1947 c 79 § .08.02; Rem. Supp. 1947 § 45.08.02.]

48.08.030 Dividends to stockholders. (1) No domestic stock insurer shall pay any cash dividend to stockholders except out of earned surplus. For the purpose of this section, "earned surplus" means that part of its available surplus funds which is derived from any realized net profits on its business, and does not include unrealized capital gains or reevaluation of assets.

(2) Such an insurer may pay a stock dividend out of any available surplus funds.

(3) Payment of any dividend to stockholders of a domestic stock insurer shall also be subject to all the limitations and requirements governing the payment of dividends by other private corporations.

(4) No dividend shall be declared or paid which would reduce the insurer's surplus to an amount less than the minimum required for the kinds of insurance thereafter to be transacted.

(5) For the purposes of this chapter "surplus funds" means the excess of the insurer's assets over its liabilities, including its capital stock as a liability.

(6) Available surplus means the excess over the minimum amount of surplus required for the kinds of insurance the insurer is authorized to transact. [1993 c 462 § 52; 1947 c 79 § .08.03; Rem. Supp. 1947 § 45.08.03.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.08.040 Illegal dividends, reductions—Penalty against directors. Any director of a domestic stock insurer who votes for or concurs in the declaration or payment of any dividend to stockholders or a reduction of capital stock not authorized by law shall, in addition to any other liability imposed by law, be guilty of a gross misdemeanor. [1947 c 79 § .08.04; Rem. Supp. 1947 § 45.08.04.]

48.08.050 Impairment of capital. (1) If the capital stock of a domestic stock insurer becomes impaired, the commissioner shall at once determine the amount of the deficiency and serve notice upon the insurer to require its stockholders to make good the deficiency within ninety days after service of such notice.

(2) The deficiency shall be made good in cash, or in assets eligible under this code for the investment of the insurer's funds, or by reduction of the insurer's capital stock to an amount not below the minimum required for the kinds of insurance to be thereafter transacted.

(3) If the deficiency is not made good and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(4) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violation of this provision shall be subject to a fine of from fifty dollars to one thousand dollars for each violation. [1947 c 79 § .08.05; Rem. Supp. 1947 § 45.08.05.]

48.08.060 Repayment of contributions to surplus. Contributions to the surplus of a domestic stock insurer other than resulting from sale of its capital stock, shall not be subject to repayment except out of surplus in excess of the minimum surplus initially required of such an insurer transacting like kinds of insurance. [1947 c 79 § .08.06; Rem. Supp. 1947 § 45.08.06.]

48.08.070 Participating policies. (1) Any domestic stock insurer may, if its charter so provides, issue policies entitled to participate from time to time in the earnings of the insurer through dividends.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable

or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No such insurer shall issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged.

(4) Dividends to participating life insurance policies issued by such insurer shall be paid only out of its surplus funds as defined in subsection (5) of RCW 48.08.030. Dividends to participating policies for other kinds of insurance shall be paid only out of that part of such surplus funds which is derived from any realized net profits from the insurer's business.

(5) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. [1947 c 79 § .08.07; Rem. Supp. 1947 § 45.08.07.]

48.08.080 Mutualization of stock insurers. (1) Any domestic stock insurer may become a domestic mutual insurer pursuant to such plan and procedure as are approved by the commissioner in advance of such mutualization.

(2) The commissioner shall not approve any such plan, procedure, or mutualization unless:

(a) It is equitable to both shareholders and policyholders.

(b) It is approved by vote of the holders of not less than three-fourths of the insurer's capital stock having voting rights, and by vote of not less than two-thirds of the insurer's policyholders who vote on such plan, pursuant to such notice and procedure as may be approved by the commissioner. Such vote may be registered in person, by proxy, or by mail.

(c) If a life insurer, the right to vote thereon is limited to those policyholders whose policies have face amounts of not less than one thousand dollars and have been in force one year or more.

(d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair value thereof as determined by competent disinterested appraisers.

(e) The plan provides for appraisal and purchase of the shares of any nonconsenting stockholder in accordance with the laws of this state relating to the sale or exchange of all the assets of a private corporation.

(f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective.

(g) The mutualization leaves the insurer with surplus funds reasonably adequate to preserve the security of its policyholders and its ability to continue successfully in business in the states in which it is then authorized, and in the kinds of insurance it is then authorized to transact. [1947 c 79 § .08.08; Rem. Supp. 1947 § 45.08.08.]

48.08.090 Stockholder meetings—Duty to inform stockholders of matters to be presented—Proxies. (1) This section shall apply to all domestic stock insurers except:

(a) A domestic stock insurer having less than one hundred stockholders; except, that if ninety-five percent or more of the insurer's stock is owned or controlled by a parent or

affiliated insurer, this section shall not apply to such insurer unless its remaining shares are held by five hundred or more stockholders.

(b) Domestic stock insurers which file with the Securities and Exchange Commission forms of proxies, consents and authorizations pursuant to the Securities and Exchange Act of 1934, as amended.

(2) Every such insurer shall seasonably furnish its stockholders in advance of stockholder meetings, information in writing reasonably adequate to inform them relative to all matters to be presented by the insurer's management for consideration of stockholders at such meeting.

(3) No person shall solicit a proxy, consent, or authorization in respect of any stock of such an insurer unless he furnishes the person so solicited with written information reasonably adequate as to

(a) the material matters in regard to which the powers so solicited are proposed to be used, and

(b) the person or persons on whose behalf the solicitation is made, and the interest of such person or persons in relation to such matters.

(4) No person shall so furnish to another, information which the informer knows or has reason to believe, is false or misleading as to any material fact, or which fails to state any material fact reasonably necessary to prevent any other statement made from being misleading.

(5) The form of all such proxies shall:

(a) Conspicuously state on whose behalf the proxy is solicited;

(b) Provide for dating the proxy;

(c) Impartially identify each matter or group of related matters intended to be acted upon;

(d) Provide means for the principal to instruct the vote of his shares as to approval or disapproval of each matter or group, other than election to office; and

(e) Be legibly printed, with context suitably organized.

Except, that a proxy may confer discretionary authority as to matters as to which choice is not specified pursuant to item (d), above, if the form conspicuously states how it is intended to vote the proxy or authorization in each such case; and may confer discretionary authority as to other matters which may come before the meeting but unknown for a reasonable time prior to the solicitation by the persons on whose behalf the solicitation is made.

(6) No proxy shall confer authority (a) to vote for election of any person to any office for which a bona fide nominee is not named in the proxy statement, or (b) to vote at any annual meeting (or adjournment thereof) other than the annual meeting next following the date on which the proxy statement and form were furnished stockholders.

(7) The commissioner shall have authority to make and promulgate reasonable rules and regulations for the effectuation of this section, and in so doing shall give due consideration to rules and regulations promulgated for similar purposes by the insurance supervisory officials of other states. [1965 ex.s. c 70 § 5.]

Exemption from federal registration: 15 U.S.C. §78 l(g)(2)(G).

48.08.100 Equity security—Defined. The term "equity security" when used in RCW 48.08.100 through

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48.08.160 means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security. [1965 ex.s. c 70 § 11.]

48.08.110 Equity security—Duty to file statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall file with the commissioner on or before the 30th day of September, 1965, or within ten days after he becomes such beneficial owner, director or officer, a statement, in such form as the commissioner may prescribe, of the amount of all equity securities of such insurer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. [1965 ex.s. c 70 § 6.]

48.08.120 Equity security—Profits from short term transactions—Remedies—Limitation of actions. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such insurer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter: PROVIDED, That no such suit shall be brought more than two years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section. [1965 ex.s. c 70 § 7.]

Exemption from federal registration: 15 U.S.C. §78 l(g)(2)(G).

48.08.130 Equity security—Sales, unlawful practices. It shall be unlawful for any such beneficial owner,

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director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his principal (1) does not own the security sold, or (2) if owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation: PROVIDED, That no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [1965 ex.s. c 70 § 8.]

48.08.140 Equity security—Exemptions—Sales by dealer. The provisions of RCW 48.08.120 shall not apply to any purchase and sale, or sale and purchase, and the provisions of RCW 48.08.130 shall not apply to any sale of an equity security of a domestic stock insurer not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [1965 ex.s. c 70 § 9.]

48.08.150 Equity security—Exemptions—Foreign or domestic arbitrage transactions. The provisions of RCW 48.08.110, 48.08.120 and 48.08.130 shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of RCW 48.08.100 through 48.08.160. [1965 ex.s. c 70 § 10.]

48.08.160 Equity security—Exemptions—Securities registered or required to be, or no class held by one hundred or more persons. The provisions of RCW 48.08.110, 48.08.120, and 48.08.130 shall not apply to equity securities of a domestic stock insurer if (1) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (2) such domestic stock insurer shall not have any class of its equity securities held of record by one hundred or more persons on the last business day of the year next preceding the year in which equity securities of the insurer would be subject to the provisions of RCW 48.08.110, 48.08.120, and 48.08.130 except for the provisions of this subsection (2). [1965 ex.s. c 70 § 12.]

48.08.170 Equity security—Rules and regulations. The commissioner shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him by RCW 48.08.100 through 48.08.160, and may for such purpose classify domestic stock insurers, securities, and other persons or matters within his jurisdiction. No provision of RCW 48.08.110, 48.08.120, and

48.08.130 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1965 ex.s. c 70 § 13.]

48.08.190 Failure to file required information, documents, or reports—Forfeiture. Any person who fails to file information, documents, or reports required to be filed under chapter 241, Laws of 1969 ex. sess. or any rule or regulation thereunder shall forfeit to the state of Washington the sum of one hundred dollars for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under this title, shall be payable to the treasurer of the state of Washington and shall be recoverable in a civil suit in the name of the state of Washington. [1969 ex.s. c 241 § 18.]

Chapter 48.09 RCW MUTUAL INSURERS

Sections

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Dividends not to be guaranteed: RCW 48.30.100.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.09.010 Initial qualifications. (1) The commissioner shall not issue a certificate of authority to a domestic mutual insurer unless it has fully qualified therefor under this code, and unless it has met the minimum requirements for the kind of insurance it proposes to transact as provided in this chapter.

(2) All applications for insurance submitted by such an insurer as fulfilling qualification requirements shall be bona fide applications from persons resident in this state covering lives, property, or risks resident or located in this state.

(3) All qualifying premiums collected and initial surplus funds of such an insurer shall be in cash. Any deposit made by such an insurer in lieu of applications, premiums, and initial surplus funds, shall be in cash or in securities eligible for the investment of the capital of a domestic stock insurer transacting the same kind of insurance. [1947 c 79 § .09.01; Rem. Supp. 1947 § 45.09.01.]

48.09.090 Additional kinds of insurance. A domestic mutual insurer may be authorized to transact kinds of insurance in addition to that for which it was originally authorized, if it has otherwise complied with the provisions of this code therefor, and while it possesses and maintains surplus funds in aggregate amount not less than the minimum amount of capital and surplus required under this code of a domestic stock insurer authorized to transact like kinds of insurance pursuant to RCW 48.05.340. [1980 c 135 § 2; 1957 c 193 § 5; 1947 c 79 § .09.09; Rem. Supp. 1947 § 45.09.09.]

48.09.100 Minimum surplus. A domestic mutual insurer on the cash premium plan shall at all times have and maintain surplus funds, representing the excess of its assets over its liabilities, in amount not less than the aggregate of

(1) the amount of any surplus funds deposited by it with the commissioner to qualify for its original certificate of authority, and

(2) the amount of any additional surplus required of it pursuant to RCW 48.09.090 for authority to transact additional kinds of insurance. [1963 c 195 § 3; 1947 c 79 § .09.10; Rem. Supp. 1947 § 45.09.10.]

48.09.110 Membership. (1) Each holder of one or more insurance contracts issued by a domestic mutual insurer, other than a contract of reinsurance, is a member of the insurer, with the rights and obligations of such membership, and each insurance contract so issued shall effectively so stipulate.

(2) Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee or fiduciary, may be a member of a mutual insurer. [1947 c 79 § .09.11; Rem. Supp. 1947 § 45.09.11.]

48.09.120 Rights of members. (1) A domestic mutual insurer is owned by and shall be operated in the interest of its members.

(2) Each member is entitled to one vote in the election of directors and on matters coming before corporate meetings of members, subject to such reasonable minimum requirements as to duration of membership and amount of insurance held as may be made in the insurer's bylaws. The person named as the policyholder in any group insurance policy issued by such insurer shall be deemed the member, and shall have but one such vote regardless of the number of individuals insured by such policy.

(3) With respect to the management, records, and affairs of the insurer, a member shall have the same character of rights and relationship as a stockholder has toward a domestic stock insurer. [1947 c 79 § .09.12; Rem. Supp. 1947 § 45.09.12.]

48.09.130 Bylaws. A domestic mutual insurer shall adopt bylaws for the conduct of its affairs. Such bylaws, or any modification thereof, shall forthwith be filed with the commissioner. The commissioner shall disapprove any such bylaws, or as so modified, if he finds after a hearing thereon, that it is not in compliance with the laws of this state, and he shall forthwith communicate such disapproval to the insurer. No such bylaw, or modification, so disapproved shall be effective during the existence of such disapproval. [1947 c 79 § .09.13; Rem. Supp. 1947 § 45.09.13.]

48.09.140 Notice of annual meeting. (1) Notice of the time and place of the annual meeting of members of a domestic mutual insurer shall be given by imprinting such notice plainly on the policies issued by the insurer.

(2) Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change may be given:

(a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or

(b) Unless the commissioner otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four months immediately following such meeting. [1947 c 79 § .09.14; Rem. Supp. 1947 § 45.09.14.]

48.09.150 Voting—Proxies. (1) A member of a domestic mutual insurer may vote in person or by proxy given another member on any matter coming before a corporate meeting of members.

(2) An officer of the insurer shall not hold or vote the proxy of any member.

(3) No such proxy shall be valid beyond the earlier of the following dates:

(a) The date of expiration set forth in the proxy; or

(b) the date of termination of membership; or

(c) five years from the date of execution of the proxy.

(4) No member's vote upon any proposal to divest the insurer of its business and assets, or the major part thereof, shall be registered or taken except in person or by a proxy newly executed and specific as to the matter to be voted upon. [1947 c 79 § .09.15; Rem. Supp. 1947 § 45.09.15.]

48.09.160 Directors—Disqualification. No individual shall be a director of a domestic mutual insurer by reason of his holding public office. Adjudication as a bankrupt or taking the benefit of any insolvency law or making a general assignment for the benefit of creditors disqualifies an individual from being or acting as a director. [1947 c 79 § .09.16; Rem. Supp. 1947 § 45.09.16.]

48.09.180 Limitation of expenses as to property and casualty insurance. (1) For any calendar year after its first two full calendar years of operation, no domestic mutual insurer on the cash premium plan, other than one issuing non-assessable policies, shall incur any costs or expense in the writing or administration of property, disability, and casualty

insurances (other than boiler and machinery or elevator) transacted by it which, exclusive of losses paid, loss adjustment expenses, investment expenses, dividends, and taxes exceeds the sum of

(a) forty percent of the net premium income during that year after deducting therefrom net earned reinsurance premiums for such year, plus

(b) all of the reinsurance commissions received on reinsurance ceded by it.

(2) The bylaws of every domestic mutual property insurer on the assessment premium plan shall impose a reasonable limitation upon its expenses. [1949 c 190 § 8; 1947 c 79 § .09.18; Rem. Supp. 1949 § 45.09.18.]

48.09.190 Procedure upon violation of limitation.

The officers and directors of an insurer violating RCW 48.09.180 shall be jointly and severally liable to the insurer for any excess of expenses incurred. If the insurer fails to exercise reasonable diligence or refuses to enforce such liability, the commissioner may prosecute action thereon for the benefit of the insurer. Such failure or refusal constitutes grounds for revocation of the insurer's certificate of authority. [1947 c 79 § .09.19; Rem. Supp. 1947 § 45.09.19.]

48.09.210 Limitation of action on officer's salary. No action to recover, or on account of, any salary or other compensation due or claimed to be due any officer or director of a domestic mutual insurer, or on any note or agreement relative thereto, shall be brought against such insurer after twelve months after the date on which such salary or compensation, or any installment thereof, first accrued. [1947 c 79 § .09.21; Rem. Supp. 1947 § 45.09.21.]

48.09.220 Contingent liability of members. (1) Each member of a domestic mutual insurer, except as otherwise provided in this chapter, shall have a contingent liability, pro rata and not one for another, for the discharge of its obligations. The contingent liability shall be in such maximum amount as is stated in the insurer's articles of incorporation, but shall be not less than one, nor more than five, additional premiums for the member's policy at the annual premium rate and for a term of one year.

(2) Every policy issued by the insurer shall contain a statement of the contingent liability.

(3) Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force. [1949 c 190 § 9; 1947 c 79 § .09.22; Rem. Supp. 1949 § 45.09.22.]

48.09.230 Assessment of members. (1) If at any time the assets of a domestic mutual insurer doing business on the cash premium plan are less than its liabilities and the minimum surplus, if any, required of it by this code as prerequisite for continuance of its certificate of authority, and the deficiency is not cured from other sources, its directors may, if approved by the commissioner, make an assessment only on its members who at any time within the twelve months immediately preceding the date such assessment was authorized by its directors held policies providing for contingent liability.

(2) Such an assessment shall be for such an amount of money as is required, in the opinion of the commissioner, to render the insurer fully solvent, but not to result in surplus in excess of five percent of the insurer's liabilities as of the date of the assessment.

(3) A member's proportionate part of any such assessment shall be computed by applying to the premium earned, during the period since the deficiency first appeared, on his contingently liable policy or policies the ratio of the total assessment to the total premium earned during such period on all contingently liable policies which are subject to the assessment.

(4) No member shall have an offset against any assessment for which he is liable on account of any claim for unearned premium or losses payable. [1949 c 190 § 10; 1947 c 79 § .09.23; Rem. Supp. 1949 § 45.09.23.]

48.09.235 Issuing a capital call—Notice—Insurer's duties—Rules.

(1) In addition to authority granted by RCW 48.09.220 and 48.09.230, a domestic mutual insurer meeting all the requirements of this section may increase its surplus by issuing a capital call. A capital call requires policyholders or applicants for insurance to pay a sum, in addition to premium, to be eligible to renew a policy or be issued a new policy. A policyholder that does not pay the amount of a call cannot be cancelled or denied the benefits of an existing policy.

(2) Prior to issuing a capital call, the insurer must have:

(a) Adopted articles of incorporation or other organizational documents authorizing capital calls; and

(b) For any capital call issued on or after January 1, 2006, included information concerning the insurer's authority to issue a capital call in the policy of every policyholder. This information must be provided at least one full policy renewal cycle prior to a capital call.

(3) The insurer must notify the commissioner of its intent to issue a capital call at least ninety days prior to the capital call. The notice to the commissioner must include:

(a) A statement of each of the following:

(i) The specific purpose or purposes of the capital call;

(ii) The total amount intended to be raised by issuance of the capital call;

(iii) The amount intended to be raised for each stated purpose;

(iv) The grounds relied upon by the insurer in deciding that the capital call is the best option available to the insurer for raising capital; and

(v) Each of the alternative methods of raising capital the insurer considered and the reasons the insurer rejected each alternative in favor of the capital call;

(b) For the ten years immediately preceding the filing of the notice, a year by year accounting of:

(i) All rate filings and actions;

(ii) The total of all underwriting losses; and

(iii) The total amount of dividends paid to policyholders; and

(c) A complete application for a solicitation permit as required in RCW 48.06.030.

(4) Before an insurer may issue a capital call, the insurer must:

(a) Notify the commissioner and provide information as required in subsection (3) of this section;

(b) Provide any and all additional information that the commissioner may determine is useful or necessary in evaluating the merits of the proposed capital call;

(c) Receive approval of the policy or insuring instrument from the commissioner; and

(d) Receive approval of the commissioner for the capital call and the solicitation permit.

The commissioner may disapprove a capital call if he or she does not believe it is in the best interest of the insurer, the policyholders, or the citizens of the state of Washington. In making this determination, the commissioner may consider the financial health of the insurer, the impact on the marketplace, the possible use of other means to raise capital, the frequency of previous capital calls by the insurer, the effect of raising premiums instead of a capital call, the impact on state revenue, or any other factor the commissioner deems proper.

(5) The funds raised by an approved capital call are not premiums for the purposes of RCW 48.14.020.

(6) The commissioner may adopt rules to implement this section. [2004 c 89 § 2.]

Effective date—2004 c 89 § 2: "Section 2 of this act takes effect January 1, 2006." [2004 c 89 § 4.]

Effective date—2004 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 89 § 5.]

48.09.240 Contingent liability of members of assessment insurer. The contingent liability of members of a domestic mutual insurer doing business on the assessment premium plan shall be called upon and enforced by its directors as provided in its bylaws. [1947 c 79 § .09.24; Rem. Supp. 1947 § 45.09.24.]

48.09.250 Contingent liability as asset. Any contingent liability of members of a domestic mutual insurer to assessment does not constitute an asset of the insurer in any determination of its financial condition. [1949 c 190 § 11; 1947 c 79 § .09.25; Rem. Supp. 1949 § 45.09.25.]

48.09.260 Liability as lien on policy reserves. As to life insurance, any portion of an assessment of contingent liability upon a policyholder which remains unpaid following notice of such assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner, be secured by placing a lien on the reserves held by the insurer to the credit of such policyholder. [1949 c 190 § 12; 1947 c 79 § .09.26; Rem. Supp. 1949 § 45.09.26.]

48.09.270 Nonassessable policies. (1) A domestic mutual insurer on the cash premium plan, after it has established a surplus not less in amount than the minimum capital funds required of a domestic stock insurer to transact like kinds of insurance, and for so long as it maintains such surplus, may extinguish the contingent liability of its members to assessment and omit provisions imposing contingent liability in all policies currently issued.

(2) Any deposit made with the commissioner as a prerequisite to the insurer's certificate of authority may be included as part of the surplus required in this section.

(3) When the surplus has been so established and the commissioner has so ascertained, he shall issue to the insurer, at its request, his certificate authorizing the extinguishment of the contingent liability of its members and the issuance of policies free therefrom.

(4) While it maintains surplus funds in amount not less than the minimum capital required of a domestic stock insurer authorized to transact like kinds of insurance, and subject to the requirements of *RCW 48.05.360 as to special surplus, a foreign or alien mutual insurer on the cash premium plan may, if consistent with its charter and the laws of its domicile, issue nonassessable policies covering subjects located, resident, or to be performed in this state. [1963 c 195 § 4; 1947 c 79 § .09.27; Rem. Supp. 1947 § 45.09.27.]

***Reviser's note:** RCW 48.05.360 was repealed by 2005 c 223 § 35.

48.09.280 Qualification on issuance of nonassessable policies. The commissioner shall not authorize a domestic mutual insurer so to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which such an insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its members as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1947 c 79 § .09.28; Rem. Supp. 1947 § 45.09.28.]

48.09.290 Revocation of right to issue nonassessable policies. (1) The commissioner shall revoke the authority of a domestic mutual insurer so to extinguish the contingent liability of its members if

(a) at any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or

(b) the insurer, by resolution of its directors approved by its members, requests that the authority be revoked.

(2) Upon revocation of such authority for any cause, the insurer shall not thereafter issue any policies without contingent liability, nor renew any policies then in force without written endorsement thereon providing for contingent liability. [1947 c 79 § .09.29; Rem. Supp. 1947 § 45.09.29.]

48.09.300 Dividends. (1) The directors of a domestic mutual insurer on the cash premium plan may from time to time apportion and pay to its members as entitled thereto, dividends only out of that part of its surplus funds which are in excess of its required minimum surplus and which represent net realized savings and net realized earnings from its business.

(2) Any classification of its participating policies and of risks assumed thereunder which the insurer may make shall be reasonable. No dividend shall be paid which is inequitable, or which unfairly discriminates as between such classifications or as between policies within the same classification.

(3) No dividend, otherwise earned, shall be made contingent upon the payment of renewal premium on any policy. [1947 c 79 § .09.30; Rem. Supp. 1947 § 45.09.30.]

48.09.310 Nonparticipating policies. (1) If its articles of incorporation so provide, a domestic mutual insurer on the cash premium plan may, while it is authorized to issue policies without contingent liability to assessment, issue policies not entitled to participate in the insurer's savings and earnings.

(2) Such insurer shall not issue in this state both participating and nonparticipating policies for the same class of risks; except, that both participating and nonparticipating life insurance policies may be issued if the right or absence of the right to participate is reasonably related to the premium charged. [1947 c 79 § .09.31; Rem. Supp. 1947 § 45.09.31.]

48.09.320 Borrowed capital. (1) A domestic mutual insurer may, with the commissioner's advance approval and without the pledge of any of its assets, borrow money to defray the expenses of its organization or for any purpose required by its business, upon an agreement that such money and such fair and reasonable interest thereon as may be agreed upon, shall be repaid only out of the insurer's earned surplus in excess of its required minimum surplus.

(2) An insurer borrowing funds under this section must comply with the national association of insurance commissioner's - accounting practices and procedures manual which sets forth requirements for borrowed money to be treated as surplus notes for financial accounting purposes.

(3) The commissioner's approval of such borrowed funds, if granted, shall specify the amount to be borrowed, the purpose for which the money is to be used, the terms and form of the loan agreement, the date by which the loan must be completed, fair and reasonable commissions or promotional expenses to be incurred or to be paid, and such other related matters as the commissioner shall deem proper. If the money is to be borrowed upon multiple agreements, the agreements shall be serially numbered. No loan agreement or series thereof shall have or be given any preferential rights over any other such loan agreement or series. [2003 c 249 § 1; 1947 c 79 § .09.32; Rem. Supp. 1947 § 45.09.32.]

48.09.330 Repayment of borrowed capital. (1) The insurer may repay any loan received pursuant to RCW 48.09.320, or any part thereof as approved by the commissioner, only out of its funds which represent such loan or realized net earned surplus. No repayment shall be made which reduces the insurer's surplus below the minimum surplus required for the kinds of insurance transacted.

(2) The insurer shall repay any such loan or the largest possible part thereof when the purposes for which such funds were borrowed have been fulfilled and when the insurer's surplus is adequate to so repay without unreasonable impairment of the insurer's operations.

(3) No repayment of such loan shall be made unless approved by the commissioner. The insurer shall notify the commissioner in writing not less than sixty days in advance of its intention to repay such loan or any part thereof, and the commissioner shall forthwith ascertain whether the insurer's

financial condition is such that the repayment can properly be made.

(4) Upon dissolution and liquidation of the insurer, after the retirement of all its other outstanding obligations the holders of any such loan agreements then remaining unpaid shall be entitled to payment before any distribution of surplus is made to the insurer's members. [1949 c 190 § 13; 1947 c 79 § .09.33; Rem. Supp. 1949 § 45.09.33.]

48.09.340 Impairment of surplus. (1) If the assets of a domestic mutual insurer on the cash premium plan fall below the amount of its liabilities, plus the amount of any surplus required by this code for the kinds of insurance authorized to be transacted, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the insurer to cure the deficiency within ninety days after such service of notice.

(2) If the deficiency is not made good in cash or in assets eligible under this code for the investment of the insurer's funds, and proof thereof filed with the commissioner within such ninety-day period, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If the deficiency is not made good the insurer shall not issue or deliver any policy after the expiration of such ninety-day period. Any officer or director who violates or knowingly permits the violating of this provision shall be subject to a fine of from fifty dollars to one thousand dollars for each violation. [1949 c 190 § 14; 1947 c 79 § 09.34; Rem. Supp. 1949 § 45.09.34.]

48.09.350 Reorganization of mutual as stock insurer—Reinsurance—Approval. (1) Upon satisfaction of the requirements applicable to the formation of a domestic stock insurer, a domestic mutual insurer may be reorganized as a stock corporation, pursuant to a plan of reorganization as approved by the commissioner.

(2) A domestic mutual insurer may be wholly reinsured in and its assets transferred to and its liabilities assumed by another mutual or stock insurer under such terms and conditions as are approved by the commissioner in advance of such reinsurance.

(3) The commissioner shall not approve any such reorganization plan or reinsurance agreement which does not determine the amount of and make adequate provision for paying to members of such mutual insurer, reasonable compensation for their equities as owners of such insurer, such compensation to be apportioned to members as identified and in the manner prescribed in RCW 48.09.360. The procedure for approval by the commissioner of any such reorganization plan or reinsurance agreement shall be the same as the procedure for approval by the commissioner of a plan of merger or consolidation under RCW 48.31.010.

Approval at a corporate meeting of members by two-thirds of the then members of a domestic mutual insurer who vote on the plan or agreement pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of any such reorganization plan or reinsurance agreement by the insurer's members. [1984 c 23 § 1; 1983 1st ex.s. c 32 § 1; 1947 c 79 § .09.35; Rem. Supp. 1947 § 45.09.35.]

48.09.360 Distribution of assets and ownership equities upon liquidation. (1) Upon the liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness and policy obligations shall be distributed to its members who were such within the thirty-six months prior to the last termination of its certificate of authority.

(2) Upon the reorganization of a domestic mutual insurer as a domestic stock insurer under RCW 48.09.350(1) or upon reinsurance of the whole of the liabilities and transfer of all the assets of a domestic mutual insurer under RCW 48.09.350(2), the ownership equities of members of the domestic mutual insurer shall be distributed to its members who were such on an eligibility date stated in the reorganization plan or reinsurance agreement, or who were such within the thirty-six months prior to such eligibility date. Such eligibility date shall be either the date on which the reorganization plan or reinsurance agreement is adopted by resolution of the board of directors of the domestic mutual insurer, or the date on which the reorganization plan or reinsurance agreement is approved by a vote of the members, or the date which ends a calendar quarter during which either of such actions is taken.

(3) Upon the liquidation of a domestic mutual insurer, the distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the thirty-six months before the last termination of the insurer's certificate of authority, bear to the aggregate of all premiums so earned on the policies of all such members during the same thirty-six months.

(4) Upon the reorganization of a domestic mutual insurer as a domestic stock insurer under RCW 48.09.350(1) or upon reinsurance of the whole of the liabilities and transfer of all the assets of a domestic mutual insurer under RCW 48.09.350(2), the distributive share of each member entitled thereto shall be in the proportion that the aggregate premiums earned by the insurer on the policies in force of that member during the thirty-six months before the eligibility date established under RCW 48.09.360(2) bear to the aggregate of all premiums so earned during the same thirty-six months on all the policies in force of all such members who are entitled to a distributive share.

(5) If a life insurer, the insurer shall make a reasonable classification of its life insurance policies so held by such members entitled to a distributive share and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the commissioner's approval. [1984 c 23 § 2; 1947 c 79 § .09.36; Rem. Supp. 1947 § 45.09.36.]

Chapter 48.10 RCW RECIPROCAL INSURERS

Sections

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48.10.330	Merger—Conversion to stock or mutual insurer.
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Dividends not to be guaranteed: RCW 48.30.100.

Merger or consolidation: RCW 48.31.010.

Organization of domestic insurers: Chapter 48.06 RCW.

Policy dividends are payable to real party in interest: RCW 48.18.340.

48.10.010 "Reciprocal insurance" defined. "Reciprocal insurance" is that resulting from an interexchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interexchange being effectuated through an "attorney-in-fact" common to all such persons. [1947 c 79 § .10.01; Rem. Supp. 1947 § 45.10.01.]

48.10.020 "Reciprocal insurer" defined. A "reciprocal insurer" means an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide reciprocal insurance among themselves. [1947 c 79 § .10.02; Rem. Supp. 1947 § 45.10.02.]

48.10.030 Scope of chapter. All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocal insurers. [1947 c 79 § .10.03; Rem. Supp. 1947 § 45.10.03.]

48.10.050 Insuring powers of reciprocals. (1) A reciprocal insurer may, upon qualifying therefor as provided by this code, transact any kind or kinds of insurance defined by this code, other than life or title insurances.

(2) A reciprocal insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance which it is authorized to transact direct. [1947 c 79 § .10.05; Rem. Supp. 1947 § 45.10.05.]

48.10.055 Real property—Attorney's duty. A reciprocal insurer may purchase, sell, mortgage, encumber, lease, or otherwise affect the title to real property for the purposes and objects of the reciprocal insurer. All deeds, notes, mortgages, or other documents relating to the real property may be executed in the name of the reciprocal insurer by its attorney. [1991 c 266 § 1.]

48.10.060 Name—Suits. A reciprocal insurer shall:

(1) Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interin-

insurance," or "exchange," or "underwriters," or "underwriting."

(2) Sue and be sued in its own name. [1947 c 79 § 10.06; Rem. Supp. 1947 § 45.10.06.]

48.10.070 Surplus funds required. (1) A domestic reciprocal insurer hereafter formed, if it has otherwise complied with the provisions of this code, may be authorized to transact insurance if it initially possesses surplus in an amount equal to or exceeding the capital and surplus requirements required under RCW 48.05.340(1) plus special surplus, if any, required under *RCW 48.05.360 and thereafter possesses, and maintains surplus funds equal to the paid-in capital stock required under RCW 48.05.340 of a stock insurer transacting like kinds of insurance, and the special surplus, if any, required under *RCW 48.05.360.

(2) A domestic reciprocal insurer which under prior laws held authority to transact insurance in this state may continue to be so authorized so long as it otherwise qualifies therefor and maintains surplus funds in amount not less than as required under laws of this state in force at the time such authority to transact insurance in this state was granted.

(3) A domestic reciprocal insurer heretofore formed shall maintain on deposit with the commissioner surplus funds of not less than the sum of one hundred thousand dollars, and to transact kinds of insurance transacted by it in addition to that authorized by its original certificate of authority, shall have and maintain surplus (including the amount of such deposit) in amount not less than the paid-in capital stock required under RCW 48.05.340(1) plus special surplus, if any, required under *RCW 48.05.360, of a domestic stock insurer formed after 1967 and transacting the same kinds of insurance. Such additional surplus funds need not be deposited with the commissioner. [1985 c 264 § 4; 1975 1st ex.s. c 266 § 5; 1963 c 195 § 5; 1947 c 79 § 10.07; Rem. Supp. 1947 § 45.10.07.]

*Reviser's note: RCW 48.05.360 was repealed by 2005 c 223 § 35.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.10.080 Attorney. (1) "Attorney" as used in this chapter refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm, or corporation.

(2) The attorney of a foreign or alien reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign persons, firms, or corporations.

(3) The subscribers and the attorney-in-fact comprise a reciprocal insurer and a single entity for the purposes of chapter 48.14 RCW as to all operations under the insurer's certificate of authority. [1965 ex.s. c 70 § 35; 1947 c 79 § 10.08; Rem. Supp. 1947 § 45.10.08.]

48.10.090 Organization of reciprocal. (1) Twenty-five or more persons domiciled in this state may organize a domestic reciprocal insurer and in compliance with this code

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make application to the commissioner for a certificate of authority to transact insurance.

(2) When applying for a certificate of authority, the original subscribers and the proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner a declaration setting forth:

- (a) the name of the insurer;
 - (b) the location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
 - (c) the kinds of insurance proposed to be transacted;
 - (d) the names and addresses of the original subscribers;
 - (e) the designation and appointment of the proposed attorney and a copy of the power of attorney;
 - (f) the names and addresses of the officers and directors of the attorney, if a corporation, or of its members, if a firm;
 - (g) the powers of the subscribers' advisory committee and the names and terms of office of the members thereof;
 - (h) that all moneys paid to the reciprocal, after deducting therefrom any sum payable to the attorney, shall be held in the name of the insurer and for the purposes specified in the subscriber's agreement;
 - (i) a copy of the subscriber's agreement;
 - (j) a statement that each of the original subscribers has in good faith applied for insurance of the kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six months at the rate theretofore filed with and approved by the commissioner;
 - (k) a statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by RCW 48.10.070 is on hand;
 - (l) a copy of each policy, endorsement, and application form it then proposes to issue or use.
- Such declaration shall be acknowledged by each such subscriber and by the attorney in the manner required for the acknowledgment of deeds to real estate. [1947 c 79 § 10.09; Rem. Supp. 1947 § 45.10.09.]

48.10.100 Policies of original subscribers, effective when. Any policy applied for by an original subscriber shall become effective coincidentally with the issuance of a certificate of authority to the reciprocal insurer. [1947 c 79 § 10.10; Rem. Supp. 1947 § 45.10.10.]

48.10.110 Certificate of authority. (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

(2) The commissioner may refuse, suspend, or revoke the certificate of authority, in addition to other grounds therefor, for failure of its attorney to comply with any provision of this code. [1947 c 79 § 10.11; Rem. Supp. 1947 § 45.10.11.]

48.10.120 Power of attorney. (1) The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

- (2) The power of attorney must set forth:
 - (a) The powers of the attorney;

(b) that the attorney is empowered to accept service of process on behalf of the insurer and to authorize the commissioner to receive service of process in actions against the insurer upon contracts exchanged;

(c) the services to be performed by the attorney in general;

(d) the maximum amount to be deducted from advance premiums or deposits to be paid to the attorney;

(e) except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than ten times the premium or premium deposit stated in the policy.

(3) The power of attorney may:

(a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

(b) impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

(c) provide for the exercise of any right reserved to the subscribers directly or through their advisory committee;

(d) contain other lawful provisions deemed advisable.

(4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement or any amendment thereof, shall be used or be effective in this state until approved by the commissioner. [1949 c 190 § 15; 1947 c 79 § .10.12; Rem. Supp. 1949 § 45.10.12.]

48.10.130 Modification of subscriber's agreement or power of attorney. Modification of the terms of the subscriber's agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto. [1947 c 79 § .10.13; Rem. Supp. 1947 § 45.10.13.]

48.10.140 Attorney's bond. (1) Concurrently with the filing of the declaration provided for in RCW 48.10.090, (or, if an existing domestic reciprocal insurer, within ninety days after the effective date of this code) the attorney of a domestic reciprocal shall file with the commissioner a bond running to the state of Washington. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

(2) The bond shall be in the penal sum of twenty-five thousand dollars, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate for his own use from the funds of the insurer any moneys or property to which he is not entitled under the power of attorney.

(3) The bond shall provide that it is not subject to cancellation unless thirty days advance notice in writing of intent to cancel is given to both the attorney and the commissioner. [1947 c 79 § .10.14; Rem. Supp. 1947 § 45.10.14.]

48.10.150 Deposit in lieu of bond. In lieu of such bond, the attorney may maintain on deposit with the commissioner

a like amount in cash or in value of securities qualified under this code as insurers' investments, and subject to the same conditions as the bond. [1947 c 79 § .10.15; Rem. Supp. 1947 § 45.10.15.]

48.10.160 Actions on bond. Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any one time by one or more subscribers suffering loss through a violation of the conditions thereof or by a receiver or liquidator of the insurer. Amounts so recovered shall be deposited in and become part of the insurer's funds. [1947 c 79 § .10.16; Rem. Supp. 1947 § 45.10.16.]

48.10.170 Service of legal process. (1) A certificate of authority shall not be issued to a domestic reciprocal insurer unless prior thereto the attorney has executed and filed with the commissioner the insurer's irrevocable authorization of the commissioner to receive legal process issued in this state against the insurer upon any cause of action arising within this state.

(2) The provisions of RCW 48.05.210 shall apply to service of such process upon the commissioner.

(3) In lieu of service on the commissioner, legal process may be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices.

(4) Any judgment against the insurer based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear and in an amount not exceeding their respective contingent liabilities. [1947 c 79 § .10.17; Rem. Supp. 1947 § 45.10.17.]

48.10.180 Annual statement. The annual statement of a reciprocal insurer shall be made and filed by the attorney. [1947 c 79 § .10.18; Rem. Supp. 1947 § 45.10.18.]

48.10.190 Attorney's contribution—Repayment. No contribution to a domestic reciprocal insurer's surplus by the attorney shall be retrievable by the attorney except under such terms and in such circumstances as the commissioner approves. [1947 c 79 § .10.19; Rem. Supp. 1947 § 45.10.19.]

48.10.200 Determination of financial condition. In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

(1) He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

(2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety days shall first be charged against such surplus deposit.

(3) The surplus deposits of subscribers shall not be charged as a liability.

(4) All premium deposits delinquent less than ninety days shall be allowed as assets.

(5) An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

(6) The contingent liability of subscribers shall not be allowed as an asset.

(7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney. [1947 c 79 § .10.20; Rem. Supp. 1947 § 45.10.20.]

48.10.220 Who may become subscriber. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, estate, trustee, or fiduciary may be a subscriber of a reciprocal insurer. [1947 c 79 § .10.22; Rem. Supp. 1947 § 45.10.22.]

48.10.230 Subscribers' advisory committee. (1) The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.

(2) Not less than three-fourths of such committee shall be composed of subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.

(3) The committee shall:

(a) Supervise the finances of the insurer;

(b) supervise the insurer's operations to such extent as to assure their conformity with the subscribers' agreement and power of attorney;

(c) procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer;

(d) have such additional powers and functions as may be conferred by the subscribers' agreement. [1947 c 79 § .10.23; Rem. Supp. 1947 § 45.10.23.]

48.10.250 Assessment liability of subscriber. (1) The liability of each subscriber subject to assessment for the obligations of the reciprocal insurer shall not be joint, but shall be individual and several.

(2) Each subscriber who is subject to assessment shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than ten times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in RCW 48.10.290.

(3) Each assessable policy issued by the insurer shall plainly set forth a statement of the contingent liability. [1947 c 79 § .10.25; Rem. Supp. 1947 § 45.10.25.]

48.10.260 Action against subscriber requires judgment against insurer. (1) No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for thirty days.

(2) Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in an amount not exceeding his contingent liability, if any. [1947 c 79 § .10.26; Rem. Supp. 1947 § 45.10.26.]

48.10.270 Assessments. (1) Assessments may be levied from time to time upon the subscribers of a domestic recipro-

cal insurer, other than as to nonassessable policies, by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

(2) Each such subscriber's share of a deficiency for which an assessment is made, not exceeding in any event his aggregate contingent liability as computed in accordance with RCW 48.10.290, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

(3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

(4) No subscriber shall have an offset against any assessment for which he is liable, on account of any claim for unearned premium or losses payable. [1947 c 79 § .10.27; Rem. Supp. 1947 § 45.10.27.]

48.10.280 Time limit for assessment. Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

(1) While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intention to levy such assessment; or

(2) If an order to show cause why a receiver, conservator, rehabilitator, or liquidator of the insurer should not be appointed is issued pursuant to RCW 48.31.190 while his policy is in force or within one year after its termination. [1947 c 79 § .10.28; Rem. Supp. 1947 § 45.10.28.]

48.10.290 Aggregate liability. No one policy or subscriber as to such policy, shall be assessed or be charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the number of times the premium as stated in the policy as computed solely upon premium earned on such policy during that year. [1947 c 79 § .10.29; Rem. Supp. 1947 § 45.10.29.]

48.10.300 Nonassessable policies. (1) Subject to the special surplus requirements of *RCW 48.05.360, if a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock required of a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.

(2) Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. No policy shall thereafter be issued or renewed without providing for the contingent assessment liability of subscribers.

(3) The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state. [1983 c 3 § 148; 1947 c 79 § .10.30; Rem. Supp. 1947 § 45.10.30.]

***Reviser's note:** RCW 48.05.360 was repealed by 2005 c 223 § 35.

48.10.310 Return of savings to subscribers. A reciprocal insurer may from time to time return to its subscribers any savings or credits accruing to their accounts. Any such distribution shall not unfairly discriminate between classes of risks, or policies, or between subscribers. [1947 c 79 § .10.31; Rem. Supp. 1947 § 45.10.31.]

48.10.320 Distribution of assets upon liquidation. Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contribution of the attorney to its surplus made as provided in RCW 48.10.190, and the return of any unused deposits, savings, or credits, shall be distributed to its subscribers who were such within the twelve months prior to the last termination of its certificate of authority according to such formula as may have been approved by the commissioner. [1947 c 79 § .10.32; Rem. Supp. 1947 § 45.10.32.]

48.10.330 Merger—Conversion to stock or mutual insurer. (1) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of the subscribers who vote upon such merger pursuant to such notice as may be approved by the commissioner and with the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(2) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

(3) The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with RCW 48.10.320 and a reasonable length of time within which to exercise such right. [1947 c 79 § .10.33; Rem. Supp. 1947 § 45.10.33.]

48.10.340 Impairment of assets—Procedure. (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities other than any liability on account of funds contributed by the attorney, and to maintain the surplus required for the kinds of insurance it is authorized to transact, its attorney shall forthwith levy an assess-

ment upon subscribers made subject to assessment by the terms of their policies for the amount needed to make up the deficiency.

(2) If the attorney fails to make the assessment within thirty days after the commissioner orders him to do so, or if the deficiency is not fully made up within sixty days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.

(3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney, but including the reasonable cost of the liquidation. [1947 c 79 § .10.34; Rem. Supp. 1947 § 45.10.34.]

Chapter 48.11 RCW INSURING POWERS

Sections

48.11.020	"Life insurance" defined.
48.11.030	"Disability insurance" defined—"Stop loss insurance" defined.
48.11.040	"Property insurance" defined.
48.11.050	"Marine and transportation insurance" defined.
48.11.060	"Vehicle insurance" defined.
48.11.070	"General casualty insurance" defined.
48.11.080	"Surety insurance" defined.
48.11.100	"Title insurance" defined.
48.11.105	"Ocean marine and foreign trade insurances" defined.
48.11.130	Reinsurance powers.
48.11.140	Limitation of single risk.

Workers' compensation: Title 51 RCW.

48.11.020 "Life insurance" defined. "Life insurance" is insurance on human lives and insurances appertaining thereto or connected therewith. For the purposes of this code the transacting of life insurance includes the granting of annuities and endowment benefits; additional benefits in event of death by accident; additional benefits in event of the total and permanent disability of the insured; and optional modes of settlement of proceeds. [1947 c 79 § .11.02; Rem. Supp. 1947 § 45.11.02.]

48.11.030 "Disability insurance" defined—"Stop loss insurance" defined. "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance appertaining thereto including stop loss insurance. "Stop loss insurance" is insurance against the risk of economic loss assumed under a self-funded employee disability benefit plan. [1992 c 226 § 1; 1947 c 79 § .11.03; Rem. Supp. 1947 § 45.11.03.]

Application—1992 c 226: "This act applies to policies issued or renewed on or after July 1, 1992." [1992 c 226 § 4.]

48.11.040 "Property insurance" defined. "Property insurance" is insurance against loss of or damage to real or personal property of every kind and any interest therein, from any or all hazard or cause, and against loss consequential upon such loss or damage. [1947 c 79 § .11.04; Rem. Supp. 1947 § 45.11.04.]

48.11.050 "Marine and transportation insurance"

defined. "Marine and transportation insurance" is:

(1) Insurance against loss of or damage to:

(a) Vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting shipment, or during any delays, storage, transshipment, or reshipment incident thereto, including war risks, marine builder's risks, and all personal property floater risks.

(b) Person or property in connection with or appertaining to a marine, transit or transportation insurance, including liability for loss of or damage to either incident to the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to any person arising out of the ownership, maintenance, or use of automobiles).

(c) Precious stones, jewels, jewelry, precious metals, whether in course of transportation or otherwise.

(d) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage); piers, wharves, docks and slips, and other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for the control of waterways.

(2) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage, or expense incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person. [1947 c 79 § .11.05; Rem. Supp. 1947 § 45.11.05.]

48.11.060 "Vehicle insurance" defined. (1) "Vehicle insurance" is insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, and against any loss or liability resulting from or incident to ownership, maintenance, or use of any such vehicle or aircraft or animal.

(2) Insurance against accidental death or accidental injury to individuals while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as part of insurance on the vehicle, aircraft, or draft or riding animal, shall be deemed to be vehicle insurance. [1947 c 79 § .11.06; Rem. Supp. 1947 § 45.11.06.]

48.11.070 "General casualty insurance" defined. "General casualty insurance" includes vehicle insurance as defined in RCW 48.11.060, and in addition is insurance:

(1) Against legal liability for the death, injury, or disability of any human being, or for damage to property.

(2) Of medical, hospital, surgical and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury or disability of human beings.

(3) Of the obligations accepted by, imposed upon, or assumed by employers under law for workers' compensation.

(4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt of any of the foregoing; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire or in the mail.

(5) Upon personal effects against loss or damage from any cause.

(6) Against loss or damage to glass, including its lettering, ornamentation and fittings.

(7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and to make inspection of and issue certificates of inspection upon elevators, boilers, machinery, and apparatus of any kind.

(8) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes and containers, or by water entering through leaks or openings in buildings.

(9) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance).

(10) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other kind or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public policy. [1987 c 185 § 18; 1953 c 197 § 5; 1947 c 79 § .11.07; Rem. Supp. 1947 § 45.11.07.]

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

48.11.080 "Surety insurance" defined. "Surety insurance" includes:

(1) Credit insurance as defined in subdivision (9) of RCW 48.11.070.

(2) Bail bond insurance.

(3) Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

(4) Guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

(5) Indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidence of debts, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also against loss or dam-

age to such an insured's premises, or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat. [1967 c 150 § 8; 1947 c 79 § .11.08; Rem. Supp. 1947 § 45.11.08.]

48.11.100 "Title insurance" defined. "Title insurance" is insurance of owners of property or others having an interest in real property, against loss by encumbrance, or defective titles, or adverse claim to title, and associated services. [2005 c 223 § 3; 1947 c 79 § .11.10; Rem. Supp. 1947 § 45.11.10.]

48.11.105 "Ocean marine and foreign trade insurances" defined. For the purposes of this code other than as to chapter 48.19 RCW "ocean marine and foreign trade insurances" shall include only:

- (1) Insurances upon vessels, crafts, hulls, and of interests therein or with relation thereto;
- (2) Insurance of marine builders' risks, marine war risks, and contracts of marine protection and indemnity insurance;
- (3) Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition;
- (4) Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise, including transportation by land, water, or air from point of origin to final destination, in respect to, appertaining to, or in connection with, any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment, or reshipment incident thereto. [2007 c 80 § 5.]

48.11.130 Reinsurance powers. A domestic mutual assessment insurer shall not have authority to accept reinsurance. Any other domestic insurer may accept reinsurance only of such kinds of insurance as it is authorized to transact direct. [1947 c 79 § .11.13; Rem. Supp. 1947 § 45.11.13.]

48.11.140 Limitation of single risk. (1) An insurer may not retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders.

(2) For the purposes of this section, a "subject of insurance" as to insurance against fire includes all properties insured by the same insurer that are reasonably subject to loss or damage from the same fire.

(3) Reinsurance in an alien reinsurer not qualified under RCW 48.12.166 may not be deducted in determining risk retained for the purposes of this section.

(4) In the case of surety insurance, the net retention shall be computed after deduction of reinsurances, the amount assumed by any co-surety, the value of any security deposited, pledged, or held subject to the consent of the surety and for the protection of the surety.

(5) This section does not apply to life insurance, disability insurance, title insurance, or insurance of marine risks or marine protection and indemnity risks. [2005 c 223 § 4; 1993

c 462 § 53; 1983 c 3 § 149; 1959 c 225 § 2; 1947 c 79 § .11.14; Rem. Supp. 1947 § 45.11.14.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.12 RCW ASSETS AND LIABILITIES

Sections

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48.12.010 "Assets" defined. In any determination of the financial condition of any insurer there shall be allowed as assets only such assets as belong wholly and exclusively to the insurer, which are registered, recorded, or held under the insurer's name, and which consist of:

(1) Cash in the possession of the insurer or in transit under its control, and the true balance of any deposit of the insurer in a solvent bank or trust company;

(2) Investments, securities, properties, and loans acquired or held in accordance with this code, and in connection therewith the following items:

(a) Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

(b) Declared and unpaid dividends on stocks and shares unless such amount has otherwise been allowed as an asset.

(c) Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

(d) Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets if such interest is in the judgment of the commissioner a collectible asset.

(e) Interest due or accrued on a mortgage loan, in amount not exceeding in any event the amount, if any, of the difference between the unpaid principal and the value of the property less delinquent taxes thereon; but if any interest on the loan is in default more than one hundred eighty days, or if any interest on the loan is in default and any taxes or any install-

ment thereof on the property are and have been due and unpaid for more than one hundred eighty days, no allowance shall be made for any interest on the loan.

(f) Rent due or accrued on real property if such rent is not in arrears for more than three months.

(3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) The net amount of uncollected and deferred premiums in the case of a life insurer which carries the full annual mean tabular reserve liability;

(5) Premiums in the course of collection, other than for life insurance, not more than ninety days past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States government or any of its instrumentalities;

(6) Installment premiums other than life insurance premiums, in accordance with regulations prescribed by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;

(7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by regulation prescribed by the commissioner;

(8) Reinsurance recoverable subject to RCW 48.12.160;

(9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him;

(11) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars, which cost shall be amortized in full over a period not to exceed three calendar years; and

(12) Other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims, at values to be determined by him. [2007 c 80 § 2; 1977 ex.s. c 180 § 2; 1963 c 195 § 11; 1947 c 79 § .12.01; Rem. Supp. 1947 § 45.12.01.]

48.12.020 Nonallowable assets. In addition to assets impliedly excluded under RCW 48.12.010, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

(1) Goodwill, except in accordance with regulations prescribed by the commissioner, trade names, agency plants and other like intangible assets.

(2) Prepaid or deferred charges for expenses and commissions paid by the insurer.

(3) Advances to officers (other than policy loans or loans made pursuant to RCW 48.07.130), whether secured or not, and advances to employees, agents and other persons on personal security only.

(4) Stock of such insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest

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in such stock through the ownership by such insurer of an interest in another firm, corporation or business unit.

(5) Furniture, furnishings, fixtures, safes, equipment, vehicles, library, stationery, literature, and supplies; except, electronic and mechanical machines authorized by subsection (11) of RCW 48.12.010, or such personal property as the insurer is permitted to hold pursuant to paragraph (e) of subsection (2) of RCW 48.13.160, or which is acquired through foreclosure of chattel mortgages acquired pursuant to RCW 48.13.150, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes.

(6) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this code. [1982 c 218 § 1; 1963 c 195 § 12; 1947 c 79 § .12.02; Rem. Supp. 1947 § 45.12.02.]

Severability—1982 c 218: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 218 § 7.]

48.12.030 Liabilities. In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

(1) The amount of its capital stock outstanding, if any; and

(2) The amount, estimated consistent with the provisions of this chapter, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement thereof; and

(3) With reference to life and disability insurance, and annuity contracts,

(a) the amount of reserves on life insurance policies and annuity contracts in force (including disability benefits for both active and disabled lives, and accidental death benefits, in or supplementary thereto) and disability insurance, valued according to the tables of mortality, tables of morbidity, rates of interest, and methods adopted pursuant to this chapter which are applicable thereto; and

(b) any additional reserves which may be required by the commissioner, consistent with practice formulated or approved by the National Association of Insurance Commissioners, on account of such insurances; and

(4) With reference to insurances other than those specified in subdivision (3) of this section, and other than title insurance, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this chapter; and

(5) Taxes, expenses, and other obligations accrued at the date of the statement; and

(6) Any additional reserve set up by the insurer for a specific liability purpose or required by the commissioner consistent with practices adopted or approved by the National Association of Insurance Commissioners. [1973 1st ex.s. c 162 § 1; 1947 c 79 § .12.03; Rem. Supp. 1947 § 45.12.03.]

48.12.040 Unearned premium reserve, property, casualty, and surety insurance. (1) With reference to insur-

ances against loss or damage to property, except as provided in RCW 48.12.050, and with reference to all general casualty insurances, and surety insurances, every insurer shall maintain an unearned premium reserve on all policies in force.

(2) The commissioner may require that such reserve shall be equal to the unearned portions of the gross premiums in force after deducting authorized reinsurance, as computed on each respective risk from the policy's date of issue. If the commissioner does not so require, the portions of the gross premiums in force, less authorized reinsurance, to be held as a premium reserve, shall be computed according to the following table:

Term for which policy was written	Reserve for unearned premium	
One year, or less		1/2
Two years	First year	3/4
	Second year	1/4
Three years	First year	5/6
	Second year	1/2
	Third year	1/6
Four years	First year	7/8
	Second year	5/8
	Third year	3/8
	Fourth year	1/8
Five years	First year	9/10
	Second year	7/10
	Third year	1/2
	Fourth year	3/10
	Fifth year	1/10
Over five years	Pro rata	

(3) In lieu of computation according to such table, all of such reserves may be computed, at the insurer's option, on a monthly pro rata basis.

(4) After adopting any one of the methods for computing such reserve an insurer shall not change methods without the commissioner's approval.

(5) If, for certain policies, the insurer's exposure to loss is uneven over the policy term, the commissioner may grant permission to the insurer to use a different method of calculating the unearned premium reserve on those certain policies. [1995 c 35 § 1; 1973 1st ex.s. c 162 § 2; 1947 c 79 § .12.04; Rem. Supp. 1947 § 45.12.04.]

48.12.050 Unearned premium reserve, marine and transportation insurance. With reference to marine and transportation insurances, premiums on trip risks not terminated shall be deemed unearned and the commissioner may require the insurer to carry a reserve thereon equal to one hundred percent on trip risks written during the month ended as of the date of statement; and computed upon a pro rata basis or, with the commissioner's consent, in accordance with the alternative methods provided in RCW 48.12.040 for all other risks. [1947 c 79 § .12.05; Rem. Supp. 1947 § 45.12.05.]

48.12.060 Reserve—Disability insurance. For all disability insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according

to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies. [1973 1st ex.s. c 162 § 3; 1947 c 79 § .12.06; Rem. Supp. 1947 § 45.12.06.]

48.12.070 Loss records. An insurer shall maintain a complete and itemized record showing all losses and claims as to which it has received notice, including with regard to property, casualty, surety, and marine and transportation insurances, all notices received of the occurrence of any event which may result in a loss. [1947 c 79 § .12.07; Rem. Supp. 1947 § 45.12.07.]

48.12.080 Increased reserves. (1) If the commissioner determines that an insurer's unearned premium reserves, however computed, are inadequate, he may require the insurer to compute such reserves or any part thereof according to such other method or methods as are prescribed in this chapter.

(2) If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the commissioner shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate. [1947 c 79 § .12.08; Rem. Supp. 1947 § 45.12.08.]

48.12.090 Loss reserves—Liability insurance. The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed as follows:

(1) The reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employer's liability insurance shall be computed in accordance with accepted loss-reserving standards and principles and shall make a reasonable provision for all unpaid loss and loss expense obligations of the insurer under the terms of such policies.

(2) Reserves under liability policies written during the three years immediately preceding the date of determination shall include any additional reserves required by the annual statement instructions of the national association of insurance commissioners. [1995 c 35 § 2; 1947 c 79 § .12.09; Rem. Supp. 1947 § 45.12.09.]

48.12.100 Unallocated liability loss expense. Subject to any restrictions contained in the annual statement instructions or accounting practices and procedures manuals of the national association of insurance commissioners, all unallocated liability loss expense payments shall be distributed as follows:

(1) All payments associated with particular claims shall be distributed to the year in which the claim was covered; and

(2) All other payments shall be distributed by year in a reasonable manner. [1995 c 35 § 3; 1947 c 79 § .12.10; Rem. Supp. 1947 § 45.12.10.]

48.12.110 Schedule of experience. Any insurer transacting any liability or workers' compensation insurances shall include in its annual statement filed with the commis-

sioner, a schedule of its experience thereunder in such form as the commissioner may prescribe. [1987 c 185 § 19; 1947 c 79 § .12.11; Rem. Supp. 1947 § 45.12.11.]

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

48.12.140 "Loss payments," "loss expense" defined. "Loss payments" and "loss expense payments" as used with reference to liability and workers' compensation insurances shall include all payments to claimants, payments for medical and surgical attendance, legal expenses, salaries and expenses of investigators, adjusters and claims field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses and all other payments made on account of claims, whether such payments are allocated to specific claims or are unallocated. [1987 c 185 § 22; 1947 c 79 § .12.14; Rem. Supp. 1947 § 45.12.14.]

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

48.12.154 Rules. The commissioner may adopt rules to implement and administer chapter 379, Laws of 1997. [1997 c 379 § 9.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.156 Qualified United States financial institution—Definition. For purposes of chapter 379, Laws of 1997, a "qualified United States financial institution" means an institution that complies with all of the following:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies;

(3) Has been determined by the commissioner, or, in the discretion of the commissioner, the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner; and

(4) Is not affiliated with the assuming company. [1997 c 379 § 2.]

Purpose—Intent—1997 c 379: "(1) The purpose of this act is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally.

(2) It is the intent of the legislature to ensure adequate regulation of insurers and reinsurers and adequate protection for those to whom they owe obligations.

(3) It is also the intent of the legislature to declare that the matters contained in this act are fundamental to the business of insurance and to exercise its powers and privileges under 15 U.S.C. Secs. 1011 and 1012." [1997 c 379 § 1.]

48.12.158 Insolvency of non-United States insurer or reinsurer—Maintenance of assets—Claims. Upon insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with chapter 379, Laws of 1997, the assets representing the security must be maintained in the United States and

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claims must be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. [1997 c 379 § 3.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.160 Credit for reinsurance—Trust fund—Regulatory oversight. (1) Any insurance company organized under the laws of this state may take credit as an asset or as a deduction from loss or claim, unearned premium, or life policy or contract reserves on risks ceded to a reinsurer to the extent reinsured by an insurer or insurers holding a certificate of authority to transact that kind of business in this state, unless the assuming insurer is the subject of a regulatory order or regulatory oversight by a state in which it is licensed based upon a commissioner's determination that the assuming insurer is in a hazardous financial condition. The credit on ceded risks reinsured by any insurer which is not authorized to transact business in this state may be taken:

(a) Where the reinsurer is a group including incorporated and unincorporated underwriters, and the group maintains a trust fund in a qualified United States financial institution which trust fund must be in an amount equal to:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled insurers to any member of the group; or

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of chapter 379, Laws of 1997, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States.

In addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group.

The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants;

(b) Where the reinsurer does not meet the definition of (a) of this subsection, the single assuming alien reinsurer that, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in a qualified United States financial institution, which trust fund must be in an amount not less than the assuming alien reinsurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars, and the assuming alien reinsurer maintaining the trust fund must

have received a registration from the commissioner under RCW 48.12.166. The assuming alien reinsurer shall report on or before February 28th to the commissioner substantially the same information as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund;

(c) In an amount not exceeding:

(i) The amount of deposits by and funds withheld from the assuming insurer pursuant to express provision therefor in the reinsurance contract, as security for the payment of the obligations thereunder, if the deposits or funds are assets of the types and amounts that are authorized under chapter 48.13 RCW and are held subject to withdrawal by and under the control of the ceding insurer or if the deposits or funds are placed in trust for these purposes in a bank which is a member of the federal reserve system and withdrawals from the trust cannot be made without the consent of the ceding company; or

(ii) The amount of a clean, irrevocable, and unconditional letter of credit issued by a United States bank that is determined by the national association of insurance commissioners to meet credit standards for issuing letters of credit in connection with reinsurance, and issued for a term of at least one year with provisions that it must be renewed unless the bank gives notice of nonrenewal at least thirty days before the expiration issued under arrangements satisfactory to the commissioner of insurance as constituting security to the ceding insurer substantially equal to that of a deposit under (c)(i) of this subsection.

(2) Credit for reinsurance may not be granted under subsection (1)(a), (b), and (c)(i) of this section unless:

(a) The form of the trust and amendments to the trust have been approved by the insurance commissioner of the state where the trust is located, or the insurance commissioner of another state who, pursuant to the terms of the trust agreement, has accepted principal regulatory oversight of the trust;

(b) The trust and trust amendments are filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled;

(c) The trust instrument provides that contested claims are valid, enforceable, and payable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of a court of competent jurisdiction in the United States;

(d) The trust vests legal title to its assets in the trustees of the trust for the benefit of the grantor's United States ceding insurers, their assigns, and successors in interest;

(e) The trust and the assuming insurer are subject to examination as determined by the commissioner;

(f) The trust shall remain in effect for as long as the assuming insurer, member, or former member of a group of insurers has outstanding obligations due under the reinsurance agreements subject to the trust; and

(g) No later than [than] February 28th of each year, the trustees of the trust report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end. In addition, the trustees of the trust shall certify the date of termination of the trust, if so

planned, or certify that the trust shall not expire within the next twelve months.

(3) Any reinsurance ceded by a company organized under the laws of this state or ceded by any company not organized under the laws of this state and transacting business in this state must be payable by the assuming insurer on the basis of liability of the ceding company under the contract or contracts reinsured without diminution because of the insolvency of the ceding company, and any such reinsurance agreement which may be canceled on less than ninety days notice must provide for a run-off of the reinsurance in force at the date of cancellation.

(4) The domiciliary conservator, liquidator, receiver, or statutory successor of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against the insolvent ceding insurer on the policy or bond reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that during the pendency of such claim any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses which it may deem available to the ceding insurer or its liquidator or receiver or statutory successor.

The expense thus incurred by the assuming insurer shall be chargeable subject to court approval against the insolvent ceding insurer as a part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer.

(5) Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

(6) The credit permitted by subsection (1)(b) of this section is prohibited unless the assuming alien insurer agrees in the trust agreement, notwithstanding other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (1)(b) of this section or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile:

(a) To comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund;

(b) That assets be distributed by, and insurance claims of United States trust beneficiaries be filed with and valued by, the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) That if the commissioner with regulatory oversight determines that the assets of the trust fund or a part thereof are not necessary to satisfy the claims of the United States ceding insurers, which are United States trust beneficiaries, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) That the grantor waives any right otherwise available to it under United States law that is inconsistent with this provision. [1997 c 379 § 6; 1996 c 297 § 1; 1994 c 86 § 1; 1993 c 91 § 2; 1977 ex.s. c 180 § 3; 1947 c 79 § .12.16; Rem. Supp. 1947 § 45.12.16.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

Rules to implement—1996 c 297: "The insurance commissioner shall adopt rules to implement and administer the amendatory changes made by section 1, chapter 297, Laws of 1996." [1996 c 297 § 2.]

Effective dates—1996 c 297: "(1) Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996].

(2) Section 1 of this act shall take effect January 1, 1997." [1996 c 297 § 4.]

Effective date—1994 c 86: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 86 § 3.]

48.12.162 Credit for reinsurance—Contract provisions—After December 31, 1996—Payment—Rights of original insured or policyholder. (1) Credit for reinsurance in a reinsurance contract entered into after December 31, 1996, is allowed a domestic ceding insurer as either an asset or a deduction from liability in accordance with RCW 48.12.160 only if the reinsurance contract contains provisions that provide, in substance, as follows:

(a) The reinsurer shall indemnify the ceding insurer against all or a portion of the risk it assumed according to the terms and conditions contained in the reinsurance contract.

(b) In the event of insolvency and the appointment of a conservator, liquidator, or statutory successor of the ceding company, the portion of risk or obligation assumed by the reinsurer is payable to the conservator, liquidator, or statutory successor on the basis of claims allowed against the insolvent company by a court of competent jurisdiction or by a conservator, liquidator, or statutory successor of the company having authority to allow such claims, without diminution because of that insolvency, or because the conservator, liquidator, or statutory successor failed to pay all or a portion of any claims. Payments by the reinsurer as provided in this subsection are made directly to the ceding insurer or to its conservator, liquidator, or statutory successor, except where the contract of insurance, reinsurance, or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer.

(2) Payment under a reinsurance contract must be made within a reasonable time with reasonable provision for verification in accordance with the terms of the reinsurance agreement. However, in no event shall the payments be beyond the period required by the national association of insurance commissioners accounting practices and procedures manual.

(3) The original insured or policyholder may not have any rights against the reinsurer that are not specifically set forth in the contract of reinsurance, or in a specific agreement between the reinsurer and the original insured or policyholder. [1997 c 379 § 4.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.164 Credit for reinsurance—Accounting or financial statement—After December 31, 1996. Credit for

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reinsurance, as either an asset or a deduction, is prohibited in an accounting or financial statement of the ceding insurer in respect to the reinsurance contract unless, in such contract, the reinsurer undertakes to indemnify the ceding insurer against all or a part of the loss or liability arising out of the original insurance. This section only applies to those reinsurance contracts entered into after December 31, 1996. [1997 c 379 § 5.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.166 Assuming alien reinsurer—Registration—Requirements—Duties of commissioner—Costs. (1) The assuming alien reinsurer must register with the commissioner and must:

(a) File with the commissioner evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records under chapter 48.03 RCW;

(b) Designate the commissioner as its lawful attorney upon whom service of all papers may be made for an action, suit, or proceeding instituted by or on behalf of the ceding insurer;

(c) File with the commissioner a certified copy of a letter or a certificate of authority or a certificate of compliance issued by the assuming alien insurer's domiciliary jurisdiction and the domiciliary jurisdiction of its United States reinsurance trust;

(d) Submit a statement, signed and verified by an officer of the assuming alien insurer to be true and correct, that discloses whether the assuming alien insurer or an affiliated person who owns or has a controlling interest in the assuming alien insurer is currently known to be the subject of one or more of the following:

(i) An order or proceeding regarding conservation, liquidation, or receivership;

(ii) An order or proceeding regarding the revocation or suspension of a license or accreditation to transact insurance or reinsurance in any jurisdiction; or

(iii) An order or proceeding brought by an insurance regulator in any jurisdiction seeking to restrict or stop the assuming alien insurer from transacting insurance or reinsurance based upon a hazardous financial condition.

The assuming alien insurer shall provide the commissioner with copies of all orders or other documents initiating proceedings subject to disclosure under this subsection. The statement must affirm that no actions, proceedings, or orders subject to this subsection are outstanding against the assuming alien insurer or an affiliated person who owns or has a controlling interest in the assuming alien insurer, except as disclosed in the statement;

(e) File other information, financial or otherwise, which the commissioner reasonably requests.

(2) A registration continues in force until suspended, revoked, or not renewed. A registration is subject to renewal annually on the first day of July upon application of the assuming alien insurer and payment of the fee in the same amount as an insurer pays for renewal of a certificate of authority.

(3) The commissioner shall give an assuming alien insurer notice of his or her intention to revoke or refuse to

renew its registration at least ten days before the order of revocation or refusal is to become effective.

(4) The commissioner shall, consistent with chapters 48.04 and 34.05 RCW, deny or revoke an assuming alien insurer's registration if the assuming alien insurer no longer qualifies or meets the requirements for registration.

(5) The commissioner may, consistent with chapters 48.04 and 34.05 RCW, deny or revoke an assuming alien insurer's registration if the assuming alien insurer:

(a) Fails to comply with a provision of this chapter or fails to comply with an order or regulation of the commissioner;

(b) Is found by the commissioner to be in such a condition that its further transaction of reinsurance would be hazardous to ceding insurers, policyholders, or the people in this state;

(c) Refuses to remove or discharge a trustee, director, or officer who has been convicted of a crime involving fraud, dishonesty, or moral turpitude;

(d) Usually compels policy-holding claimants either to accept less than the amount due them or to bring suit against the assuming alien insurer to secure full payment of the amount due;

(e) Refuses to be examined, or its trustees, directors, officers, employees, or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform a legal obligation relative to the examination;

(f) Refuses to submit to the jurisdiction of the United States courts;

(g) Fails to pay a final judgment rendered against it:

(i) Within thirty days after the judgment became final;

(ii) Within thirty days after time for taking an appeal has expired; or

(iii) Within thirty days after dismissal of an appeal before final determination; whichever date is later;

(h) Is found by the commissioner, after investigation or upon receipt of reliable information:

(i) To be managed by persons, whether by its trustees, directors, officers, or by other means, who are incompetent or untrustworthy or so lacking in insurance company management experience as to make proposed operation hazardous to the insurance-buying public; or

(ii) That there is good reason to believe it is affiliated directly or indirectly through ownership, control, or business relations, with a person or persons whose business operations are, or have been found to be, in violation of any law or rule, to the detriment of policyholders, stockholders, investors, creditors, or of the public, by bad faith or by manipulation of the assets, accounts, or reinsurance;

(i) Does business through reinsurance intermediaries or other representatives in this state or in any other state, who are not properly licensed under applicable laws and rules; or

(j) Fails to pay, by the date due, any amounts required by this code.

(6) A domestic ceding insurer is not allowed credit with respect to reinsurance ceded, if the assuming alien insurer's registration has been revoked by the commissioner.

(7) The actual costs and expenses incurred by the commissioner for an examination of a registered alien insurer must be charged to and collected from the alien reinsurer.

(8) A registered alien reinsurer is included as a "class one" organization for the purposes of RCW 48.02.190. [1997 c 379 § 7.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.168 Credit for reinsurance—Foreign ceding insurer. (1) Unless credit for reinsurance or deduction from liability is prohibited under RCW 48.12.164, a foreign ceding insurer is allowed credit for reinsurance or deduction from liability to the extent credit has been allowed by the ceding insurer's state of domicile if:

(a) The state of domicile is accredited by the national association of insurance commissioners; or

(b) Credit or deduction from liability would be allowed under chapter 379, Laws of 1997 if the foreign ceding insurer were domiciled in this state.

(2) Notwithstanding subsection (1) of this section, credit for reinsurance or deduction from liability may be disallowed upon a finding by the commissioner that either the condition of the reinsurer, or the collateral or other security provided by the reinsurer, does not satisfy the credit for reinsurance requirements applicable to ceding insurers domiciled in this state. [1997 c 379 § 8.]

Purpose—Intent—1997 c 379: See note following RCW 48.12.156.

48.12.170 Valuation of bonds. (1) All bonds or other evidences of debt having a fixed term and rate held by any insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(a) If purchased at par, at the par value.

(b) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at the earliest date callable at par or maturing at par and so as to yield in the meantime the effective rate of interest at which the purchase was made; or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(c) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

(d) Unless otherwise provided by a valuation established or approved by the National Association of Insurance Commissioners, no such security shall be carried at above call price for the entire issue during any period within which the security may be so called.

(2) Such securities not amply secured or in default as to principal or interest shall be carried at market value.

(3) The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section, and not inconsistent with any such methods then currently formulated or approved by the National Association of Insurance Commissioners. [1947 c 79 § .12.17; Rem. Supp. 1947 § 45.12.17.]

48.12.180 Valuation of stocks. (1) Securities, other than those referred to in RCW 48.12.170, held by an insurer shall be valued, in the discretion of the commissioner, at their

market value, or at their appraised value, or at prices determined by him or her as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he or she may approve.

(3) The stock of a subsidiary of an insurer shall be valued on the basis of the greater of (a) the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer or (b) such other value determined pursuant to rules and cumulative limitations which shall be promulgated by the commissioner to effectuate the purposes of this chapter.

(4) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section, and consistent with such methods as then adopted by the National Association of Insurance Commissioners. [1993 c 462 § 54; 1973 c 151 § 1; 1947 c 79 § .12.18; Rem. Supp. 1947 § 45.12.18.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.12.190 Valuation of property. (1) Real property acquired pursuant to a mortgage loan or a contract for a deed, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(2) Other real property held by an insurer shall not be valued at any amount in excess of fair value, less reasonable depreciation based on the estimated life of the improvements.

(3) Personal property acquired pursuant to chattel mortgages made under RCW 48.13.150 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at date of acquisition together with taxes and expenses incurred in connection with such acquisition, or the fair value of such property, whichever amount is the lesser.

(4) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section, and consistent with such methods as then adopted by the National Association of Insurance Commissioners. [1993 c 462 § 55; 1967 ex.s. c 95 § 10; 1947 c 79 § .12.19; Rem. Supp. 1947 § 45.12.19.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.12.200 Valuation of purchase money mortgages.

(1) Purchase money mortgages shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or ninety percent of the fair value of such real property, whichever is less.

(2) The commissioner has full discretion in determining the method of calculating values according to the rules set forth in this section, and consistent with such methods as then adopted by the National Association of Insurance Commis-

sioners. [1993 c 462 § 56; 1947 c 79 § .12.20; Rem. Supp. 1947 § 45.12.20.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.13 RCW

INVESTMENTS

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Valuation of investments: RCW 48.12.170 through 48.12.200.

48.13.010 Scope of chapter—Eligible investments.

(1) Investments of domestic insurers shall be eligible to be held as assets only as prescribed in this chapter.

(2) Any particular investment of a domestic insurer held by it on the effective date of this code and which was a legal investment immediately prior thereto, shall be deemed a legal investment hereunder.

(3) The eligibility of an investment shall be determined as of the date of its making or acquisition.

(4) Except as to RCW 48.13.360, this chapter applies only to domestic insurers. [1973 c 151 § 2; 1947 c 79 § .13.01; Rem. Supp. 1947 § 45.13.01.]

48.13.020 General qualifications. (1) No security or other investment shall be eligible for purchase or acquisition under this chapter unless it is interest bearing or interest accruing or dividend or income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon; except,

(a) that an insurer may acquire real property as provided in RCW 48.13.160, and

(b) that this section shall not prevent participation by an insurer in a mortgage loan if the insurer, either individually or jointly with other lenders, holds a senior participation in such mortgage or deed of trust giving it substantially the rights of a first mortgagee as to its interest in that loan.

(2) No security shall be eligible for purchase at a price above its market value except voting stock of a corporation being acquired as a subsidiary.

(3) No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or if acquired pursuant to a lawful and bona fide agreement of bulk reinsurance or consolidation. Any investments so acquired through bulk reinsurance or consolidation, which are not otherwise eligible under this chapter, shall be disposed of pursuant to RCW 48.13.290 if personal property or securities, or pursuant to RCW 48.13.170 if real property. [1983 1st ex.s. c 32 § 2; 1982 c 218 § 2; 1967 ex.s. c 95 § 11; 1947 c 79 § .13.02; Rem. Supp. 1947 § 45.13.02.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.030 Limitation on securities of one entity or a depository institution. (1) Except as set forth in RCW 48.13.273, an insurer shall not, except with the consent of the commissioner, have at any time any combination of investments in or loans upon the security of the obligations, property, and securities of any one person, institution, or municipal corporation aggregating an amount exceeding four percent of the insurer's assets. This section shall not apply to investments in, or loans upon the security of general obligations of the government of the United States or of any state of the United States, nor to investments in foreign securities pursuant to RCW 48.13.180(1), nor include policy loans made pursuant to RCW 48.13.190.

(2) An insurer shall not, except with the consent of the commissioner, have at any time investments in the voting securities of a depository institution or any company which controls a depository institution aggregating an amount exceeding five percent of the insurer's admitted assets. [2001 c 21 § 1; 1993 c 92 § 1; 1947 c 79 § .13.03; Rem. Supp. 1947 § 45.13.03.]

48.13.040 Public obligations. An insurer may invest any of its funds in bonds or other evidences of debt, not in default as to principal or interest, which are valid and legally

authorized obligations issued, assumed or guaranteed by the United States or by any state thereof or by any territory or possession of the United States or by the District of Columbia or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by any civil division or public instrumentality of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, (1) from taxes levied or required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit or, (2) from adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment, but not including any obligation payable solely out of special assessments on properties benefited by local improvements unless adequate security is evidenced by the ratio of assessment to the value of the property or the obligation is additionally secured by an adequate guaranty fund required by law. [1947 c 79 § .13.04; Rem. Supp. 1947 § 45.13.04.]

48.13.050 Corporate obligations. Except as set forth in RCW 48.13.273, an insurer may invest any of its funds in obligations other than those eligible for investment under RCW 48.13.110 if they are issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, and are qualified under any of the following:

(1) Obligations which are secured by adequate collateral security and bear fixed interest if during each of any three, including the last two, of the five fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in RCW 48.13.060, have been not less than one and one-fourth times the total of its fixed charges for such year. In determining the adequacy of collateral security, not more than one-third of the total value of such required collateral shall consist of stock other than stock meeting the requirements of RCW 48.13.080.

(2) Fixed interest bearing obligations, other than those described in subdivision (1) of this section, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period and if during the last year of such period such net earnings have been not less than one and one-half times its fixed charges for such year.

(3) Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during each of the last two years of such period such net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for such year. [1993 c 92 § 2; 1947 c 79 § .13.05; Rem. Supp. 1947 § 45.13.05.]

48.13.060 Terms defined. (1) Certain terms used are defined for the purposes of this chapter as follows:

(a) "Obligation" includes bonds, debentures, notes or other evidences of indebtedness.

(b) "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of such institution.

(c) "Fixed charges" includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased properties.

(d) "Admitted assets" means the amount as of the last day of the most recently concluded annual statement year, computed in the same manner as "assets" in RCW 48.12.010.

(e) "Aggregate amount" of medium grade and lower grade obligations means the aggregate statutory statement value of those obligations thereof.

(f) "Institution" means a corporation, a joint stock company, an association, a trust, a business partnership, a business joint venture, or similar entity.

(2) If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the commissioner. [1993 c 92 § 3; 1947 c 79 § .13.06; Rem. Supp. 1947 § 45.13.06.]

48.13.070 Securities of merged or reorganized institutions. In applying the earnings test set forth in RCW 48.13.060 to any such institution, whether or not in legal existence during the whole of such five years next preceding the date of investment by the insurer, which has at any time during the five-year period acquired substantially all of the assets of any other institution or institutions by purchase, merger, consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings of the predecessor or constituent institutions, or of the institution so reorganized, available for interest and dividends for such portion of the five-year period as may have preceded such acquisition, or such reorganization, may be included in the earnings of such issuing, assuming or guaranteeing institution for such portion of such period as may be determined in accordance with adjusted or pro forma consolidated earnings statements covering such portion of such period and giving effect to all stock or shares outstanding, and all fixed charges existing, immediately after such acquisition, or such reorganization. [1947 c 79 § .13.07; Rem. Supp. 1947 § 45.13.07.]

48.13.080 Preferred or guaranteed stocks. (1) An insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, if a life insurer, or not

exceeding fifteen percent of such assets if other than a life insurer, in preferred or guaranteed stocks or shares, other than common stocks, of solvent institutions existing under the laws of the United States or of any state, district or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition by the insurer are eligible as investments under this chapter; and if qualified under either of the following:

(a) Preferred stocks or shares shall be deemed qualified if both these requirements are met:

(i) The net earnings of the institution available for its fixed charges for a period of five fiscal years next preceding the date of acquisition by the insurer must have averaged per year not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

(ii) during each of the last two years of such period such net earnings must have been not less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends whether paid or not.

(b) Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of subdivision (1) of RCW 48.13.050, construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

(2) An insurer shall not invest in or loan upon any preferred stock having voting rights, of any one institution, in excess of such proportion of the total issued and outstanding preferred stock of such institution having voting rights, as would, when added to any common shares of such institution, directly or indirectly held by it, exceed fifteen percent of all outstanding shares of such institution having voting rights, nor an amount in excess of the limit provided by RCW 48.13.030. This limitation shall not apply to such shares of a corporation which is the subsidiary of an insurer, and which corporation is engaged exclusively in a kind of business properly incidental to the insurance business of the insurer. [1947 c 79 § .13.08; Rem. Supp. 1947 § 45.13.08.]

48.13.090 Trustees' or receivers' obligations. An insurer may invest any of its funds, in an aggregate amount not exceeding two percent of its assets, in certificates, notes, or other obligations issued by trustees or receivers of institutions existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest. [1947 c 79 § .13.09; Rem. Supp. 1947 § 45.13.09.]

48.13.100 Equipment trust certificates. An insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United

States and the right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment. [1947 c 79 § .13.10; Rem. Supp. 1947 § 45.13.10.]

48.13.110 Mortgages, deeds of trust, mortgage bonds, notes, contracts. An insurer may invest any of its funds in:

(1)(a) Bonds or evidences of debt which are secured by first mortgages or deeds of trust on improved unencumbered real property located in the United States;

(b) Chattel mortgages in connection therewith pursuant to RCW 48.13.150;

(c) The equity of the seller of any such property in the contract for a deed, covering the entire balance due on a bona fide sale of such property, in amount not to exceed ten thousand dollars or the amount permissible under RCW 48.13.030, whichever is greater, in any one such contract for deed.

(2) Purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to RCW 48.13.160 as amended by section 7, chapter 241, Laws of 1969 ex. sess.

(3) Bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration under the terms of an act of congress of the United States of June 27, 1934, entitled the "National Housing Act," as amended.

(4) Bonds or notes secured by mortgage or trust deed guaranteed or insured as to principal in whole or in part by the Administrator of Veterans' Affairs pursuant to the provisions of Title III of an act of congress of the United States of June 22, 1944, entitled the "Servicemen's Readjustment Act of 1944," as amended.

(5) Evidences of debt secured by first mortgages or deeds of trust upon leasehold estates, except agricultural leaseholds executed pursuant to *RCW 79.01.096, running for a term of not less than fifteen years beyond the maturity of the loan as made or as extended, in improved real property, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold.

(6) Evidences of debt secured by first mortgages or deeds of trust upon agricultural leasehold estates executed pursuant to *RCW 79.01.096, otherwise unencumbered, and if the mortgagee is entitled to be subrogated to all the rights under the leasehold. [1975 1st ex.s. c 154 § 1; 1969 ex.s. c 241 § 4; 1947 c 79 § .13.11; Rem. Supp. 1947 § 45.13.11.]

*Reviser's note: RCW 79.01.096 was recodified as RCW 79.11.010 pursuant to 2003 c 334 § 556. For agricultural leaseholds, see RCW 79.13.060.

48.13.120 Investments limited by property value. (1) An investment made pursuant to the provisions of RCW 48.13.110 shall not exceed seventy-five percent of the fair value of the particular property at the time of investment. However, if the loan is secured by a first mortgage or other first lien upon real property improved with a single-family residential building, the terms of such loan provide for monthly payments of principal and interest sufficient to effect full repayment of the loan within the remaining useful life of the building as estimated in the appraisal for the loan,

or thirty years and two months, whichever is less, the principal so loaned or the entire note or bond issue so secured, plus the amount of the liens of any public bond, assessment, or tax assessed upon the property, shall not exceed eighty percent of the market value of the real property, or of the real property together with the improvements which are taken as security. This restriction shall not apply to purchase money mortgages or like securities received by an insurer upon the sale or exchange of real property acquired pursuant to RCW 48.13.160.

(2) The extent to which a mortgage loan made under RCW 48.13.110 (3) or (4) is guaranteed or insured by the Federal Housing Administration or guaranteed by the Administrator of Veterans' Affairs may be deducted before application of the limitations contained in subsection (1) of this section. [2007 c 80 § 6; 1993 c 92 § 7; 1969 ex.s. c 241 § 5; 1967 c 150 § 11; 1955 c 303 § 1; 1949 c 190 § 16; 1947 c 79 § .13.12; Rem. Supp. 1949 § 45.13.12.]

48.13.125 Mortgage loans on one family dwellings—Limitation on amortization. Loans on one family dwellings secured by mortgages or deeds of trust or investments therein shall be amortized within not more than thirty years and two months by payments of installments thereon at regular intervals not less frequent than every three months; except those guaranteed or insured in whole or in part by the Federal Housing Administration, the Administrator of Veterans' Affairs or the Farmers Home Administration. [1969 ex.s. c 241 § 6; 1967 c 150 § 10.]

48.13.130 "Encumbrance" defined. (1) Real property shall not be deemed to be encumbered within the meaning of RCW 48.13.110 by reason of the existence of:

(a) Instruments reserving mineral, oil, timber or similar rights, rights-of-way, sewer rights, or rights in walls;

(b) Liens for taxes or assessments not delinquent, or liens not delinquent for community recreational facilities, or for the maintenance of community facilities, or for service and maintenance of water rights;

(c) Building restrictions or other restrictive covenants;

(d) Encroachments, if such encroachments are taken into consideration in determining the fair value of the property;

(e) A lease under which rents or profits are reserved to the owner if in any event the security for the loan or investment is a first lien upon the real property; or

(f) With respect to loans secured by mortgage, deed of trust, or other collateral guaranteed or insured in full or in part by the government of the United States, such encumbrances as are allowed as exceptions in title by the administrator or administration of the division of such government so guaranteeing or insuring.

(2) If under any of the exceptions set forth in subsection (1) of this section there is any sum owing but not due or delinquent, the total amount of such sum shall be deducted from the amount which otherwise might be loaned on the property. The value of any mineral, oil, timber or similar right reserved shall not be included in the fair value of the property. [1955 c 303 § 2; 1947 c 79 § .13.13; Rem. Supp. 1947 § 45.13.13.]

48.13.140 Appraisal of property—Insurance—Limit of loan. (1) The fair value of property shall be determined by appraisal by a competent appraiser at the time of the acquisition of real property or of the making or acquiring of a mortgage loan or investing in a contract for the deed thereon; except, that as to bonds or notes secured by mortgage or trust deed guaranteed or insured by the Federal Housing Administration, or guaranteed or insured as to principal in full or in part by the Administrator of Veterans' Affairs, or guaranteed or insured by the Farmers Home Administration, the valuation made by such administration or administrator shall be deemed to have been made by a competent appraiser for the purposes of this subsection.

(2) Buildings and other improvements located on mortgaged premises shall be kept insured for the benefit of the mortgagee against loss or damage from fire in an amount not less than the unpaid balance of the obligation, or the insurable value of the property, whichever is the lesser.

(3) An insurer shall not make or acquire a loan or loans upon the security of any one parcel of real property in aggregate amount in excess of twenty-five thousand dollars or more than the amount permissible under RCW 48.13.030, whichever is the greater. [1967 ex.s. c 95 § 12; 1955 c 303 § 3; 1947 c 79 § .13.14; Rem. Supp. 1947 § 45.13.14.]

48.13.150 Auxiliary chattel mortgages. (1) In connection with a mortgage loan on the security of real property designed and used primarily for residential purposes only, acquired pursuant to RCW 48.13.110, an insurer may loan or invest an amount not exceeding twenty percent of the amount loaned on or invested in such real property mortgage, on the security of a chattel mortgage for a term of not more than five years representing a first and prior lien, except for taxes not then delinquent, on personal property constituting durable equipment owned by the mortgagor and kept and used in the mortgaged premises.

(2) The term "durable equipment" shall include only mechanical refrigerators, mechanical laundering machines, heating and cooking stoves and ranges, mechanical kitchen aids, vacuum cleaners, and fire extinguishing devices; and in addition in the case of apartment houses and hotels, room furniture and furnishings.

(3) Prior to acquisition of a chattel mortgage, items of property to be included shall be separately appraised by a competent appraiser and the fair market value thereof determined. No such chattel mortgage loan shall exceed in amount the same ratio of loan to the value of the property as is applicable to the companion loan on the real property. [1947 c 79 § .13.15; Rem. Supp. 1947 § 45.13.15.]

48.13.160 Real property owned—Home office building. (1) An insurer may own and invest or have invested in its home office and branch office buildings any of its funds in aggregate amount not to exceed ten percent of its assets unless approved by the commissioner, or if a mutual or reciprocal insurer not to exceed ten percent of its assets nor such amount as would reduce its surplus, exclusive of such investment, below fifty thousand dollars unless approved by the commissioner.

(2) An insurer may own real property acquired in satisfaction or on account of loans, mortgages, liens, judgments, (2008 Ed.)

or other debts previously owing to the insurer in the course of its business.

(3) An insurer may invest or have invested in aggregate amount not exceeding three percent of its assets in the following real property, and in the repair, alteration, furnishing, or improvement thereof:

(a) Real property requisite for its accommodation in the convenient transaction of its business if approved by the commissioner.

(b) Real property acquired by gift or devise.

(c) Real property acquired in exchange for real property owned by it. If necessary in order to consummate such an exchange, the insurer may put up cash in amount not to exceed twenty percent of the fair value of its real property to be so exchanged, in addition to such property.

(d) Real property acquired through a lawful merger or consolidation with it of another insurer and not required for the purposes specified in subsection (1) and in paragraph (a) of subsection (2) of this section.

(e) Upon approval of the commissioner, in real property and equipment incident to real property, requisite or desirable for the protection or enhancement of the value of other real property owned by the insurer.

(4) A domestic life insurer with assets of at least twenty-five million dollars and at least ten million dollars in capital and surplus, and a domestic property and casualty insurer with assets of at least seventy-five million dollars and at least thirty million dollars in capital and surplus, or, if a mutual or reciprocal property or casualty insurer, at least thirty million dollars in surplus, may, in addition to the real property included in subsections (1), (2) and (3) of this section, own such real property other than property to be used for ranch, mining, recreational, amusement, or club purposes, as may be acquired as an investment for the production of income, or as may be acquired to be improved or developed for such investment purpose pursuant to an existing program therefor, subject to the following limitations and conditions:

(a) The cost of each parcel of real property so acquired under this subsection (4), including the estimated cost to the insurer of the improvement or development thereof, when added to the book value of all other real property under this subsection (4), together with the admitted value of all common stock, then held by it, shall not exceed twenty percent of its admitted assets or fifty percent of its surplus over the minimum required surplus, whichever is greater, as of the thirty-first day of December next preceding; and

(b) The cost of each parcel of real property so acquired, including the estimated cost to the insurer of the improvement or development thereof, shall not exceed as of the thirty-first day of December next preceding, four percent of its admitted assets.

(c) Indirect or proportionate interests in real estate held by a domestic life insurer through any subsidiary shall be included in proportion to such insurer's interest in the subsidiary in applying the limits provided in subsection (4). [1981 c 339 § 6; 1973 c 151 § 3; 1969 ex.s. c 241 § 7; 1967 ex.s. c 95 § 13; 1949 c 190 § 17; 1947 c 79 § .13.16; Rem. Supp. 1949 § 45.13.16.]

48.13.170 Disposal of real property—Time limit. (1) Real property acquired by an insurer pursuant to paragraph

(a) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after it has ceased being necessary for the use of the insurer in the transaction of its business. Real property acquired by an insurer pursuant to loans, mortgages, liens, judgments, or other debts, or pursuant to paragraphs (b), (c), (d), and (e) of subsection (3) of RCW 48.13.160 shall be disposed of within five years after date of acquisition. The time for any such disposal may be extended by the commissioner for a definite additional period or periods upon application and proof that forced sale of the property, otherwise necessary, would be against the best interests of the insurer.

(2) Any such real property held by the insurer without the commissioner's consent beyond the time permitted for its disposal shall not be carried or allowed as an asset. [1967 ex.s. c 95 § 14; 1947 c 79 § .13.17; Rem. Supp. 1947 § 45.13.17.]

48.13.180 Foreign securities. (1) An insurer authorized to transact insurance in a foreign country may invest any of its funds, in aggregate amount not exceeding its deposit and reserve obligations incurred in such country, in securities of or in such country possessing characteristics and of a quality similar to those required pursuant to this chapter for investments in the United States.

(2) Subject to the limitations in this chapter, an insurer may invest any of its funds, in an aggregate amount not exceeding ten percent of its assets, in addition to any amount permitted pursuant to subsection (1) of this section, in obligations of foreign governments including provinces, counties, municipalities, or similar entities, and in obligations and securities of foreign corporations, which have not been in default during the five years next preceding date of acquisition, and if the foreign jurisdiction has a sovereign debt rating of SVO 1. However, an investment made in any one foreign country pursuant to this subsection shall not exceed five percent of the insurer's assets. [2003 c 251 § 1; 1947 c 79 § .13.18; Rem. Supp. 1947 § 45.13.18.]

48.13.190 Policy loans. A life insurer may loan to its policyholder upon the pledge of the policy as collateral security, any sum not exceeding the legal reserve maintained on the policy. [1947 c 79 § .13.19; Rem. Supp. 1947 § 45.13.19.]

48.13.200 Savings and share accounts. An insurer may invest or deposit any of its funds in share or savings accounts of savings and loan associations, or in savings accounts of banks, and in any one such institution only to the extent that such an account is insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation. [1947 c 79 § .13.20; Rem. Supp. 1947 § 45.13.20.]

48.13.210 Insurance stocks. (1) An insurer other than a life insurer may invest a portion of its surplus funds in an aggregate amount not exceeding fifty percent of its surplus over its capital stock and other liabilities, or thirty-five percent of its capital funds, whichever is greater, in the stocks of other insurers organized and existing under the laws of states of the United States. Indirect or proportionate interests in

insurance stocks held by an insurer through any intermediate subsidiary or subsidiaries shall be included in applying the limitations provided in subsections (1), (2), and (3) of this section.

(2) A life insurer may invest in such insurance stocks in an aggregate amount not exceeding the smaller of the following amounts: Five percent of its assets; or twenty-five percent of its surplus over its capital stock and other liabilities, or of surplus over its required minimum surplus if a mutual life insurer.

(3) An insurer shall not purchase or hold as an investment more than five percent of the voting stock of any one other insurer, and subject further to the investment limits of RCW 48.13.030. This limitation shall not apply if such other insurer is the subsidiary of, and substantially all its shares having voting powers are owned by, the insurer.

(4) No such insurance stock shall be eligible as an investment unless it meets the qualifications for stocks of other corporations as set forth in RCW 48.13.220.

(5) The limitations on investment in insurance stocks set forth in this chapter shall not apply to stocks acquired under a plan for merger of the insurers which has been approved by the commissioner or to shares received as stock dividends upon shares already owned. [1979 ex.s. c 199 § 3; 1979 ex.s. c 130 § 4; 1947 c 79 § .13.21; Rem. Supp. 1947 § 45.13.21.]

48.13.218 Limitation on insurer loans or investments. (1) Notwithstanding RCW 48.13.220 and 48.13.240, an insurer may not loan or invest its funds in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries in an aggregate amount exceeding the lesser of the following sums: Ten percent of its assets, or fifty percent of its surplus as regards policyholders. In calculating the amount of investments under this section, investments in domestic or foreign subsidiary insurers, health care service contractors, and health maintenance organizations are excluded.

(2) For the purposes of this section, "subsidiary" has the same meaning as in RCW 48.31B.005. [2001 c 90 § 1.]

48.13.220 Common stocks—Investment—Acquisition—Engaging in certain businesses. (Effective until July 1, 2009.) (1) After satisfying the requirements of RCW 48.13.260, an insurer may invest any of its funds in common shares of stock in solvent United States corporations that qualify as a sound investment; except, that as to life insurers such investments shall further not aggregate an amount in excess of fifty percent of the insurer's surplus over its minimum required surplus.

(2) The insurer shall not invest in or loan upon the security of more than ten percent of the outstanding common shares of any one such corporation, subject further to the aggregate investment limitation of RCW 48.13.030.

(3) The limitations of subsection (2) of this section shall not apply to investment in the securities of any subsidiary corporations of the insurer which are engaged or organized to engage exclusively in one or more of the following businesses:

(a) Acting as an insurance agent for its parent or for any of its parent's insurer subsidiaries or affiliates;

(b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(c) Rendering management, sales, or other related services to any investment company subject to the Federal Investment Company Act of 1940, as amended;

(d) Rendering investment advice;

(e) Rendering services related to the functions involved in the operation of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims appraisal, and collection services;

(f) Acting as administrator of employee welfare benefit and pension plans for governments, government agencies, corporations, or other organizations or groups;

(g) Ownership and management of assets which the parent could itself own and manage: PROVIDED, That the aggregate investment by the insurer and its subsidiaries acquired pursuant to this paragraph shall not exceed the limitations otherwise applicable to such investments by the parent;

(h) Acting as administrative agent for a government instrumentality which is performing an insurance function or is responsible for a health or welfare program;

(i) Financing of insurance premiums;

(j) Any other business activity reasonably ancillary to an insurance business;

(k) Owning one or more subsidiary (i) insurers to the extent permitted by this chapter, or (ii) businesses specified in paragraphs (a) through (k) of this subsection inclusive, or (iii) other businesses the stock of which is eligible under RCW 48.13.240 or 48.13.250, or any combination of such insurers and businesses.

(4) No acquisition of a majority of the total outstanding common shares of any corporation shall be made pursuant to this section unless a notice of intention of such proposed acquisition shall have been filed with the commissioner not less than ninety days, or such shorter period as may be permitted by the commissioner, in advance of such proposed acquisition, nor shall any such acquisition be made if the commissioner at any time prior to the expiration of the notice period finds that the proposed acquisition is contrary to law, or determines that such proposed acquisition would be contrary to the best interests of the parent insurer's policyholders or of the people of this state. The following shall be the only factors to be considered in making the foregoing determination:

(a) The availability of the funds or assets required for such acquisition;

(b) The fairness of any exchange of stock, assets, cash, or other consideration for the stock or assets to be received;

(c) The impact of the new operation on the parent insurer's surplus and existing insurance business and the risks inherent in the parent insurer's investment portfolio and operations;

(d) The fairness and adequacy of the financing proposed for the subsidiary;

(e) The likelihood of undue concentration of economic power;

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(f) Whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and

(g) Whether the acquisition might result in an excessive proliferation of subsidiaries which would tend to unduly dilute management effectiveness or weaken financial strength or otherwise be contrary to the best interests of the parent insurer's policyholders or of the people of this state. At any time after an acquisition, the commissioner may order its disposition if he finds, after notice and hearing, that its continued retention is hazardous or prejudicial to the interests of the parent insurer's policyholders. The contents of each notice of intention of a proposed acquisition filed hereunder and information pertaining thereto shall be kept confidential, shall not be subject to subpoena, and shall not be made public unless after notice and hearing the commissioner determines that the interests of policyholders, stockholders, or the public will be served by the publication thereof.

(5) A domestic insurance company may, provided that it maintains books and records which separately account for such business, engage directly in any business referred to in paragraphs (d), (e), (h), and (j) of subsection (3) of this section either to the extent necessarily or properly incidental to the insurance business the insurer is authorized to do in this state or to the extent approved by the commissioner and subject to any limitations he may prescribe for the protection of the interests of the policyholders of the insurer after taking into account the effect of such business on the insurer's existing insurance business and its surplus, the proposed allocation of the estimated cost of such business, and the risks inherent in such business as well as the relative advantages to the insurer and its policyholders of conducting such business directly instead of through a subsidiary. [1982 c 218 § 3; 1973 c 151 § 4; 1949 c 190 § 18; 1947 c 79 § .13.22; Rem. Supp. 1949 § 45.13.22.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.220 Common stocks—Investment—Acquisition—Engaging in certain businesses. (Effective July 1, 2009.) (1) After satisfying the requirements of RCW 48.13.260, an insurer may invest any of its funds in common shares of stock in solvent United States corporations that qualify as a sound investment; except, that as to life insurers such investments shall further not aggregate an amount in excess of fifty percent of the insurer's surplus over its minimum required surplus.

(2) The insurer shall not invest in or loan upon the security of more than ten percent of the outstanding common shares of any one such corporation, subject further to the aggregate investment limitation of RCW 48.13.030.

(3) The limitations of subsection (2) of this section shall not apply to investment in the securities of any subsidiary corporations of the insurer which are engaged or organized to engage exclusively in one or more of the following businesses:

(a) Acting as an insurance producer or title insurance agent for its parent or for any of its parent's insurer subsidiaries or affiliates;

(b) Investing, reinvesting, or trading in securities or acting as a securities broker or dealer for its own account, that of

its parent, any subsidiary of its parent, or any affiliate or subsidiary;

(c) Rendering management, sales, or other related services to any investment company subject to the Federal Investment Company Act of 1940, as amended;

(d) Rendering investment advice;

(e) Rendering services related to the functions involved in the operation of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims appraisal, and collection services;

(f) Acting as administrator of employee welfare benefit and pension plans for governments, government agencies, corporations, or other organizations or groups;

(g) Ownership and management of assets which the parent could itself own and manage: PROVIDED, That the aggregate investment by the insurer and its subsidiaries acquired pursuant to this paragraph shall not exceed the limitations otherwise applicable to such investments by the parent;

(h) Acting as administrative agent for a government instrumentality which is performing an insurance function or is responsible for a health or welfare program;

(i) Financing of insurance premiums;

(j) Any other business activity reasonably ancillary to an insurance business;

(k) Owning one or more subsidiary (i) insurers to the extent permitted by this chapter, or (ii) businesses specified in paragraphs (a) through (k) of this subsection inclusive, or (iii) other businesses the stock of which is eligible under RCW 48.13.240 or 48.13.250, or any combination of such insurers and businesses.

(4) No acquisition of a majority of the total outstanding common shares of any corporation shall be made pursuant to this section unless a notice of intention of such proposed acquisition shall have been filed with the commissioner not less than ninety days, or such shorter period as may be permitted by the commissioner, in advance of such proposed acquisition, nor shall any such acquisition be made if the commissioner at any time prior to the expiration of the notice period finds that the proposed acquisition is contrary to law, or determines that such proposed acquisition would be contrary to the best interests of the parent insurer's policyholders or of the people of this state. The following shall be the only factors to be considered in making the foregoing determination:

(a) The availability of the funds or assets required for such acquisition;

(b) The fairness of any exchange of stock, assets, cash, or other consideration for the stock or assets to be received;

(c) The impact of the new operation on the parent insurer's surplus and existing insurance business and the risks inherent in the parent insurer's investment portfolio and operations;

(d) The fairness and adequacy of the financing proposed for the subsidiary;

(e) The likelihood of undue concentration of economic power;

(f) Whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and

(g) Whether the acquisition might result in an excessive proliferation of subsidiaries which would tend to unduly dilute management effectiveness or weaken financial strength or otherwise be contrary to the best interests of the parent insurer's policyholders or of the people of this state. At any time after an acquisition, the commissioner may order its disposition if he or she finds, after notice and hearing, that its continued retention is hazardous or prejudicial to the interests of the parent insurer's policyholders. The contents of each notice of intention of a proposed acquisition filed hereunder and information pertaining thereto shall be kept confidential, shall not be subject to subpoena, and shall not be made public unless after notice and hearing the commissioner determines that the interests of policyholders, stockholders, or the public will be served by the publication thereof.

(5) A domestic insurance company may, provided that it maintains books and records which separately account for such business, engage directly in any business referred to in paragraphs (d), (e), (h), and (j) of subsection (3) of this section either to the extent necessarily or properly incidental to the insurance business the insurer is authorized to do in this state or to the extent approved by the commissioner and subject to any limitations he or she may prescribe for the protection of the interests of the policyholders of the insurer after taking into account the effect of such business on the insurer's existing insurance business and its surplus, the proposed allocation of the estimated cost of such business, and the risks inherent in such business as well as the relative advantages to the insurer and its policyholders of conducting such business directly instead of through a subsidiary. [2008 c 217 § 5; 1982 c 218 § 3; 1973 c 151 § 4; 1949 c 190 § 18; 1947 c 79 § .13.22; Rem. Supp. 1949 § 45.13.22.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.230 Collateral loans. An insurer may loan its funds upon the pledge of securities or evidences of debt eligible for investment under this chapter. As at date made, no such loan shall exceed in amount ninety percent of the market value of such collateral pledged, except that loans upon pledges of United States government bonds may be equal to the market value of the bonds pledged. The amount so loaned shall be included in the maximum percentage of funds permitted to be invested in the kinds of securities or evidences of debt pledged or permitted by RCW 48.13.030. [1947 c 79 § .13.23; Rem. Supp. 1947 § 45.13.23.]

48.13.240 Miscellaneous investments. (1) An insurer may loan or invest its funds in an aggregate amount not exceeding the lesser of the following sums: Ten percent of its assets, or fifty percent of its surplus over its capital and other liabilities, or if a mutual or reciprocal insurer fifty percent of its surplus over minimum required surplus, in loans or investments not otherwise eligible for investment and not specifically prohibited by RCW 48.13.270.

(2) No such loan or investment shall be any item described in RCW 48.12.020.

(3) No such investment in or loan upon the security of any one person or entity shall exceed the amount specified in subsection (1) of this section or one percent of the insurer's

assets, whichever is the lesser, except that an investment in a limited liability company formed under chapter 25.15 RCW to develop real property owned by the insurer as permitted by RCW 48.13.160 shall not exceed the lesser of the amount specified in subsection (1) of this section or four percent of the insurer's assets. This subsection (3) shall not apply to an investment in the stock of a subsidiary company.

(4) The insurer shall keep a separate record of all investments acquired under this section. [2004 c 88 § 1; 1982 c 218 § 4; 1947 c 79 § .13.24; Rem. Supp. 1947 § 45.13.24.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.250 Special consent investments. Upon advance approval of the commissioner and in compliance with RCW 48.13.020, an insurer may make any investment or kind of investment or exchange of assets otherwise prohibited or not eligible under any other section of this chapter. The commissioner's order of approval if granted shall specify whether the investment or any part thereof may be credited to required minimum capital or surplus investments, or to investment of reserves. [1947 c 79 § .13.25; Rem. Supp. 1947 § 45.13.25.]

48.13.260 Required investments for capital and reserves. (1) An insurer shall invest and keep invested its funds aggregating in amount, if a stock insurer, not less than one hundred percent of its minimum required capital, or if a mutual or reciprocal insurer, not less than one hundred percent of its required minimum surplus, in cash or investments eligible in accordance with RCW 48.13.040 (public obligations), and in mortgage loans on real property located within this state, pursuant to RCW 48.13.110.

(2) In addition to the investments required by subsection (1) of this section, an insurer shall invest and keep invested its funds aggregating not less than one hundred percent of its reserves required by this code in cash or premiums in course of collection or in investments eligible in accordance with the following sections: RCW 48.13.040 (public obligations), 48.13.050 (corporate obligations), 48.13.080 (preferred or guaranteed stocks), 48.13.090 (trustees' or receivers' obligations), 48.13.100 (equipment trust certificates), 48.13.110 (mortgages, loans and contracts), 48.13.150 (auxiliary chattel mortgages), 48.13.160 (real property, home office building, etc.), 48.13.180 (foreign securities), 48.13.190 (policy loans), 48.13.200 (savings and share accounts), 48.13.220 (common stocks), 48.13.230 (collateral loans), 48.13.250 (special consent investments).

(3) This section shall not apply to title insurers nor to mutual insurers on the assessment premium plan. [1971 ex.s. c 13 § 16; 1947 c 79 § .13.26; Rem. Supp. 1947 § 45.13.26.]

48.13.265 Investments secured by real estate—Amount restricted. An insurer shall not invest or have invested at any one time more than sixty-five percent of its assets in investments in real estate, real estate contracts, and notes, bonds and other evidences of debt secured by mortgage on real estate, as described in RCW 48.13.110 and 48.13.160. Any insurer which, on June 13, 1957, has in excess of sixty-five percent of its assets so invested shall not make any further such investments while such excess exists. All investments in mortgage-backed securities qualifying

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under the secondary mortgage market enhancement act of 1984 (98 Stat. 1691; 15 U.S.C. Sec. 77r-l et seq.) are included in determining if an insurer has exceeded the sixty-five percent limit. [2007 c 80 § 7; 1957 c 193 § 8.]

48.13.270 Prohibited investments. An insurer shall not, except with the commissioner's approval in advance, invest in or loan its funds upon the security of, or hold:

(1) Issued shares of its own capital stock, except for the purpose of mutualization in accordance with RCW 48.08.080;

(2) Securities issued by any corporation if a majority of its stock having voting power is owned directly or indirectly by or for the benefit of any one or more of the insurer's officers and directors;

(3) Any investment or loan ineligible under the provisions of RCW 48.13.030;

(4) Securities issued by any insolvent corporation;

(5) Obligations contrary to the provisions of RCW 48.13.273; or

(6) Any investment or security which is found by the commissioner to be designed to evade any prohibition of this code. [1995 c 84 § 1; 1993 c 92 § 4; 1982 c 218 § 5; 1947 c 79 § .13.27; Rem. Supp. 1947 § 45.13.27.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.273 Acquisition of medium and lower grade obligations—Definitions—Limitations—Rules. (1) As used in this section:

(a) "Lower grade obligations" means obligations that are rated four, five, or six by the securities valuation office.

(b) "Medium grade obligations" means obligations that are rated three by the securities valuation office.

(c) "Securities valuation office" means the entity created by the national association of insurance commissioners in part, to assign rating categories for bond obligations acquired by insurers.

(2) No insurer may acquire directly or indirectly, any medium grade or lower grade obligation if, after giving effect to the acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the insurer would exceed twenty percent of its admitted assets provided that:

(a) No more than ten percent of an insurer's admitted assets may be invested in lower grade obligations;

(b) No more than three percent of an insurer's admitted assets may be invested in lower grade obligations rated five or six by the securities valuation office;

(c) No more than one percent of an insurer's admitted assets may be invested in lower grade obligations rated six by the securities valuation office;

(d) No more than one percent of an insurer's admitted assets may be invested in medium and lower grade obligations issued, guaranteed, or insured by any one institution; and

(e) No more than one-half of one percent of an insurer's admitted assets may be invested in lower grade obligations issued, guaranteed, or insured by any one institution.

(3) This section does not require an insurer to sell or otherwise dispose of any obligation lawfully acquired before July 25, 1993, or in accordance with this chapter. The com-

missioner shall adopt rules identifying the circumstances under which the commissioner may approve an investment in obligations exceeding the limitations of this section as necessary to mitigate financial loss by an insurer.

(4) The board of directors of any domestic insurance company which acquires or invests, directly or indirectly, more than two percent of its admitted assets in medium grade and lower grade obligations of any institution, shall adopt a written plan for making those investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards including, but not limited to, standards for issuer, industry, duration, liquidity, and geographic location. [1993 c 92 § 5.]

48.13.275 Obligations rated by the securities valuation office. An insurer may invest its funds in obligations rated by the securities valuation office. Investments in obligations that are rated one or two by the securities valuation office shall be subject to the limitations contained in RCW 48.13.030. [2007 c 80 § 8; 1993 c 92 § 6.]

48.13.280 Securities underwriting, agreements to withhold or repurchase, prohibited. No insurer shall

(1) participate in the underwriting of the marketing of securities in advance of their issuance or enter into any transaction for such underwriting for the account of such insurer jointly with any other person; or

(2) enter into any agreement to withhold from sale any of its property, or to repurchase any property sold by it. [1947 c 79 § 13.28; Rem. Supp. 1947 § 45.13.28.]

48.13.285 Derivative transactions—Restrictions—Definitions—Rules. (1) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined by rule by the insurance commissioner;

(b) Derivative instruments shall not be used for speculative purposes, but only as stated in (a) of this subsection;

(c) An insurer shall be able to demonstrate to the insurance commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analysis;

(d) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(i) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent of its admitted assets;

(ii) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent of its admitted assets; and

(iii) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent of its admitted assets;

(e) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent of its admitted assets:

(i) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(ii) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Sales of covered puts on investments that the insurer is permitted to acquire under this chapter, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(iv) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding;

(f) An insurer shall include all counterparty exposure amounts in determining compliance with general diversification requirements and medium and low grade investment limitations under this chapter; and

(g) Pursuant to rules adopted by the insurance commissioner under subsection (3) of this section, the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limitations in (d) of this subsection or for other risk management purposes under rules adopted by the commissioner, but replication transactions shall not be permitted for other than risk management purposes.

(2) For purposes of this section:

(a) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price;

(b) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor;

(c) "Counterparty exposure amount" means the net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse. The amount of the credit risk equals the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer, or zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

If over-the-counter derivative instruments are entered into under a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or, if not within the United States, within a foreign jurisdiction listed in the purposes and procedures of the securities valuation office as eligible for netting, the net amount of credit risk shall be the greater of zero or the sum of:

(i) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(ii) The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties;

(d) "Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap or floor it has written, or has set aside under a custodial or escrow agreement cash or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction;

(e) "Derivative instrument" means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any other agreements, options, or instruments substantially similar thereto or any series or combination thereof and any agreements, options, or instruments permitted under rules adopted by the commissioner under subsection (3) of this section;

(f) "Derivative transaction" means a transaction involving the use of one or more derivative instruments;

(g) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests;

(h) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of, one or more underlying interests;

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(i) "Hedging transaction" means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring;

(j) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, or terminate or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests;

(k) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests;

(l) "Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments; and

(m) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

(3) The insurance commissioner may adopt rules implementing the provisions of this section. [1997 c 317 § 1.]

48.13.290 Disposal of ineligible property or securities. (1) Any ineligible personal property or securities acquired by an insurer may be required to be disposed of within the time not less than six months specified by order of the commissioner, unless before that time it attains the standard of eligibility, if retention of such property or securities would be contrary to the policyholders or public interest in that it tends to substantially lessen competition in the insurance business or threatens impairment of the financial condition of the insurer.

(2) Any personal property or securities acquired by an insurer contrary to RCW 48.13.270 shall be disposed of forthwith or within any period specified by order of the commissioner.

(3) Any property or securities ineligible only because of being excess of the amount permitted under this chapter to be invested in the category to which it belongs shall be ineligible only to the extent of such excess. [1982 c 218 § 6; 1973 c 151 § 5; 1947 c 79 § .13.29; Rem. Supp. 1947 § 45.13.29.]

Severability—1982 c 218: See note following RCW 48.12.020.

48.13.340 Authorization of investments. No investment, loan, sale or exchange thereof shall, except as to the policy loans of a life insurer, be made by any domestic insurer unless authorized or approved by its board of directors or by a committee charged by the board of directors or the bylaws with the duty of making such investment, loan, sale or exchange. The minutes of any such committee shall be

recorded and reports thereof shall be submitted to the board of directors for approval or disapproval. [1949 c 190 § 19; 1947 c 79 § .13.34; Rem. Supp. 1949 § 45.13.34.]

48.13.350 Record of investments. (1) As to each investment or loan of the funds of a domestic insurer a written record in permanent form showing the authorization thereof shall be made and signed by an officer of the insurer or by the chairman of such committee authorizing the investment or loan.

(2) As to each such investment or loan the insurer's records shall contain:

(a) In the case of loans: The name of the borrower; the location and legal description of the property; a physical description, and the appraised value of the security; the amount of the loan, rate of interest and terms of repayment.

(b) In the case of securities: The name of the obligor; a description of the security and the record of earnings; the amount invested, the rate of interest or dividend, the maturity and yield based upon the purchase price.

(c) In the case of real estate: The location and legal description of the property; a physical description and the appraised value; the purchase price and terms.

(d) In the case of all investments:

(i) The amount of expenses and commissions if any incurred on account of any investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents which are part of the insurer's records.

(ii) The name of any officer or director of the insurer having any direct, indirect, or contingent interest in the securities or loan representing the investment, or in the assets of the person in whose behalf the investment or loan is made, and the nature of such interest. [1949 c 190 § 20; 1947 c 79 § .13.35; Rem. Supp. 1949 § 45.13.35.]

48.13.360 Investments of foreign and alien insurers. The investments of a foreign or alien insurer shall be as permitted by the laws of its domicile but shall be of a quality substantially as high as those required under this chapter for similar funds of like domestic insurers. [1947 c 79 § .13.36; Rem. Supp. 1947 § 45.13.36.]

48.13.450 Safeguarding securities—Definitions. The definitions in this section apply throughout RCW 48.13.450 through 48.13.475 unless the context clearly requires otherwise.

(1) "Agent" means a national bank, state bank, trust company, or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the federal reserve system and through which a custodian participates in a clearing corporation, including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems; except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "agent" may include a corporation that is organized or existing under the laws of a foreign country and

that is legally qualified under those laws to accept custody of securities.

(2) "Broker/dealer" means a broker or dealer as defined in RCW 62A.8-102(1)(c), that is registered with and subject to the jurisdiction of the securities and exchange commission, maintains membership in the securities investor protection corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars.

(3) "Clearing corporation" means a corporation as defined in RCW 62A.8-102(1)(e) that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of any foreign country and is legally qualified under such laws to effect transactions in securities by computerized book-entry. "Clearing corporation" also includes treasury/reserve automated debt entry securities system and treasury direct book-entry securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301.

(4) "Commissioner" means the insurance commissioner of the state of Washington.

(5) "Custodian" means:

(a) A national bank, state bank, or trust company that shall, at all times acting as a custodian, be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the federal reserve system and that is legally qualified to accept custody of securities; except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times acting as a custodian be no less than adequately capitalized as determined by the standards adopted by the international banking authorities and legally qualified to accept custody of securities; or

(b) A broker/dealer.

(6) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the treasury/reserve automated debt equity securities system (TRADES) or treasury direct systems.

(7) "Securities" means instruments as defined in RCW 62A.8-102(1)(o).

(8) "Securities certificate" has the same meaning as in RCW 62A.8-102(1)(d).

(9) "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent annual or transition report pursuant to section 13 or 15(d) of the securities exchange act of 1934 (S.E.C. Form 10-K) filed with the securities and exchange commission.

(10) "Treasury/reserve automated debt entry securities system" ("TRADES") and "treasury direct" mean book-entry

securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301, with the operation of TRADES and treasury direct subject to 31 C.F.R. pt. 357 et seq. [2008 c 234 § 1; 2000 c 221 § 1.]

48.13.455 Safeguarding securities—Deposit in a clearing corporation—Certificates—Records. Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation. When securities are deposited with a clearing corporation, securities certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and securities certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any custodian through which an insurance company holds securities shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of securities certificates representing such securities. [2008 c 234 § 2; 2000 c 221 § 2.]

48.13.460 Safeguarding securities—Authorized methods of holding securities. The following are the only authorized methods of holding securities:

- (1) A domestic insurance company may hold securities in definitive certificates;
- (2) A domestic insurance company may, pursuant to an agreement, designate a custodian through which it can transact and maintain book-entry securities on behalf of the insurance company; or
- (3) A domestic insurance company may, pursuant to an agreement, participate in depository systems of clearing corporations directly or through a custodian. [2008 c 234 § 3; 2000 c 221 § 3.]

48.13.465 Safeguarding securities—Requirement to receive a confirmation. A domestic insurance company using the methods of holding securities under RCW 48.13.460 (2) or (3) is required to receive a confirmation from:

- (1) The custodian whenever securities are received or surrendered pursuant to the domestic insurance company's instructions to a securities broker; or
- (2) The securities broker provided that the domestic insurance company has given the custodian and the securities broker matching instructions authorizing the transaction, which have been confirmed by the custodian prior to surrendering funds or securities to conduct the transaction. [2008 c 234 § 4; 2000 c 221 § 4.]

48.13.470 Safeguarding securities—Broker executing a trade—Time limits. (1) A broker executing a securities trade pursuant to an order from a domestic insurance

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company shall send confirmation to the domestic insurance company or the clearing corporation confirming the order has been executed within twenty-four hours after order completion.

(2) A broker may not hold in its own account for longer than seventy-two hours any securities bought or sold pursuant to an order from a domestic insurance company. [2000 c 221 § 5.]

48.13.475 Safeguarding securities—Maintenance with a custodian—Commissioner may order transfer—Challenge to order—Standing at hearing or for judicial review. (1) Notwithstanding the maintenance of securities with a custodian pursuant to agreement, if the commissioner:

- (a) Has reasonable cause to believe that the domestic insurer:
 - (i) Is conducting its business and affairs in such a manner as to threaten to render it insolvent;
 - (ii) Is in a hazardous condition or is conducting its business and affairs in a manner that is hazardous to its policyholders, creditors, or the public; or
 - (iii) Has committed or is committing or has engaged or is engaging in any act that would constitute grounds for rendering it subject to rehabilitation or liquidation proceedings; or

(b) Determines that irreparable loss and injury to the property and business of the domestic insurer has occurred or may occur unless the commissioner acts immediately; then the commissioner may, without hearing, order the insurer and the custodian promptly to effect the transfer of the securities to another custodian approved by the commissioner. Upon receipt of the order, the custodian shall promptly effect the transfer of the securities. Notwithstanding the pendency of any hearing or request for hearing, the order shall be complied with by those persons subject to that order. Any challenge to the validity of the order shall be made under chapter 48.04 RCW, however, the stay of action provisions of RCW 48.04.020 do not apply. It is the responsibility of both the insurer and the custodian to oversee that compliance with the order is completed as expeditiously as possible. Upon receipt of an order, there shall be no trading of the securities without specific instructions from the commissioner until the securities are received by the new custodian, except to the extent trading transactions are in process on the day the order is received by the insurer and the failure to complete the trade may result in loss to the insurer's account. Issuance of an order does not affect the custodian's liabilities with regard to the securities that are the subject of the order.

(2) No person other than the insurer has standing at the hearing by the commissioner or for any judicial review of the order. [2008 c 234 § 5; 2000 c 221 § 6.]

48.13.480 Safeguarding securities—Insurance company's securities—Written agreement with custodian—Required terms. (1) An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent or in a clearing corporation.

(2) The agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee of the board. The terms of the agreement shall comply with the following:

(a) Securities certificates held by the custodian shall be held separate from the securities certificates of the custodian and all of its customers;

(b) Securities held indirectly by the custodian and securities in a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or by its agent and which securities are in a clearing corporation. If the securities are in a clearing corporation, the records shall also identify where the securities are and the name of the clearing corporation; and if the securities are held by an agent, the records shall also identify the name of the agent;

(c) All custodied securities that are registered shall be registered in the name of the company or in the name of the nominee of the company or in the name of the custodian or its nominee, or, if in a clearing corporation, in the name of the clearing corporation or its nominee;

(d) Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except custodied securities used to meet the deposit requirements;

(e) The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. Confirmation of all transfers shall be provided to the insurance company in hard copy or electronic format. In addition, the custodian shall be required to furnish, no less than monthly, the insurance company with reports of various holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's trust committee's annual reports of its review of the insurer trust accounts shall also be provided to the insurer. Reports and verifications may be transmitted in electronic or paper format;

(f) During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company, and a representative of an appropriate regulatory body shall be entitled to examine, on the premise of the custodian, the custodian's records relating to the custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company;

(g) The custodian and its agents shall be required to send to the insurance company:

(i) All reports that they receive from a clearing corporation on their respective systems of internal accounting control; and

(ii) Reports prepared by outside auditors on the custodians or its agents internal accounting control of custodied securities that the insurance company may reasonably request;

(h) The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required

in an audit of the financial statements of the insurance company;

(i) The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits;

(j) A national bank, state bank, or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurer's assets, and shall state in the custody agreement that the protection is in compliance with the requirements of the custodian's banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the securities investor protection corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and whether the amount of coverage is adequate;

(k) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees or agents, or burglary, robbery, holdup, theft, or mysterious disappearance, including loss by damage or destruction;

(l) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in (k) of this subsection, the custodian shall promptly replace the securities of the value thereof and the value of any loss of rights or privileges resulting from the loss of securities;

(m) The custodian will not be liable for a failure to take an action required under the agreement in the event and to the extent that the taking of the action is prevented or delayed by war (whether declared or not, including existing wars), revolution, insurrection, riot, civil commotion, accident, fire, explosion, labor stoppage and strikes, laws, regulations, orders, or other acts of any governmental authority, which are beyond its reasonable control;

(n) In the event that the custodian gains entry in a clearing corporation through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent is subject to regulation under the laws of a jurisdiction that are different from the laws of the jurisdiction that regulates the custodian, the commissioner may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian;

(o) The custodian shall provide written notification to the office of the insurance commissioner if the custodial agreement with the insurer has been terminated or if one hundred percent of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the commissioner within three business days of the withdrawal of one hundred percent of the account assets. [2008 c 234 § 7.]

48.13.490 Safeguarding securities—Rules. The commissioner may adopt rules governing the deposit by insurance companies of securities with clearing corporations,

including establishing standards for national banks, state banks, trust companies, and brokers/dealers to qualify as custodians for insurance company securities. [2008 c 234 § 6; 2000 c 221 § 7.]

**Chapter 48.14 RCW
FEES AND TAXES**

Sections

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48.14.010 Fee schedule. (Effective until July 1, 2009.)

(1) The commissioner shall collect in advance the following fees:

- (a) **For filing charter documents:**
 - (i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed. \$250.00
 - (ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws \$ 10.00
 - (iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
- (b) **Certificate of authority:**
 - (i) Issuance. \$ 25.00
 - (ii) Renewal \$ 25.00
- (c) **Annual statement of insurer, filing \$ 20.00**
- (d) **Organization or financing of domestic insurers and affiliated corporations:**
 - (i) Application for solicitation permit, filing \$100.00
 - (ii) Issuance of solicitation permit . . . \$ 25.00
- (e) **Agents' licenses:**
 - (i) Agent's qualification licenses every two years. \$ 50.00
 - (ii) Filing of appointment of each such agent, every two years \$ 20.00
 - (iii) Limited license issued pursuant to RCW 48.17.190, every two years \$ 20.00
- (f) **Reinsurance intermediary licenses:**

- (i) Reinsurance intermediary-broker, each year \$ 50.00
- (ii) Reinsurance intermediary-manager, each year \$100.00
- (g) **Brokers' licenses:**
 - (i) Broker's license, every two years \$100.00
 - (ii) Surplus line broker, every two years \$200.00
- (h) **Solicitors' license, every two years. \$ 20.00**
- (i) **Adjusters' licenses:**
 - (i) Independent adjuster, every two years \$ 50.00
 - (ii) Public adjuster, every two years \$ 50.00
- (j) **Resident general agent's license, every two years. \$ 50.00**
- (k) **Managing general agent appointment, every two years \$200.00**
- (l) **Examination for license, each examination:** All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service \$ 20.00
- (m) **Miscellaneous services:**
 - (i) Filing other documents \$ 5.00
 - (ii) Commissioner's certificate under seal \$ 5.00
 - (iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(l) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account. [2005 c 223 § 5; 1994 c 131 § 2; 1993 c 462 § 57; 1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date, implementation—1979 ex.s. c 269: "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

48.14.010 Fee schedule. (Effective July 1, 2009.) (1) The commissioner shall collect in advance the following fees:

- (a) **For filing charter documents:**
 - (i) Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed \$250.00
 - (ii) Amended charter documents, or certified copy thereof, other than amendments of bylaws. \$ 10.00
 - (iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.
- (b) **Certificate of authority:**
 - (i) Issuance \$ 25.00
 - (ii) Renewal \$ 25.00
- (c) **Annual statement of insurer, filing. \$ 20.00**
- (d) **Organization or financing of domestic insurers and affiliated corporations:**
 - (i) Application for solicitation permit, filing. \$100.00
 - (ii) Issuance of solicitation permit. \$ 25.00
- (e) **Insurance producer licenses:**
 - (i) License application \$ 55.00
 - (ii) License renewal, every two years \$ 55.00
 - (iii) Initial appointment and renewal of appointment of each insurance producer, every two years \$ 20.00
 - (iv) Limited insurance producer license application and renewal, every two years \$ 20.00
- (f) **Reinsurance intermediary licenses:**
 - (i) Reinsurance intermediary-broker, each year \$ 50.00
 - (ii) Reinsurance intermediary-manager, each year. \$100.00
- (g) **Surplus line broker license application and renewal, every two years \$200.00**
- (h) **Adjusters' licenses:**
 - (i) Independent adjuster, every two years \$ 50.00
 - (ii) Public adjuster, every two years. \$ 50.00
- (i) **Managing general agent appointment, every two years \$200.00**
- (j) **Examination for license, each examination:**
 All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service \$ 20.00
- (k) **Miscellaneous services:**
 - (i) Filing other documents \$ 5.00
 - (ii) Commissioner's certificate under seal \$ 5.00
 - (iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(j) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account. [2007 c 117 § 37; 2005 c 223 § 5; 1994 c 131 § 2; 1993 c 462 § 57; 1988 c 248 § 7; 1981 c 111 § 1; 1979 ex.s. c 269 § 1; 1977 ex.s. c 182 § 1; 1969 ex.s. c 241 § 8; 1967 c 150 § 12; 1955 c 303 § 4; 1947 c 79 § .14.01; Rem. Supp. 1947 § 45.14.01.]

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Effective date, implementation—1979 ex.s. c 269: "This act shall take effect on April 1, 1980. The insurance commissioner is authorized to immediately take such steps as are necessary to insure that this 1979 act is implemented on its effective date." [1979 ex.s. c 269 § 10.]

48.14.020 Premium taxes. (Effective until July 1, 2009.)

(1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (2) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(3) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or

before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(4) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their agents, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or their agents.

(5) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums. [1986 c 296 § 1; 1983 2nd ex.s. c 3 § 7; 1982 2nd ex.s. c 10 § 1; 1982 1st ex.s. c 35 § 15; 1979 ex.s. c 233 § 2; 1969 ex.s. c 241 § 9; 1947 c 79 § 14.02; Rem. Supp. 1947 § 45.14.02.]

Severability—1986 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 296 § 11.]

Application—1986 c 296 § 1: "[The 1986 c 296 amendment of] RCW 48.14.020 applies to the payment of taxes due beginning July 1, 1986, and thereafter." [1986 c 296 § 12.]

Effective date—1986 c 296: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1986." [1986 c 296 § 13.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Payment of additional premium tax—1982 2nd ex.s. c 10: "The additional premium tax payments required by the amendment of RCW 48.14.020 by section 1 of this act shall be paid to the state treasurer through the insurance commissioner's office on March 1, 1983. Thereafter the prepayment schedule provided by RCW 48.14.025 shall apply." [1982 2nd ex.s. c 10 § 2.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 233: "This 1979 amendatory act shall become effective beginning upon and after January 1, 1980." [1979 ex.s. c 233 § 4.]

Intent—1979 ex.s. c 233: "It is the intent of the legislature to eliminate existing tax discrimination between qualified and nonqualified pension plans which are effectuated by annuity contracts, by excluding the consideration paid for such contracts from premiums subject to the premium tax." [1979 ex.s. c 233 § 1.]

Severability—1979 ex.s. c 233: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 233 § 3.]

Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c): RCW 48.32.145.

Portion of state taxes on fire insurance premiums to be deposited in

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firefighters' pension fund: RCW 41.16.050.

volunteer firefighters' and reserve officers' relief and pension principal fund: RCW 41.24.030.

48.14.020 Premium taxes. (Effective July 1, 2009.)

(1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection (2) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property resident, situated, or to be performed in this state. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

(3) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

(4) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their appointed insurance producers, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or these insurance producers.

(5) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which

were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums. [2008 c 217 § 6; 1986 c 296 § 1; 1983 2nd ex.s. c 3 § 7; 1982 2nd ex.s. c 10 § 1; 1982 1st ex.s. c 35 § 15; 1979 ex.s. c 233 § 2; 1969 ex.s. c 241 § 9; 1947 c 79 § 14.02; Rem. Supp. 1947 § 45.14.02.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—1986 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 296 § 11.]

Application—1986 c 296 § 1: "[The 1986 c 296 amendment of] RCW 48.14.020 applies to the payment of taxes due beginning July 1, 1986, and thereafter." [1986 c 296 § 12.]

Effective date—1986 c 296: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately. The remainder of this act shall take effect July 1, 1986." [1986 c 296 § 13.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Payment of additional premium tax—1982 2nd ex.s. c 10: "The additional premium tax payments required by the amendment of RCW 48.14.020 by section 1 of this act shall be paid to the state treasurer through the insurance commissioner's office on March 1, 1983. Thereafter the prepayment schedule provided by RCW 48.14.025 shall apply." [1982 2nd ex.s. c 10 § 2.]

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective date—1979 ex.s. c 233: "This 1979 amendatory act shall become effective beginning upon and after January 1, 1980." [1979 ex.s. c 233 § 4.]

Intent—1979 ex.s. c 233: "It is the intent of the legislature to eliminate existing tax discrimination between qualified and nonqualified pension plans which are effectuated by annuity contracts, by excluding the consideration paid for such contracts from premiums subject to the premium tax." [1979 ex.s. c 233 § 1.]

Severability—1979 ex.s. c 233: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 233 § 3.]

Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c): RCW 48.32.145.

*Portion of state taxes on fire insurance premiums to be deposited in firefighters' pension fund: RCW 41.16.050.
volunteer firefighters' and reserve officers' relief and pension principal fund: RCW 41.24.030.*

48.14.0201 Premiums and prepayments tax—Health care services—Exemptions—State preemption. (1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in RCW 48.44.010, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer shall pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax shall be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation for the preced-

ing calendar year recomputed using the rate in effect for the current year. For the prepayment of taxes due during the first calendar year, the minimum amount of the prepayments shall be percentages of the taxpayer's tax obligation that would have been due had the tax been in effect during the previous calendar year. The tax prepayments shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

(a) On or before June 15, forty-five percent;

(b) On or before September 15, twenty-five percent;

(c) On or before December 15, twenty-five percent.

(4) For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the health maintenance organization's, health care service contractor's, self-funded multiple employer welfare arrangement's, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund through March 31, 1996, and in the health services account under RCW 43.72.900 after March 31, 1996.

(6) The taxes imposed in this section do not apply to:

(a) Amounts received by any taxpayer from the United States or any instrumentality thereof as prepayments for health care services provided under Title XVIII (medicare) of the federal social security act.

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

(i) The medical care services program as provided in RCW 74.09.035;

(ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW; or

(iii) The medicaid program on behalf of elderly or disabled clients as provided in chapter 74.09 RCW when these prepayments are received prior to July 1, 2009, and are associated with a managed care contract program that has been implemented on a voluntary demonstration or pilot project basis.

(c) Amounts received by any health care service contractor, as defined in RCW 48.44.010, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020.

(d) Participant contributions to self-funded multiple employer welfare arrangements that are not taxable in this state.

(7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW, health maintenance organizations under chapter 48.46 RCW, and self-funded multiple employer welfare arrangements as defined in RCW 48.125.010. The preemption authorized by this subsection shall not impair the ability of a county, city, town, or other municipal subdivision to impose excise or privilege taxes upon the health care services directly delivered by the

employees of a health maintenance organization under chapter 48.46 RCW.

(8)(a) The taxes imposed by this section apply to a self-funded multiple employer welfare arrangement only in the event that they are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing state premium taxes on these arrangements. Once the legality of the taxes has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these taxes.

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement shall deposit the taxes imposed by this section into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner shall notify each taxpayer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms. [2005 c 405 § 1; 2005 c 223 § 6; 2005 c 7 § 1; 2004 c 260 § 24; 1998 c 323 § 1; 1997 c 154 § 1; 1993 sp.s. c 25 § 601; 1993 c 492 § 301.]

Reviser's note: This section was amended by 2005 c 7 § 1, 2005 c 223 § 6, and by 2005 c 405 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2005 c 7: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2005]." [2005 c 7 § 3.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—1997 c 154: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 154 § 2.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.14.021 Reduction of tax—Policies connected with pension, etc., plans exempt or qualified under internal revenue code. As to premiums received from policies or contracts issued in connection with a pension, annuity or profit-sharing plan exempt or qualified under sections 401,

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403(b), 404, 408(b), or 501(a) of the United States internal revenue code, the rate of tax specified in RCW 48.14.020 shall be reduced twelve and one-half percent with respect to the tax payable in 1964, twenty-five percent with respect to the tax payable in 1965, thirty-seven and one-half percent with respect to the tax payable in 1966, fifty percent with respect to the tax payable in 1967, sixty-two and one-half percent with respect to the tax payable in 1968, seventy-five percent with respect to the tax payable in 1969, eighty-seven and one-half percent with respect to the tax payable in 1970, and one hundred percent with respect to the tax payable in 1971 and annually thereafter. [1975-'76 2nd ex.s. c 119 § 1; 1974 ex.s. c 132 § 1; 1963 c 166 § 1.]

48.14.022 Taxes—Exemptions and deductions. (1) The taxes imposed in RCW 48.14.020 and 48.14.0201 do not apply to premiums and prepayments collected or received for policies of insurance issued under RCW 48.41.010 through 48.41.210.

(2) In computing tax due under RCW 48.14.020 and 48.14.0201, there may be deducted from taxable premiums and prepayments the amount of any assessment against the taxpayer under RCW 48.41.010 through 48.41.210. Any portion of the deduction allowed in this section which cannot be deducted in a tax year without reducing taxable premiums below zero may be carried forward and deducted in successive years until the deduction is exhausted. [1995 c 304 § 1; 1987 c 431 § 23.]

Effective date—1995 c 304: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 304 § 2.]

Severability—1987 c 431: See RCW 48.41.910.

48.14.025 Prepayment of tax obligations under RCW 48.14.020. (1) Every insurer with a tax obligation under RCW 48.14.020 shall make prepayment of the tax obligations under RCW 48.14.020 for the current calendar year's business, if the sum of the tax obligations under RCW 48.14.020 for the preceding calendar year's business is four hundred dollars or more.

(2) The commissioner shall credit the prepayment toward the appropriate tax obligations of the insurer for the current calendar year under RCW 48.14.020.

(3) The minimum amounts of the prepayments shall be percentages of the insurer's preceding calendar year's tax obligation recomputed using the rate in effect for the current year and shall be paid to the state treasurer through the commissioner's office by the due dates and in the following amounts:

- (a) On or before June 15, forty-five percent;
- (b) On or before September 15, twenty-five percent; and
- (c) On or before December 15, twenty-five percent.

For good cause demonstrated in writing, the commissioner may approve an amount smaller than the preceding calendar year's tax obligation as recomputed for calculating the insurer's prepayment obligations.

(4) The effect of transferring policies of insurance from one insurer to another insurer is to transfer the tax prepayment obligation with respect to the policies.

(5) On or before June 1 of each year, the commissioner shall notify each insurer required to make prepayments in that year of the amount of each prepayment and shall provide remittance forms to be used by the insurer. However, an insurer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the insurer to receive, the notice or forms. [1986 c 296 § 2; 1982 c 181 § 4; 1981 c 6 § 1.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—1982 c 181: See note following RCW 48.03.010.

48.14.027 Exemption for state health care premiums before July 1, 1990. The taxes imposed in RCW 48.14.020 do not apply to premiums collected or received before July 1, 1990, for medical and dental coverage purchased under chapter 41.05 RCW. [1988 c 107 § 32.]

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

48.14.030 Tax statement. The insurer shall file with the commissioner as part of its annual statement a statement of premiums so collected or received according to such form as shall be prescribed and furnished by the commissioner. In every such statement the reporting of premiums for tax purposes shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. [1947 c 79 § .14.03; Rem. Supp. 1947 § 45.14.03.]

48.14.040 Retaliatory provision. (Effective until July 1, 2009.) (1) If pursuant to the laws of any other state or country, any taxes, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate, or additional to or at a net rate in excess of any such taxes, licenses, fees, deposits or other obligations or prohibitions imposed by the laws of this state upon like foreign or alien insurers and their agents and solicitors, are imposed on insurers of this state and their agents doing business in such other state or country, a like rate, obligation or prohibition may be imposed by the commissioner, as to any item or combination of items involved, upon all insurers of such other state or country and their agents doing business in this state, so long as such laws remain in force or are so applied.

(2) For the purposes of this section, an alien insurer may be deemed to be domiciled in the state wherein it has established its principal office or agency in the United States. If no such office or agency has been established, the domicile of the alien insurer shall be deemed to be the country under the laws of which it is formed.

(3) For the purposes of this section, the regulatory surcharge imposed by RCW 48.02.190 shall not be included in the calculation of any retaliatory taxes, licenses, fees, deposits, or other obligations or prohibitions imposed under this section. [2007 c 153 § 4; 1988 c 248 § 8; 1949 c 190 § 21, part; 1947 c 79 § .14.04; Rem. Supp. 1949 § 45.14.04.]

48.14.040 Retaliatory provision. (Effective July 1, 2009.) (1) If pursuant to the laws of any other state or country, any taxes, licenses, fees, deposits, or other obligations or prohibitions, in the aggregate, or additional to or at a net rate in excess of any such taxes, licenses, fees, deposits or other

obligations or prohibitions imposed by the laws of this state upon like foreign or alien insurers and their appointed insurance producers or title insurance agents, are imposed on insurers of this state and their appointed insurance producers or title insurance agents doing business in such other state or country, a like rate, obligation or prohibition may be imposed by the commissioner, as to any item or combination of items involved, upon all insurers of such other state or country and their appointed insurance producers or title insurance agents doing business in this state, so long as such laws remain in force or are so applied.

(2) For the purposes of this section, an alien insurer may be deemed to be domiciled in the state wherein it has established its principal office or agency in the United States. If no such office or agency has been established, the domicile of the alien insurer shall be deemed to be the country under the laws of which it is formed.

(3) For the purposes of this section, the regulatory surcharge imposed by RCW 48.02.190 shall not be included in the calculation of any retaliatory taxes, licenses, fees, deposits, or other obligations or prohibitions imposed under this section. [2008 c 217 § 7; 2007 c 153 § 4; 1988 c 248 § 8; 1949 c 190 § 21, part; 1947 c 79 § .14.04; Rem. Supp. 1949 § 45.14.04.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.14.060 Failure to pay tax—Penalty. (1) Any insurer or taxpayer, as defined in RCW 48.14.0201, failing to file its tax statement and to pay the specified tax or prepayment of tax on premiums and prepayments for health care services by the last day of the month in which the tax becomes due shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not paid within forty-five days after the due date, the insurer will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not paid within sixty days of the due date, the insurer will be assessed a total penalty of twenty percent of the amount of the tax. The tax may be collected by distraint, and the penalty recovered by any action instituted by the commissioner in any court of competent jurisdiction. The amount of any penalty collected must be paid to the state treasurer and credited to the general fund.

(2) In addition to the penalties set forth in subsection (1) of this section, interest will accrue on the amount of the unpaid tax or prepayment at the maximum legal rate of interest permitted under RCW 19.52.020 commencing sixty-one days after the tax is due until paid. This interest will not accrue on taxes imposed under RCW 48.15.120.

(3) The commissioner may revoke the certificate of authority or registration of any delinquent insurer or taxpayer, and the certificate of authority or registration will not be reissued until all taxes, prepayments of tax, interest, and penalties have been fully paid and the insurer or taxpayer has otherwise qualified for the certificate of authority or registration. [2003 c 341 § 1; 1981 c 6 § 2; 1947 c 79 § .14.06; Rem. Supp. 1947 § 45.14.06.]

48.14.070 Refunds. In event any person has paid to the commissioner any tax, license fee or other charge in error or in excess of that which he is lawfully obligated to pay, the

commissioner shall upon written request made to him make a refund thereof. A person may only request a refund of taxes within six years from the date the taxes were paid. A person may only request a refund of fees or charges other than taxes within thirteen months of the date the fees or charges were paid. Refunds may be made either by crediting the amount toward payment of charges due or to become due from such person, or by making a cash refund. To facilitate such cash refunds the commissioner may establish a revolving fund out of funds appropriated by the legislature for his use. [1979 ex.s. c 130 § 2; 1947 c 79 § .14.07; Rem. Supp. 1947 § 45.14.07.]

48.14.080 Premium tax in lieu of other forms—Exceptions—Definition. (1) As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all other taxes, except as otherwise provided in this section.

(2) Subsection (1) of this section does not apply with respect to:

- (a) Taxes on real and tangible personal property;
- (b) Excise taxes on the sale, purchase, use, or possession of (i) real property; (ii) tangible personal property; (iii) extended warranties; and (iv) services; and
- (c) The tax imposed in RCW 82.04.260(10), regarding public and nonprofit hospitals.

(3) For the purposes of this section, the term "taxes" includes taxes imposed by the state or any county, city, town, municipal corporation, quasi-municipal corporation, or other political subdivision. [2006 c 278 § 2; 1998 c 312 § 1; 1993 sp.s. c 25 § 602; 1993 c 492 § 302; 1949 c 190 § 21, part; Rem. Supp. 1949 § 45.14.08.]

Findings—Intent—2006 c 278: "The legislature finds that the insurance premiums tax is intended to be in lieu of any other tax imposed on insurers. However, insurers are not exempt from taxes on real and tangible personal property, or excise taxes on the sale, purchase, or use of such property. These provisions, enacted in 1949, have not been reviewed or altered in light of significant expansion of sales and use taxes to include taxation of many service activities. Some insurers have interpreted their obligation to pay retail sales and use taxes to be limited to those taxes imposed on the sale or use of tangible personal property. These insurers claim exemption from retail sales tax, use tax, or any other excise tax on the purchase or sale of services, such as telephone service, credit bureau services, construction services, landscape services, and repair services. Other insurers have consistently paid excise taxes imposed on these services.

The legislature further finds exempting insurers from excise taxes on the purchase or sale of services is inequitable and results from the inadvertent failure to revise insurance premiums tax statutes to be consistent with other excise tax statutes. The legislature declares its intent to require insurers to pay retail sales and use taxes on purchases of both tangible personal property or services, on the same terms as other taxpayers. This act is intended to apply both prospectively and retrospectively." [2006 c 278 § 1.]

Application—2006 c 278: "This act applies both prospectively and retroactively." [2006 c 278 § 3.]

Effective date—2006 c 278: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2006]." [2006 c 278 § 4.]

Effective date—Savings—1998 c 312: See notes following RCW 82.04.332.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

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Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.14.090 Determining amount of direct premium taxable in this state. In determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. [1963 c 195 § 14.]

48.14.095 Unlawful or delinquent insurers or taxpayers—Computing the tax payable—Risks, exposures, or enrolled participants only partially in state. (Effective until July 1, 2009.) (1) This section applies to any insurer or taxpayer, as defined in RCW 48.14.0201, violating or failing to comply with RCW 48.05.030(1), *48.17.060 (1) or (2), 48.36A.290(1), 48.44.015(1), or 48.46.027(1).

(2) Except as provided in subsection (7) of this section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.

(3) If an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.

(4) In determining the amount of taxable premiums under subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.

(5) Insurance on risks or property resident, situated, or to be performed in this state, or health coverage for the provision of health care services for residents of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

(6) Premiums on risks or exposures that are properly allocated to federal waters or international waters or under the jurisdiction of a foreign government are not taxable by this state.

(7) This section does not apply to premiums on insurance procured by a licensed surplus line broker under chapter 48.15 RCW. [2003 c 341 § 3.]

***Reviser's note:** RCW 48.17.060 was amended by 2007 c 117 § 2, deleting subsections (1) and (2), effective July 1, 2009.

48.14.095 Unlawful or delinquent insurers or taxpayers—Computing the tax payable—Risks, exposures, or enrolled participants only partially in state. (Effective July 1, 2009.) (1) This section applies to any insurer or taxpayer, as defined in RCW 48.14.0201, violating or failing to

comply with RCW 48.05.030(1), 48.17.060, 48.36A.290(1), 48.44.015(1), or 48.46.027(1).

(2) Except as provided in subsection (7) of this section, RCW 48.14.020, 48.14.0201, and 48.14.060 apply to insurers or taxpayers identified in subsection (1) of this section.

(3) If an insurance contract, health care services contract, or health maintenance agreement covers risks or exposures, or enrolled participants only partially in this state, the tax payable is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state, or enrolled participants residing in this state.

(4) In determining the amount of taxable premiums under subsection (3) of this section, all premiums, other than premiums properly allocated or apportioned and reported as taxable premiums of another state, that are written, procured, or received in this state, or that are for a policy or contract negotiated in this state, are considered to be written on risks or property resident, situated, or to be performed in this state, or for health care services to be provided to enrolled participants residing in this state.

(5) Insurance on risks or property resident, situated, or to be performed in this state, or health coverage for the provision of health care services for residents of this state, is considered to be insurance procured, continued, renewed, or performed in this state, regardless of the location from which the application is made, the negotiations are conducted, or the premiums are remitted.

(6) Premiums on risks or exposures that are properly allocated to federal waters or international waters or under the jurisdiction of a foreign government are not taxable by this state.

(7) This section does not apply to premiums on insurance procured by a licensed surplus line broker under chapter 48.15 RCW. [2008 c 217 § 8; 2003 c 341 § 3.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.14.100 Foreign or alien insurers, continuing liability for taxes. Any foreign or alien insurer authorized to do business in this state which hereafter either withdraws from the state or has its certificate of authority suspended or revoked shall continue to pay premium taxes pursuant to this chapter as to policies upon risks or property resident, situated, or to be performed in this state, which policies were issued during the time the insurer was authorized in this state. [1963 c 195 § 15.]

Chapter 48.15 RCW

UNAUTHORIZED INSURERS

Sections

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48.15.020 Solicitation by unauthorized insurer prohibited—Personal liability. (1) An insurer that is not authorized by the commissioner may not solicit insurance business in this state or transact insurance business in this state, except as provided in this chapter.

(2)(a) A person may not, in this state, represent an unauthorized insurer except as provided in this chapter. This subsection does not apply to any adjuster or attorney-at-law representing an unauthorized insurer from time to time in this state in his or her professional capacity.

(b) A person, other than a duly licensed surplus line broker acting in good faith under his or her license, who makes a contract of insurance in this state, directly or indirectly, on behalf of an unauthorized insurer, without complying with the provisions of this chapter, is personally liable for the performance of such contract.

(3) Each violation of subsection (2) of this section constitutes a separate offense punishable by a fine of not more than twenty-five thousand dollars, and the commissioner, at the commissioner's discretion, may order replacement of policies improperly placed with an unauthorized insurer with policies issued by an authorized insurer. Violations may result in suspension or revocation of a license. [2003 c 250 § 2; 1992 c 149 § 1; 1983 1st ex.s. c 32 § 3; 1980 c 102 § 2; 1947 c 79 § .15.02; Rem. Supp. 1947 § 45.15.02.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.15.023 Unauthorized activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract.

(3) Any person who knowingly violates RCW 48.15.020(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.15.020(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 3.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.15.030 Validity of contracts illegally effectuated.

A contract of insurance effectuated by an unauthorized insurer in violation of the provisions of this code shall be voidable except at the instance of the insurer. [1947 c 79 § .15.03; Rem. Supp. 1947 § 45.15.03.]

48.15.040 "Surplus line" coverage. If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated as "surplus lines," may be procured from unauthorized insurers subject to the following conditions:

(1) The insurance must be procured through a licensed surplus line broker.

(2) The insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this state.

(3) Coverage shall not be procured from an unauthorized insurer for the purpose of securing a lower premium rate than would be accepted by any authorized insurer nor to secure any other competitive advantage.

(4) The commissioner may by regulation establish the degree of effort required to comply with subsections (2) and (3) of this section.

(5) At the time of the procuring of any such insurance an affidavit setting forth the facts referred to in subsections (2) and (3) of this section must be executed by the surplus line broker. Such affidavit shall be filed with the commissioner within thirty days after the insurance is procured. [1983 1st ex.s. c 32 § 4; 1947 c 79 § .15.04; Rem. Supp. 1947 § 45.15.04.]

48.15.050 Endorsement of contract. Every insurance contract procured and delivered as a surplus line coverage pursuant to this chapter shall have stamped upon it and be initialed by or bear the name of the surplus line broker who procured it, the following:

"This contract is registered and delivered as a surplus line coverage under the insurance code of the state of Washington, enacted in 1947." [1947 c 79 § .15.05; Rem. Supp. 1947 § 45.15.05.]

48.15.060 Validity of contracts. Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this chapter shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers. [1947 c 79 § .15.06; Rem. Supp. 1947 § 45.15.06.]

48.15.070 Surplus line brokers—Licensing. Any individual while a resident of this state, or any firm or any corporation that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated location in this state, may be

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licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require.

(2) The license shall expire if not timely renewed. Surplus line brokers licenses shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(3) Prior to issuance of license the applicant shall file with the commissioner a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that he or she will conduct business under the license in accordance with the provisions of this chapter and that he or she will promptly remit the taxes provided by RCW 48.15.120. The licensee shall maintain such bond in force for as long as the license remains in effect.

(4) Every applicant for a surplus line broker's license or for the renewal of a surplus line broker's license shall file with the application or request for renewal a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of one hundred thousand dollars and shall be the bonding requirement for new licensees. The licensee shall maintain such bond in force while so licensed. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the amount stated in the bond. The bond shall be contingent on the accounting by the surplus line broker to any person requesting such broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(5) Any bond issued pursuant to subsection (3) or (4) of this section shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days' advance notice in writing filed with the commissioner.

(6) If in the process of verifying fingerprints under subsection (1) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(7) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker. [2002 c 227 § 3; 1994 c 131 § 3; 1983 1st ex.s. c 32 § 24; 1982 c 181 § 5;

1981 c 199 § 1; 1980 c 102 § 3; 1979 ex.s. c 130 § 3; 1977 ex.s. c 182 § 2; 1959 c 225 § 4; 1947 c 79 § .15.07; Rem. Supp. 1947 § 45.15.07.]

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.15.073 Nonresident surplus line brokers—Licensing—Reciprocity. (1) The commissioner may license as a surplus line broker a person who is otherwise qualified under this code but who is not a resident of this state, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of this state.

(2) A person under subsection (1) of this section must meet the same qualifications, other than residency, as any other person seeking to be licensed as a surplus line broker under this chapter. A person granted a nonresident surplus line broker's license must have all the same responsibilities as any other surplus line broker and is subject to the (a) commissioner's supervision as though resident in this state and (b) rules adopted under this chapter. [2001 c 91 § 1.]

48.15.080 Broker may accept business. (Effective until July 1, 2009.) A licensed surplus line broker may accept and place surplus line business for any insurance agent or broker licensed in this state for the kind of insurance involved, and may compensate such agent or broker therefor. [1947 c 79 § .15.08; Rem. Supp. 1947 § 45.15.08.]

48.15.080 Licensed surplus line broker may accept business. (Effective July 1, 2009.) A licensed surplus line broker may accept and place surplus line business for any insurance producer licensed in this state for the kind of insurance involved, and may compensate that insurance producer therefor. [2008 c 217 § 9; 1947 c 79 § .15.08; Rem. Supp. 1947 § 45.15.08.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.15.085 Liability of insurer assuming direct risk. (1) If pursuant to the surplus lines provisions of this chapter an insurer has assumed direct risk under a coverage and the premium therefor has been paid to the broker who placed such insurance, the insurer shall be liable to the insured for unearned premiums payable upon cancellation of the insurance, whether or not the broker is indebted to the insurer for such premium or otherwise. This provision shall not affect rights as between the insurer and the broker.

(2) Each such insurer shall be deemed to have subjected itself to this section by acceptance of such direct risk. [1959 c 225 § 5.]

48.15.090 Solvent insurer required. (1) A surplus line broker shall not knowingly place surplus line insurance with insurers unsound financially. The surplus line broker shall ascertain the financial condition of the unauthorized insurer, and maintain written evidence thereof, before placing insurance therewith. The surplus line broker shall not so insure with:

(a) Any foreign insurer having less than six million dollars of capital and surplus or substantially equivalent capital

funds, of which not less than one million five hundred thousand dollars is capital; or

(b) Any alien insurer having less than six million dollars of capital and surplus or substantially equivalent capital funds. By January 1, 1992, this requirement shall be increased to twelve million five hundred thousand dollars. By January 1, 1993, this requirement shall be further increased to fifteen million dollars.

Such alien insurers must have in force in the United States an irrevocable trust fund, in a qualified United States financial institution, on behalf of United States policyholders of not less than five million four hundred thousand dollars and consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state.

There must be on file with the commissioner a copy of the trust, certified by the trustee, evidencing a subsisting trust fund deposit having an expiration date which at no time shall be less than five years after the date of creation of the trust. Such trust fund shall be included in the calculation of the insurer's capital and surplus or its equivalents; or

(c) Any group including incorporated and individual insurers maintaining a trust fund of less than fifty million dollars as security to the full amount thereof for all policyholders in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in (b) of this subsection for an alien insurer; or

(d) Any insurance exchange created by the laws of an individual state, maintaining capital and surplus, or substantially equivalent capital funds of less than fifty million dollars in the aggregate. For insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than six million dollars. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of (a) of this subsection.

(2) The commissioner may, by rule:

(a) Increase the financial requirements under subsection (1) of this section by not more than one million dollars in any twelve-month period, but in no case may the requirements exceed fifteen million dollars; or

(b) Prescribe the terms under which the foregoing financial requirements may be waived in circumstances where insurance cannot be otherwise procured on risks located in this state.

(3) For any violation of this section the surplus line broker may be fined not less than one hundred dollars or more than five thousand dollars, and in addition to or in lieu thereof the surplus line broker's license may be revoked, suspended, or nonrenewed. [1997 c 89 § 1; 1994 c 86 § 2; 1991 sp.s. c 5 § 2; 1980 c 102 § 4; 1975 1st ex.s. c 266 § 6; 1969 ex.s. c 241 § 10; 1955 c 303 § 5; 1947 c 79 § .15.09; Rem. Supp. 1947 § 45.15.09.]

Effective date—1997 c 89: "This act takes effect June 1, 1998." [1997 c 89 § 2.]

Effective date—1994 c 86: See note following RCW 48.12.160.

Effective date—1991 sp.s. c 5: See note following RCW 48.05.340.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.15.100 Record of surplus line broker. (1) Each licensed surplus line broker shall keep a full and true record of each surplus line contract procured by him including a copy of the daily report, if any, showing such of the following items as may be applicable:

- (a) Amount of the insurance;
- (b) Gross premiums charged;
- (c) Return premium paid, if any;
- (d) Rate of premium charged upon the several items of property;
- (e) Effective date of the contract, and the terms thereof;
- (f) Name and address of the insurer;
- (g) Name and address of the insured;
- (h) Brief general description of property insured and where located;
- (i) Other information as may be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years next following the date of completion of such transaction. [1955 c 303 § 6; 1947 c 79 § .15.10; Rem. Supp. 1947 § 45.15.10.]

48.15.110 Broker's annual statement. (1) Each surplus line broker shall on or before the first day of March of each year file with the commissioner a verified statement of all surplus line insurance transacted by him during the preceding calendar year.

(2) The statement shall be on forms as prescribed and furnished by the commissioner and shall show:

- (a) Aggregate of net premiums;
- (b) Additional information as required by the commissioner. [1955 c 303 § 7; 1947 c 79 § .15.11; Rem. Supp. 1947 § 45.15.11.]

48.15.120 Premium tax—Surplus lines. (1) On or before the first day of March of each year each surplus line broker shall remit to the state treasurer through the commissioner a tax on the premiums, exclusive of sums collected to cover federal and state taxes and examination fees, on surplus line insurance subject to tax transacted by him during the preceding calendar year as shown by his annual statement filed with the commissioner, and at the same rate as is applicable to the premiums of authorized foreign insurers under this code. Such tax when collected shall be credited to the general fund.

(2) If a surplus line policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state. [1947 c 79 § .15.12; Rem. Supp. 1947 § 45.15.12.]

48.15.130 Penalty for default. If any surplus line broker fails to file his or her annual statement, or fails to remit the tax provided by RCW 48.15.120, by the last day of the month in which the tax becomes due, the surplus line broker must pay the penalties provided in RCW 48.14.060(1). The

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tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner must be paid to the state treasurer and credited to the general fund. [2003 c 341 § 2; 1983 1st ex.s. c 32 § 5; 1980 c 102 § 5; 1947 c 79 § .15.13; Rem. Supp. 1947 § 45.15.13.]

48.15.140 Revocation, suspension, or failure to renew broker's license. (Effective until July 1, 2009.) (1) The commissioner may revoke, suspend, or refuse to renew any surplus line broker's license:

- (a) If the surplus line broker fails to file his annual statement or to remit the tax as required by this chapter; or
- (b) If the surplus line broker fails to maintain an office in this state, or to keep the records, or to allow the commissioner to examine his records as required by this chapter; or
- (c) For any of the causes for which a broker's license may be revoked under chapter 48.17 RCW.

(2) The commissioner may suspend or revoke any such license whenever he deems suspension or revocation to be for the best interests of the people of this state.

(3) The procedures provided by this code for the suspension or revocation of general brokers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) No broker whose license has been so revoked shall again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by him have been paid. [1980 c 102 § 6; 1947 c 79 § .15.14; Rem. Supp. 1947 § 45.15.14.]

48.15.140 Revocation, suspension, or failure to renew surplus line broker's license. (Effective July 1, 2009.) (1) The commissioner may revoke, suspend, or refuse to renew any surplus line broker's license:

- (a) If the surplus line broker fails to file the licensee's annual statement or to remit the tax as required by this chapter; or
- (b) If the surplus line broker fails to maintain an office in this state, or to keep the records, or to allow the commissioner to examine the licensee's records as required by this chapter; or

(c) For any of the causes for which an insurance producer's license may be revoked under chapter 48.17 RCW.

(2) The commissioner may suspend or revoke any such license whenever he or she deems suspension or revocation to be for the best interests of the people of this state.

(3) The procedures provided by this code for the suspension or revocation of insurance producers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) A surplus line broker whose license has been so revoked shall not again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by the formal licensee have been paid. [2008 c 217 § 10; 1980 c 102 § 6; 1947 c 79 § .15.14; Rem. Supp. 1947 § 45.15.14.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.15.150 Legal process against surplus line insurer.

(1) An unauthorized insurer shall be sued, upon any cause of action arising in this state under any contract issued by it as a surplus line contract, pursuant to this chapter, in the superior court of the county in which the cause of action arose.

(2) Service of legal process against the insurer may be made in any such action by service upon the commissioner of duplicate copies of such legal process either by a person competent to serve a summons or by registered mail or certified mail with return receipt requested. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the insurer at its principal place of business last known to the commissioner, or to the person designated by the insurer for that purpose in the most recent document filed with the commissioner, on forms prescribed by the commissioner, by prepaid registered or certified mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision designating the commissioner as the person upon whom service of process may be made. [1979 ex.s. c 199 § 4; 1963 c 195 § 16; 1955 c 303 § 8; 1947 c 79 § .15.15; Rem. Supp. 1947 § 45.15.15.]

48.15.160 Exemptions from surplus line requirements. (Effective until July 1, 2009.) (1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter and shall meet the requirements imposed upon a surplus line broker pursuant to RCW 48.15.090 and any regulations adopted thereunder. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The agent or broker shall furnish to the commissioner at the commissioner's request and on forms as designated and fur-

nished by him or her a report of all such coverages so placed in a designated calendar year. [1987 c 185 § 23; 1985 c 264 § 5; 1949 c 190 § 22; 1947 c 79 § .15.16; Rem. Supp. 1949 § 45.15.16.]

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

48.15.160 Exemptions from surplus line requirements. (Effective July 1, 2009.) (1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed insurance producers of this state:

(a) Ocean marine and foreign trade insurances.

(b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.

(c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Insurance producers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter and shall meet the requirements imposed upon a surplus line broker pursuant to RCW 48.15.090 and any regulations adopted thereunder. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The insurance producer shall furnish to the commissioner at the commissioner's request and on forms as designated and furnished by him or her a report of all such coverages so placed in a designated calendar year. [2008 c 217 § 11; 1987 c 185 § 23; 1985 c 264 § 5; 1949 c 190 § 22; 1947 c 79 § .15.16; Rem. Supp. 1949 § 45.15.16.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

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

48.15.170 Records of insureds—Inspection. Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of this chapter shall, upon the commissioner's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than five hundred dollars. [1947 c 79 § .15.17; Rem. Supp. 1947 § 45.15.17.]

Chapter 48.16 RCW DEPOSITS OF INSURERS

Sections
48.16.010 Deposits of insurers—In general.
48.16.020 Deposits to be held in trust.

48.16.030	Securities eligible for deposit.
48.16.050	Commissioner's receipt—Records.
48.16.060	Transfer of securities.
48.16.070	Depositories—Designation.
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48.16.100	Release of deposits—Generally.
48.16.110	Release of existing deposits.
48.16.120	Voluntary excess deposits.
48.16.130	Immunity from levy.

48.16.010 Deposits of insurers—In general. The commissioner shall accept deposits of securities or funds by insurers as follows:

(1) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact insurance in this state.

(2) Deposits of domestic or alien insurers in amount as required to be made by the laws of other states as prerequisite for authority to transact insurance in such other states.

(3) Deposits in amounts as result from application of the retaliatory provision, RCW 48.14.040.

(4) Deposits in other additional amounts permitted to be made by this code. [1955 c 86 § 3; 1947 c 79 § .16.01; Rem. Supp. 1947 § 45.16.01.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.020 Deposits to be held in trust. Each such deposit shall be held by the commissioner in trust for the protection of all policyholders in the United States of the insurer making it; except that deposits of alien insurers shall be so held for the security of such insurer's obligations arising out of its insurance transactions in the United States, and except as to deposits the purpose of which may be further limited pursuant to the retaliatory provision, RCW 48.14.040. [1955 c 86 § 4; 1947 c 79 § .16.02; Rem. Supp. 1947 § 45.16.02.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.030 Securities eligible for deposit. All such deposits shall consist of cash funds or public obligations as specified in RCW 48.13.040; except, that with respect to deposits held on account of registered policies heretofore issued, the commissioner may accept deposit of such other kinds of securities as are expressly required to be deposited by the terms of such policies. [1955 c 86 § 5; 1947 c 79 § .16.03; Rem. Supp. 1947 § 45.16.03.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.050 Commissioner's receipt—Records. (1) The commissioner shall deliver to the insurer a receipt for all funds and securities so deposited by it.

(2) The commissioner or the designated depository shall keep a record in permanent form of all funds and securities so deposited. [1955 c 86 § 6; 1947 c 79 § .16.05; Rem. Supp. 1947 § 45.16.05.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.060 Transfer of securities. (1) No transfer of any funds or security so held on deposit, whether voluntary or

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by operation of law, shall be valid unless approved in writing by the commissioner.

(2) A statement of each such transfer shall be entered on the records of the commissioner or designated depository, showing the name of the insurer from whose deposit such transfer is made, the name of the transferee, and the par value of the securities so transferred. [1955 c 86 § 7; 1947 c 79 § .16.06; Rem. Supp. 1947 § 45.16.06.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.070 Depositories—Designation. The commissioner may designate any solvent trust company or other solvent financial institution having trust powers as the commissioner's depository to receive and hold any deposit of securities. Any deposit so held shall be at the expense of the insurer. Any solvent financial institution having trust powers, the deposits of which are insured by the Federal Deposit Insurance Corporation, may be designated as the commissioner's depository to receive and hold any deposit of funds. All funds deposited shall be fully insured by the Federal Deposit Insurance Corporation. For purposes of this section, "solvent financial institution" means any national or state-chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, having trust powers located in this state and lawfully engaged in business. [1998 c 25 § 1; 1985 c 264 § 6; 1955 c 86 § 8; 1947 c 79 § .16.07; Rem. Supp. 1947 § 45.16.07.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.080 Liability for safekeeping. The state of Washington shall be responsible for the safekeeping and return of all funds and securities deposited pursuant to this chapter with the commissioner or in any such depository so designated by him. [1955 c 86 § 9; 1947 c 79 § .16.08; Rem. Supp. 1947 § 45.16.08.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.090 Dividends and substitutions. While solvent and complying with this code an insurer shall be entitled:

(1) To collect and receive interest and dividends accruing on the securities so held on deposit for its account, and

(2) From time to time exchange and substitute for any of such securities, other securities eligible for deposit and of at least equal value. [1947 c 79 § .16.09; Rem. Supp. 1947 § 45.16.09.]

48.16.100 Release of deposits—Generally. (1) Any such required deposit shall be released in these instances only:

(a) Upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.

(b) If any such deposit or portion thereof is no longer required under this code.

(c) If the deposit has been made pursuant to the retaliatory provision, RCW 48.14.040, it shall be released in whole or in part when no longer so required.

(d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer for whose account the deposit is held.

(2) No such release shall be made except on application to and written order of the commissioner made upon proof satisfactory to him of the existence of one of such grounds therefor. The commissioner shall have no personal liability for any such release of any deposit or part thereof so made by him in good faith.

(3) All releases of deposits or any part thereof shall be made to the person then entitled thereto upon proof of title satisfactory to the commissioner.

(4) Deposits held on account of title insurers are subject further to the provisions of chapter 48.29 RCW. [1947 c 79 § .16.10; Rem. Supp. 1947 § 45.16.10.]

48.16.110 Release of existing deposits. Any part of any deposit of an insurer held by the commissioner which is in amount in excess of the deposit required or permitted to be made by such insurer under this code, shall, upon written order of the commissioner, be released; except, that no deposit held on account of any registered policies heretofore issued by the insurer shall be released except in accordance with the conditions under which such deposit was made. [1955 c 86 § 10; 1947 c 79 § .16.11; Rem. Supp. 1947 § 45.16.11.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.120 Voluntary excess deposits. An insurer may deposit and maintain on deposit with the commissioner funds and eligible securities in amount exceeding its required deposit under this code by not more than one hundred thousand dollars, for the purpose of absorbing fluctuations in the value of securities held in its required deposit, and to facilitate the exchange and substitution of such required securities. During the solvency of the insurer any such excess deposit or any part thereof shall be released to it upon its request. During the insolvency of the insurer such excess deposit shall be released only as provided in RCW 48.16.100. [1955 c 86 § 11; 1947 c 79 § .16.12; Rem. Supp. 1947 § 45.16.12.]

Effective date—Supervision of transfer—1955 c 86: See notes following RCW 48.05.080.

48.16.130 Immunity from levy. No judgment creditor or other claimant of an insurer shall levy upon any deposit held pursuant to this chapter, or upon any part thereof. [1947 c 79 § .16.13; Rem. Supp. 1947 § 45.16.13.]

Chapter 48.17 RCW

AGENTS, BROKERS, SOLICITORS, AND ADJUSTERS [INSURANCE PRODUCERS, TITLE INSURANCE AGENTS, AND ADJUSTERS, EFFECTIVE JULY 1, 2009]

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48.17.005 Rule making. (Effective July 1, 2009.) The commissioner may adopt rules to implement and administer this chapter. [2007 c 117 § 35.]

48.17.010 "Agent" defined. (Effective until July 1, 2009.) "Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated. [1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.010 Definitions. (Effective July 1, 2009.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his or her profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a managing general agent, is not deemed to be an "adjuster" for the purpose of this chapter.

(a) "Independent adjuster" means an adjuster representing the interests of the insurer.

(b) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(3) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business, and is licensed to act as an insurance producer.

(4) "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW, or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150.

(5) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. "Insurance producer" does not include title insurance agent as defined in subsection (15) of this section.

(6) "Insurer" has the same meaning as in RCW 48.01.050, and includes a health care service contractor as defined in RCW 48.44.010 and a health maintenance organization as defined in RCW 48.46.020.

(7) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer or

title insurance agent for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurer.

(8) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(9) "NAIC" means national association of insurance commissioners.

(10) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

(14) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

(15) "Title insurance agent" means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

(16) "Uniform business entity application" means the current version of the NAIC uniform application for business entity insurance license or registration for resident and non-resident business entities.

(17) "Uniform application" means the current version of the NAIC uniform application for individual insurance producers for resident and nonresident insurance producer licensing. [2007 c 117 § 1; 1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § .17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.020 "Broker" defined. (Effective until July 1, 2009.) "Broker" means any person who, on behalf of the insured, for compensation as an independent contractor, for commission, or fee, and not being an agent of the insurer, solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance thereof, or in any manner aids therein, for insureds or prospective insureds other than himself. [1947 c 79 § .17.02; Rem. Supp. 1947 § 45.17.02.]

48.17.030 "Solicitor" defined. (Effective until July 1, 2009.) "Solicitor" means an individual authorized by an agent or broker to solicit applications for insurance as a representative of such agent or broker and to collect premiums in

connection therewith. An individual employed by, and devoting full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the agent or broker is not deemed to be a solicitor if his compensation is not related to the volume of such applications, insurances, or premiums. [1947 c 79 § .17.03; Rem. Supp. 1947 § 45.17.03.]

48.17.040 Service representatives. (Effective until July 1, 2009.) Individuals other than an officer, manager, or general agent of the insurer, employed on salary by an insurer or general agent to work with and assist agents in soliciting, negotiating, and effectuating insurance in such insurer or in the insurers represented by the general agent, are deemed to be service representatives and are not required to be licensed. [1947 c 79 § .17.04; Rem. Supp. 1947 § 45.17.04.]

48.17.050 "Adjuster" defined. (Effective until July 1, 2009.) (1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to his principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a general agent, is not deemed to be an "adjuster" for the purposes of this chapter.

(2) "Independent adjuster" means such an adjuster representing the interests of the insurer.

(3) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy. [1947 c 79 § .17.05; Rem. Supp. 1947 § 45.17.05.]

48.17.055 "Insurance education provider" defined. (Effective until July 1, 2009.) "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150. [1989 c 323 § 2.]

Effective date—1989 c 323: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 323 § 8.]

48.17.060 License required—Exceptions. (Effective until July 1, 2009.) (1) A person may not act as or hold himself or herself out to be an agent, broker, solicitor, or adjuster in this state unless licensed by the commissioner.

(2) An agent, solicitor, or broker may not solicit or take applications for, procure, or place for others any kind of insurance for which he or she is not then licensed.

(3) This section does not apply with respect to any person securing and forwarding information required for the purposes of group credit life and credit disability insurance or credit casualty insurance against loss or damage resulting

from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information. However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance will not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve months, not to exceed three dollars per loan transaction revision per year. [2003 c 250 § 4; 1995 c 214 § 1; 1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Severability—2003 c 250: See note following RCW 48.01.080.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.060 License required. (Effective July 1, 2009.) A person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter. [2007 c 117 § 2; 2003 c 250 § 4; 1995 c 214 § 1; 1975 1st ex.s. c 266 § 7; 1955 c 303 § 9; 1947 c 79 § .17.06; Rem. Supp. 1947 § 45.17.06.]

Severability—2003 c 250: See note following RCW 48.01.080.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.062 Insurance producer license not required under chapter 117, Laws of 2007. (Effective July 1, 2009.)

(1) Nothing in chapter 117, Laws of 2007 shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(2) A license as an insurance producer is not required of the following:

(a) An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state, and:

(i) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or

(ii) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(iii) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers, and do not include the sale, solicitation, or negotiation of insurance;

(b) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and disability insurance; or for the purpose of enrolling individuals under plans; or issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(c) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(d) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers, and who are not individually engaged in the sale, solicitation, or negotiation of insurance;

(e) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communication in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state;

(f) A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate the insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(g) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission; or

(h) Any person securing and forwarding information required for the purposes of group credit life and credit disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations in connection with an extension of credit and such other credit life and disability insurance or credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations as the commissioner shall determine, and where no commission or other compensation is payable on account of the securing and forwarding of such information. However, the reimbursement of a creditor's actual expenses for securing and forwarding information required for the purposes of such group insurance will not be considered a commission or other compensation if such reimbursement does not exceed three dollars per certificate issued, or in the case of a monthly premium plan extending beyond twelve

months, not to exceed three dollars per loan transaction revision per year. [2007 c 117 § 3.]

48.17.063 Unlicensed activities—Acts committed in this state—Sanctions. (Effective until July 1, 2009.) (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract, health care services contract, or health maintenance agreement.

(3) Any person who knowingly violates RCW 48.17.060(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any person who knowingly violates RCW 48.17.060(2) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(5) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(6)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.17.060 (1) or (2), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080;

(ii) Suspend or revoke a license; and/or

(iii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 5.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.063 Unlicensed activities—Acts committed in this state—Sanctions. (Effective July 1, 2009.) (1) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves an insurance contract, health care services contract, or health maintenance agreement.

(2) Any person who knowingly violates RCW 48.17.060 is guilty of a class B felony punishable under chapter 9A.20 RCW.

(3) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(4)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.17.060, the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080;

(ii) Suspend or revoke a license; and/or

(iii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and

an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2007 c 117 § 4; 2003 c 250 § 5.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.065 Application of chapter to health care service contractors and health maintenance organizations. (Effective until July 1, 2009.) The provisions of this chapter shall apply to agents of health care service contractors and health maintenance organizations. [1983 c 202 § 7.]

48.17.065 Application of chapter to insurance producers appointed by health care service contractors, health maintenance organizations, or both. (Effective July 1, 2009.) The provisions of this chapter shall apply to insurance producers appointed by either health care service contractors or health maintenance organizations, or both. [2007 c 117 § 5; 1983 c 202 § 7.]

48.17.067 Determining whether authorization exists—Burden on solicitor, agent, or broker. (Effective until July 1, 2009.) Any solicitor, agent, or broker soliciting, negotiating, or procuring an application for insurance or health care services in this state must make a good faith effort to determine whether the entity that is issuing the coverage is:

(1) Authorized to transact insurance or health coverage in this state; or

(2) Conducting business through a surplus lines broker licensed under chapter 48.15 RCW. [2003 c 250 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.067 Determining whether authorization exists—Burden on insurance producer or title insurance agent. (Effective July 1, 2009.) Any insurance producer or title insurance agent soliciting, negotiating, or procuring an application for insurance or health care services in this state must make a good faith effort to determine whether the entity that is issuing the coverage is:

(1) Authorized to transact insurance or health coverage in this state; or

(2) Conducting business through a surplus line broker licensed under chapter 48.15 RCW. [2007 c 117 § 6; 2003 c 250 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.17.070 General qualifications for license. (Effective until July 1, 2009.) For the protection of the people of this state the commissioner shall not issue or renew any such license except in compliance with this chapter, nor to, nor to be exercised by, any person found by him to be untrustworthy, or incompetent, or who has not established to the satisfaction of the commissioner that he is qualified therefor in accordance with this chapter. [1947 c 79 § .17.07; Rem. Supp. 1947 § 45.17.07.]

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48.17.090 Application for license. (Effective until July 1, 2009.) (1) Application for a license to be an agent, broker, solicitor, or adjuster shall be made to the commissioner upon forms furnished by the commissioner. As a part of or in connection with any such application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require.

(2) Persons resident in the United States but not in Washington may apply for such a license on a form prepared by the national association of insurance commissioners or others, if those forms are approved by the commissioner by rule. An applicant shall also furnish any other information required to be submitted but not provided for in that form.

(3) Any person willfully misrepresenting any fact required to be disclosed in any such application shall be liable to penalties as provided by this code.

(4) If in the process of verifying fingerprints under subsection (1) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of such fees or charges shall be paid to the commissioner's office by the applicant. [2002 c 227 § 2; 2001 c 56 § 1; 1982 c 181 § 6; 1981 c 339 § 10; 1967 c 150 § 15; 1947 c 79 § .17.09; Rem. Supp. 1947 § 45.17.09.]

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.090 Application for license—Commissioner's findings. (Effective July 1, 2009.) (1) A person applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. As a part of or in connection with the application, the applicant shall furnish information concerning the applicant's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530;

(c) Has completed a preclicensing course of study for the lines of authority for which the person has applied;

(d) Has paid the fees set forth in RCW 48.14.010; and

(2008 Ed.)

(e) Has successfully passed the examinations for the lines of authority for which the person has applied.

(3) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

(a) The business entity has paid the fees set forth in RCW 48.14.010; and

(b) The business entity has designated a licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state.

(4) A business entity acting as a title insurance agent is required to obtain a title insurance agent license. Application shall be made to the commissioner on the uniform business entity application, and the individual signing the application shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:

(a) Has paid the fees set forth in RCW 48.14.010;

(b) Maintains a lawfully established place of business in this state or holds a corresponding license issued by the state of its principal place of business, and has complied with the laws of this state governing the admission of foreign corporations;

(c) Is empowered to be a title agent under a members' agreement, if a limited liability company, or by its articles of incorporation;

(d) Is appointed as an agent by one or more authorized title insurance companies; and

(e) Has complied with RCW 48.29.155 and 48.29.160.

(5) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer, title insurance agent, or adjuster to produce the information called for in an application for license. [2007 c 117 § 7; 2002 c 227 § 2; 2001 c 56 § 1; 1982 c 181 § 6; 1981 c 339 § 10; 1967 c 150 § 15; 1947 c 79 § .17.09; Rem. Supp. 1947 § 45.17.09.]

Effective date—2002 c 227: See note following RCW 48.06.040.

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.100 One filing of personal data sufficient. (*Effective until July 1, 2009.*) (1) The filing of personal data by an individual in connection with one application for an agent's license shall be sufficient, regardless of the number of insurers to be represented by the agent or the number of subsequent applications by the same applicant.

(2) The commissioner may, for his information from time to time require any licensed agent, or solicitor, or broker, or adjuster, to supply him with the information called for in an application for license. [1947 c 79 § .17.10; Rem. Supp. 1947 § 45.17.10.]

48.17.110 Examination of applicants. (*Effective until July 1, 2009.*) (1) Each applicant for license as an agent, broker, solicitor, or adjuster shall, prior to the issuance of any such license, personally take and pass to the satisfaction of

the examining authority, an examination given as a test of that person's qualifications and competence, but this requirement shall not apply to:

(a) Applicants for limited licenses under RCW 48.17.190, at the discretion of the commissioner.

(b) Applicants who within the two year period next preceding date of application have been licensed as a resident in this state under a license requiring qualifications similar to qualifications required by the license applied for or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry and who are deemed by the commissioner to be fully qualified and competent.

(c) Applicants for license as a nonresident agent or as a nonresident broker or as a nonresident adjuster who are duly licensed in their state of residence and who are deemed by the commissioner to be fully qualified and competent for a similar license in this state.

(d) Applicants for an agent's or solicitor's license covering the same kinds of insurance as an agent's or solicitor's license then held by them.

(e) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full time salaried employee of an insurer or of a general agent to adjust, investigate, or report claims arising under insurance contracts.

(2) Any person licensed as an insurance broker by this state prior to June 8, 1967, who is otherwise qualified to be a licensed insurance broker, shall be entitled to renew that person's broker's license by payment of the applicable fee for such of the broker's licenses authorized by RCW 48.17.240, as that person shall elect, without taking any additional examination, except as provided in subsection (3).

(3) The commissioner may at any time require any licensed agent, broker, solicitor, or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violation of this code, or has so conducted affairs under an insurance license as to cause the commissioner reasonably to desire further evidence of the licensee's qualifications. [1990 1st ex.s. c 3 § 2; 1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.110 Examination of applicants—Exemptions. (*Effective July 1, 2009.*) (1) A resident individual applying for an insurance producer or adjuster license shall pass a written examination unless exempt under this section or RCW 48.17.175.

The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or adjuster, and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under the rules prescribed by the commissioner. The commissioner shall prepare, or approve, and make available a manual specifying in general terms the subjects which may be covered in any examination for a particular license.

(2) The following are exempt from the examination requirement:

(a) Applicants for licenses under RCW 48.17.170(1) (g), (h), and (i), at the discretion of the commissioner;

(b) Applicants who within the two-year period next preceding date of application have been licensed as a resident in this state under a license requiring qualifications similar to qualifications required by the license applied for, or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry, and who are deemed by the commissioner to be fully qualified and competent;

(c) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full-time salaried employee of an insurer or of a managing general agent to adjust, investigate, or report claims arising under insurance contracts;

(d) Applicants deemed by the commissioner to be qualified by past experience to deal in ocean marine and related coverages.

(3) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(4) The commissioner may, at any time, require any licensed insurance producer or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violating this title, or has so conducted affairs under an insurance license as to cause the commissioner to reasonably desire further evidence of the licensee's qualifications. [2007 c 117 § 8; 1990 1st ex.s. c 3 § 2; 1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § .17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.120 Scope of examinations. (Effective until July 1, 2009.) (1) Each such examination shall be of sufficient scope and difficulty to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state applicable to, such a licensee, and so as reasonably to assure that a passing score indicates that the applicant is qualified from the standpoint of knowledge and education.

(2) Examination as to ocean marine and related coverages may be waived by the commissioner as to any applicant deemed by the commissioner to be qualified by past experience to deal in such insurances.

(3) The commissioner shall prepare, or approve, and make available to insurers, general agents, brokers, agents, and applicants a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license. [1989 c 323 § 6; 1981 c 111 § 2; 1967 c 150 § 17; 1955 c 303 § 11; 1947 c 79 § .17.12; Rem. Supp. 1947 § 45.17.12.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.125 Examination questions—Confidentiality—Penalties. (Effective until July 1, 2009.) It is unlawful for any unauthorized person to remove, reproduce, duplicate, or

distribute in any form, any question(s) used by the state of Washington to determine the qualifications and competence of insurance agents, brokers, solicitors, or adjusters required by Title 48 RCW to be licensed. This section shall not prohibit an insurance education provider from creating and using sample test questions in courses approved pursuant to RCW 48.17.150.

Any person violating this section shall be subject to penalties as provided by RCW 48.01.080 and 48.17.560. [1989 c 323 § 1.]

Effective date—1989 c 323: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 323 § 8.]

48.17.125 Examination questions—Confidentiality—Penalties. (Effective July 1, 2009.) It is unlawful for any unauthorized person to remove, reproduce, duplicate, or distribute in any form, any question(s) used by the state of Washington to determine the qualifications and competence of insurance producers or adjusters required by Title 48 RCW to be licensed. This section shall not prohibit an insurance education provider from creating and using sample test questions in courses approved pursuant to RCW 48.17.150.

Any person violating this section shall be subject to penalties as provided by RCW 48.01.080, 48.17.530, and 48.17.560. [2007 c 117 § 9; 1989 c 323 § 1.]

Effective date—1989 c 323: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 323 § 8.]

48.17.130 Examinations—Form, time of, fee. (Effective until July 1, 2009.) (1) The answers of the applicant to any such examination shall be written by the applicant under the examining authority's supervision, and any such written examination may be supplemented by oral examination at the discretion of the examining authority.

(2) Examinations shall be given at such times and places within this state as the examining authority deems necessary reasonably to serve the convenience of both the examining authority and applicants.

(3) The examining authority may require a waiting period of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(4) For each examination taken, the commissioner shall collect in advance the fee provided in RCW 48.14.010. In the event the commissioner contracts with an independent testing service for examination development and administration, the examination fee may be collected directly by such testing service. [1981 c 111 § 3; 1967 c 150 § 18; 1947 c 79 § .17.13; Rem. Supp. 1947 § 45.17.13.]

48.17.150 Agent's and broker's qualifications—Continuing education requirements. (Effective until July 1, 2009.) (1) To qualify for an agent's or broker's license, an applicant must otherwise comply with this code and must:

(a) Be at least eighteen years of age, if an individual;

(b) Be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and main-

tain a lawfully established place of business in this state, except as provided in RCW 48.17.330;

(c) Be empowered to be an agent or broker under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(d) Complete the minimum educational requirements for the issuance of an agent's license for the kinds of insurance specified in RCW 48.17.210 as may be required by regulation issued by the commissioner;

(e) Successfully pass any examination as required under RCW 48.17.110;

(f) Be a trustworthy person;

(g)(i) If for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license;

(ii) The commissioner may by regulation establish requirements, including notification formats, in addition to or in lieu of the requirements of (g)(i) of this subsection to allow an agent to act as a representative of and place insurance with an insurer without first notifying the commissioner of the appointment for a period of time up to but not exceeding thirty days from the date the first insurance application is executed by the agent; and

(h) If for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that the applicant possesses the competence necessary to fulfill the responsibilities of broker.

(2) The commissioner shall by regulation establish minimum continuing education requirements for the renewal or reissuance of a license to an agent or a broker.

(a) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(b) The continuing education requirements must be appropriate to the license for the kinds of insurance specified in RCW 48.17.210.

(c) The continuing education requirements may be waived by the commissioner for good cause shown.

(3) If the commissioner finds that the applicant is qualified and that the license fee has been paid, the license shall be issued. Otherwise, the commissioner shall refuse to issue the license. [2005 c 223 § 7; 1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

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

48.17.150 Continuing education courses and requirements. (*Effective July 1, 2009.*) (1) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(2) The continuing education requirements must be appropriate to the license for the lines of authority specified in RCW 48.17.170 or by rule.

(3) The continuing education requirements may be waived by the commissioner for good cause shown. [2007 c 117 § 10; 2005 c 223 § 7; 1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

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

48.17.153 Agents selling federal flood insurance policies—Training requirements. (1) All Washington state licensed insurance agents who sell federal flood insurance policies must comply with the minimum training requirements of section 207 of the flood insurance reform act of 2004, and basic flood education as outlined at 70 C.F.R. Sec. 52117, or such later requirements as are published by the federal emergency management agency.

(2) Licensed insurers shall demonstrate to the commissioner, upon request, that their licensed and appointed agents who sell federal flood insurance policies have complied with the minimum federal flood insurance training requirements. [2006 c 25 § 15.]

48.17.160 Appointment of agents—Revocation—Expiration—Renewal. (*Effective until July 1, 2009.*) (1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment procedures for individuals within licensed firms, corporations, or sole proprietorships who are empowered to exercise the authority conferred by the firm, corporate, or sole proprietorship license.

(2) Each appointment shall be effective until the agent's license expires or is revoked, the appointment has expired, or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

(3) When the appointment is revoked by the insurer, written notice of such revocation shall be given to the agent and a copy of the notice of revocation shall be mailed to the commissioner.

(4) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

(5) Appointments expire if not timely renewed. Each insurer shall pay the renewal fee set forth for each agent holding an appointment on the renewal date assigned the agents of

the insurer by the commissioner. The commissioner, by rule, shall determine renewal dates. If a staggered system is used, fees shall be prorated in the conversion to a staggered system. [1994 c 131 § 5; 1990 1st ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.160 Appointment of agents—Approval—Termination—Fees. (Effective July 1, 2009.) (1) An insurance producer or title insurance agent shall not act as an agent of an insurer unless the insurance producer or title insurance agent becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint an insurance producer or title insurance agent as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed or when the first insurance application is submitted, whichever is later.

(3) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the insurance producer or title insurance agent is eligible for appointment. If the insurance producer or title insurance agent is determined to be ineligible for appointment, the commissioner shall notify the insurer within ten days of the determination.

(4) An insurer shall pay an appointment fee, in the amount and method of payment set forth in RCW 48.14.010, for each insurance producer or title insurance agent appointed by the insurer.

(5) Contingent upon payment of the appointment renewal fee as set forth in RCW 48.14.010, an appointment shall be effective until terminated by the insurance company, insurance producer, or title insurance agent and notice has been given to the commissioner as required by RCW 48.17.595. [2007 c 117 § 11; 1994 c 131 § 5; 1990 1st ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § .17.16; Rem. Supp. 1947 § 45.17.16.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.170 Form and content of licenses. (Effective until July 1, 2009.) Agents', solicitors', adjusters' and brokers' licenses shall be in the form and contain the essential information prescribed by the commissioner. [1979 ex.s. c 269 § 3; 1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.170 Insurance producers', title insurance agents', and adjusters' licenses—Authorized lines of authority—Definitions—Form and content of licenses. (Effective July 1, 2009.) (1) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090 and 48.17.110 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

(a) "Life," which is insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) "Disability," which is insurance coverage for accident, health, and disability or sickness, bodily injury, or accidental death, and may include benefits for disability income;

(c) "Property," which is insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) "Casualty," which is insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) "Variable life and variable annuity products," which is insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) "Personal lines," which is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) Limited lines:

(i) Surety;

(ii) Limited line credit insurance;

(iii) Travel;

(h) Specialty lines:

(i) Communications equipment or services;

(ii) Rental car; or

(i) Any other line of insurance permitted under state laws or rules.

(2) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090(4) shall be issued a title insurance agent license.

(3) All insurance producers', title insurance agents', and adjusters' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any insurance producer's, title insurance agent's, or adjuster's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(5) If the request and fee for renewal of an insurance producer's, title insurance agent's, or adjuster's license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed order of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

(6) For all licenses, if request for renewal of an insurance producer's, title insurance agent's, or adjuster's license or payment of the fee is not received by the commissioner prior to the expiration date as required under subsection (4) of this section, the insurer or applicant for renewal shall pay to the commissioner and the commissioner shall collect, in addition

to the regular fee, a surcharge as follows: For the first thirty days or part thereof of delinquency the surcharge is fifty percent of the fee; for all delinquencies extending more than thirty days, the surcharge is one hundred percent of the fee. A surcharge of two hundred percent of the renewal fee is required for any delinquency extending more than sixty days after the expiration date. This subsection shall not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment, or affect the commissioner's right, at his or her discretion, to consider such delinquent application as one for a new license or appointment.

(7) An individual insurance producer, title insurance agent, or adjuster who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(8) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(9) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, lines of authority, expiration date, and any other information the commissioner deems necessary.

(10) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty under either RCW 48.17.530 or 48.17.560, or both. [2007 c 117 § 12; 1979 ex.s. c 269 § 3; 1947 c 79 § .17.17; Rem. Supp. 1947 § 45.17.17.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.173 Nonresident license request—Conditions for approval—Service of legal process. (Effective July 1, 2009.)

(1) Unless denied licensure under RCW 48.17.530, a nonresident person shall receive a nonresident producer license for the line or lines of authority under RCW 48.17.170 which is substantially equivalent to the line or lines of authority granted to the nonresident person in the person's home state if:

(a) The person is currently licensed as a resident and in good standing in the person's home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by RCW 48.14.010;

(c) The person has submitted or transmitted to the commissioner the application for licensure that the person submitted to the person's home state, or in lieu, a completed uniform application;

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis; and

(e) The person, as part of the request for licensure, has furnished information concerning the person's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information

for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) The commissioner shall waive any license application requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by this section, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(3) A nonresident insurance producer's satisfaction of the nonresident insurance producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

(4) The commissioner shall waive the requirement for providing fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, if the person possesses a valid insurance producer's or surplus line broker's license from the person's home state and the person's home state requires submission of information concerning a person's identity, including fingerprints for the licensure of its resident insurance producers or surplus line brokers, respectively.

(5) The commissioner may verify the producer's licensure status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(6) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

(7) A person licensed as a surplus lines producer in the person's home state and complying with the requirements of subsection (1) of this section and chapter 48.15 RCW shall receive a nonresident surplus line broker license under subsection (1) of this section.

(8) A person licensed as a limited line credit insurance or other type of limited lines producer in the person's home state and who complies with the requirements of subsection (1) of this section shall receive a nonresident limited lines producer license, under subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to the lines set out in RCW 48.17.170(1)(g).

(9) Each licensed nonresident insurance producer or title insurance agent shall appoint the commissioner as the insurance producer's or title insurance agent's attorney to receive service of legal process issued against the insurance producer or title insurance agent in this state upon causes of action arising within this state. Service upon the commissioner as attorney

ney shall constitute effective legal service upon the insurance producer or title insurance agent.

(a) The appointment shall be irrevocable for as long as there could be any cause of action against the insurance producer or title insurance agent arising out of the insurance producer's or title insurance agent's insurance transactions in this state.

(b) Duplicate copies of such legal process against such insurance producer or title insurance agent shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(c) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant insurance producer or title insurance agent at the insurance producer's or title insurance agent's last address of record with the commissioner.

(d) The commissioner shall keep a record of the day and hour of service upon the commissioner of all such legal process. No proceedings shall be had against the defendant insurance producer or title insurance agent, and the defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [2007 c 117 § 13.]

48.17.175 In-state applicant has license in another state. (Effective July 1, 2009.) (1) An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license, and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records, maintained by the NAIC, its affiliates, or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

(2) A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident licensee under RCW 48.17.090. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by rule. [2007 c 117 § 14.]

48.17.180 Licenses to firms and corporations. (Effective until July 1, 2009.) (1) A firm or corporation may be licensed as an agent, adjuster, or broker if each individual empowered to exercise the authority conferred by the corporate or firm license is also licensed. Exercise or attempted exercise of the powers of the firm or corporation by an unlicensed person, with the knowledge or consent of the firm or corporation, shall constitute cause for the revocation or suspension of the license.

(2) Licenses shall be issued in a trade name only upon proof satisfactory to the commissioner that the trade name has been lawfully registered.

(3) For the purpose of this section, a firm shall include a duly licensed individual acting as a sole proprietorship having associated licensees authorized to act on the proprietor's behalf in the proprietor's business or trade name. [1990 1st ex.s. c 3 § 4; 1979 ex.s. c 269 § 4; 1947 c 79 § .17.18; Rem. Supp. 1947 § 45.17.18.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Title insurance agents, separate licenses for individuals not required: RCW 48.29.170.

48.17.180 Doing business under any name other than legal name. (Effective July 1, 2009.) An insurance producer or title insurance agent doing business under any name other than the insurance producer's or title insurance agent's legal name is required to register the name in accordance with chapter 19.80 RCW and notify the commissioner before using the assumed name. [2007 c 117 § 15; 1990 1st ex.s. c 3 § 4; 1979 ex.s. c 269 § 4; 1947 c 79 § .17.18; Rem. Supp. 1947 § 45.17.18.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Title insurance agents, separate licenses for individuals not required: RCW 48.29.170.

48.17.190 Limited licenses. (Effective until July 1, 2009.) The commissioner may issue limited licenses to the following:

(1) Persons selling transportation tickets of a common carrier of persons or property who shall act as such agents only as to transportation ticket policies of disability insurance or baggage insurance on personal effects.

(2) Compensated master policyholders of credit life and credit accident and health insurance and credit casualty insurance against loss or damage resulting from failure of debtors to pay their obligations, retail dealers compensated by any such master policyholders, or the authorized representative(s) of either.

(3) Persons selling special or unique policies of insurance covering goods sold or leased from a primary business or activity other than the transaction of insurance or covering collateral securing loans from a primary business or activity other than the transaction of insurance if, in the commissioner's discretion, such limited license would safeguard and promote the public interest. [1995 c 214 § 2; 1979 c 138 § 1; 1967 c 150 § 21; 1947 c 79 § .17.19; Rem. Supp. 1947 § 45.17.19.]

48.17.200 One license required by agent. (Effective until July 1, 2009.) An agent is required to have but one license regardless of the number of appointments by insurers the agent may have. [1979 ex.s. c 269 § 5; 1955 c 303 § 14; 1947 c 79 § .17.20; Rem. Supp. 1947 § 45.17.20.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.210 Minimum license combinations. (Effective until July 1, 2009.) Except as provided in RCW 48.17.190,

an agent's license shall not be issued unless it includes, and the applicant is qualified for, one or more of the following kinds of insurance:

- (1) Casualty.
- (2) Disability.
- (3) Life.
- (4) Marine and transportation.
- (5) Property.
- (6) Surety.
- (7) Vehicle. [1947 c 79 § .17.21; Rem. Supp. 1947 § 45.17.21.]

48.17.230 Agent placing rejected business. (Effective until July 1, 2009.) A licensed agent appointed by an insurer as to life or disability insurances may, if with the knowledge and consent of such insurer, place any portion of a life or disability risk which has been rejected by such insurer, with other authorized insurers without being licensed as to such other insurers. Any agent so placing rejected business becomes the agent for the company issuing the insurance with respect to that business just as if it had appointed such person as its agent. [1988 c 248 § 10; 1947 c 79 § .17.23; Rem. Supp. 1947 § 45.17.23.]

48.17.240 Scope of broker's license. (Effective until July 1, 2009.) A broker's license may be issued to cover the following lines of insurance:

- (a) All lines of insurance; or
- (b) All lines except life, which shall be designated as a casualty-property broker's license; or
- (c) Life and disability only. [1967 c 150 § 22; 1947 c 79 § .17.24; Rem. Supp. 1947 § 45.17.24.]

48.17.250 Broker's bond. (Effective until July 1, 2009.) (1) Every applicant for a broker's license or for the renewal of a broker's license existing on the effective date of this code shall file with the application or request for renewal and shall thereafter maintain in force while so licensed a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of twenty thousand dollars. If the applicant is a firm or corporation, the bond shall be in the amount of twenty thousand dollars plus five thousand dollars for the second and five thousand dollars for each additional individual empowered and designated in the license to exercise the powers conferred thereby. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the broker to any person requesting the broker to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days advance notice in writing filed with the commissioner. [1979 ex.s. c 269 § 8; 1977 ex.s. c 182 § 4; 1947 c 79 § .17.25; Rem. Supp. 1947 § 45.17.25.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

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48.17.250 Insurance producer's bond. (Effective July 1, 2009.) (1) Every insurance producer licensed under this chapter on or after July 1, 2009, who places insurance either directly or indirectly with an insurer with which the insurance producer is not appointed as an agent must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of Washington are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums brokered in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the insurance producer to any person requesting the insurance producer to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Authorized insurance producers of a business entity may meet the requirements of this section with a bond in the name of the business entity, continuous in form, and in the amounts set forth in subsection (1) of this section. Insurance producers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual insurance producer remains responsible for assuring that a bond is in effect and is for the correct amount.

(3) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(4) The insurance producer's license may be revoked if the insurance producer acts without a bond that is required under this section.

(5) If a party injured under the terms of the bond requests the insurance producer to provide the name of the surety and the bond number, the insurance producer must provide the information within three working days after receiving the request.

(6) An association may meet the requirements of this section for all of its members with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (1) of this section.

(7) All records relating to the bond required by this section shall be kept available and open to the inspection of the commissioner at any business time. [2007 c 117 § 16; 1979 ex.s. c 269 § 8; 1977 ex.s. c 182 § 4; 1947 c 79 § .17.25; Rem. Supp. 1947 § 45.17.25.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.260 Broker's authority—Commissions. (Effective until July 1, 2009.) (1) A broker, as such, is not an agent or other representative of an insurer, and does not have power, by his own acts, to bind the insurer upon any risk or with reference to any insurance contract.

(2) An insurer or agent shall have the right to pay to a broker licensed under this code, or under the laws of any other state or province, and such broker shall have the right to receive from the insurer or agent, the customary commissions upon insurances placed in the insurer by the broker. [1949 c 190 § 24; 1947 c 79 § .17.26; Rem. Supp. 1949 § 45.17.26.]

48.17.270 Agent-broker combinations—Compensation—Disclosure. (Effective until July 1, 2009.) (1) A licensed agent may be licensed as a broker and be a broker as to insurers for which the licensee is not then appointed as agent. A licensed broker may be licensed as and be an agent as to insurers appointing such agent. The sole relationship between a broker and an insurer as to which the licensee is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent.

(2) Unless the agency-insurer agreement provides to the contrary, an insurance agent licensed as a broker may, with respect to property and casualty insurance, receive the following compensation:

- (a) A commission paid by the insurer;
- (b) A fee paid by the insured; or
- (c) A combination of commission paid by the insurer and a fee paid by the insured from which a broker may offset or reimburse the insured for all or part of the fee.

If the compensation received by an agent who is also licensed as a broker and who is dealing directly with the insured includes a fee, the full amount of compensation, including an explanation of any offset or reimbursement, must be disclosed in writing, signed by the broker and the insured, and the writing must be retained by the broker for not less than five years. [1994 c 203 § 1; 1993 c 455 § 1; 1981 c 339 § 13; 1947 c 79 § .17.27; Rem. Supp. 1947 § 45.17.27.]

48.17.270 Insurance producer as insurer's agent—Compensation—Disclosure. (Effective July 1, 2009.) (1) The sole relationship between an insurance producer and an insurer as to which the insurance producer is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent.

(2) Unless the agency-insurer agreement provides to the contrary, an insurance producer may receive the following compensation:

- (a) A commission paid by the insurer;
- (b) A fee paid by the insured; or
- (c) A combination of commission paid by the insurer and a fee paid by the insured from which an insurance producer may offset or reimburse the insured for all or part of the fee.

(3) If the compensation received by an insurance producer who is dealing directly with the insured includes a fee, for each policy, the insurance producer must disclose in writing to the insured:

- (a) The full amount of the fee paid by the insured;
- (b) The full amount of any commission paid to the insurance producer by the insurer, if one is received;
- (c) An explanation of any offset or reimbursement of fees or commissions as described in subsection (2)(c) of this section;

(d) When the insurance producer may receive additional commission, notice that states the insurance producer:

(i) May receive additional commission in the form of future incentive compensation from the insurer, including contingent commissions and other awards and bonuses based on factors that typically include the total sales volume, growth, profitability, and retention of business placed by the insurance producer with the insurer, and incentive compensation is only paid if the performance criteria established in the agency-insurer agreement is met by the insurance producer or the business entity with which the insurance producer is affiliated; and

(ii) Will furnish to the insured or prospective insured specific information relating to additional commission upon request; and

(e) The full name of the insurer that may pay any commission to the insurance producer.

(4) Written disclosure of compensation as required by subsection (3) of this section shall be provided by the insurance producer to the insured prior to the sale of the policy.

(5) Written disclosure as required by subsection (3) of this section must be signed by the insurance producer and the insured, and the writing must be retained by the insurance producer for five years. For the purposes of this section, written disclosure means the insured's written consent obtained prior to the insured's purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot be reasonably obtained, consent documented by the producer shall be acceptable. [2007 c 117 § 17; 1994 c 203 § 1; 1993 c 455 § 1; 1981 c 339 § 13; 1947 c 79 § .17.27; Rem. Supp. 1947 § 45.17.27.]

48.17.280 Solicitor's qualifications. (Effective until July 1, 2009.) The commissioner shall license as a solicitor an individual only who meets the following requirements:

- (1) Is a resident of this state.
- (2) Intends to and does make the soliciting and handling of insurance business under his license his principal vocation.
- (3) Is to represent and be employed by but one licensed agent or broker.
- (4) Has passed any examination as required under this chapter.
- (5) Is otherwise qualified under this code. [1947 c 79 § .17.28; Rem. Supp. 1947 § 45.17.28.]

48.17.290 Solicitor's license—Application. (Effective until July 1, 2009.) The commissioner shall issue a solicitor's license only upon application by the applicant and the request of the agent or broker to be represented, upon such forms as the commissioner shall prescribe and furnish. [1947 c 79 § .17.29; Rem. Supp. 1947 § 45.17.29.]

48.17.300 Solicitor's license fee—Custody—Cancellation. (Effective until July 1, 2009.) (1) The fee for issuance or renewal of a solicitor's license shall be paid by the agent or broker by whom the solicitor is employed.

(2) The solicitor's license shall be delivered to and shall remain in the possession of the employing agent or broker. Upon termination of such employment, the license shall likewise terminate and shall be returned to the commissioner for

cancellation. [1947 c 79 § .17.30; Rem. Supp. 1947 § 45.17.30.]

48.17.310 Limitations upon solicitors. (Effective until July 1, 2009.) (1) A solicitor's license shall not cover any kind of insurance for which the agent or broker by whom he is employed is not then licensed.

(2) A solicitor shall not have power to bind an insurer upon or with reference to any risk or insurance contract, or to countersign insurance contracts.

(3) Any individual while licensed as a solicitor shall not be licensed as an agent or broker. [1947 c 79 § .17.31; Rem. Supp. 1947 § 45.17.31.]

48.17.320 Responsibility of employing agent or broker. (Effective until July 1, 2009.) All business transacted by a solicitor under his license shall be in the name of the agent or broker by whom he is employed and the agent or broker shall be responsible for all acts or omissions of the solicitor within the scope of such employment. [1947 c 79 § .17.32; Rem. Supp. 1947 § 45.17.32.]

48.17.330 Nonresident agents and brokers—Reciprocity. (Effective until July 1, 2009.) (1) The commissioner may license as an agent or as a broker, a person who is not a resident of or domiciled in this state and who holds a corresponding license issued by the state or province of his or her residence or domicile, subject to RCW 48.17.530, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of or corporations domiciled in this state. As used in this section, "state" means a state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and "province" means a province of Canada.

(2) Any such licensee shall be subject to the same obligations and limitations, and to the commissioner's supervision as though resident or domiciled in this state, subject to RCW 48.14.040.

(3) No such person shall be so licensed unless he or she files the power of attorney provided for in RCW 48.17.340, and, if a corporation, it must have complied with the laws of this state governing the admission of foreign corporations. [2001 c 56 § 2; 1973 1st ex.s. c 107 § 1; 1955 c 303 § 28; 1947 c 79 § .17.33; Rem. Supp. 1947 § 45.17.33.]

Severability—1973 1st ex.s. c 107: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 107 § 5.]

48.17.340 Service of process against nonresident agent or broker. (Effective until July 1, 2009.) (1) Each licensed nonresident agent or broker shall appoint the commissioner as his attorney to receive service of legal process issued against the agent or broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute effective legal service upon the agent or broker.

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(2) The appointment shall be irrevocable for as long as there could be any cause of action against the agent or broker arising out of his insurance transactions in this state.

(3) Duplicate copies of such legal process against such agent or broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(4) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant agent or broker at his last address of record with the commissioner.

(5) The commissioner shall keep a record of the day and hour of service upon him of all such legal process. No proceedings shall be had against the defendant agent or broker, and such defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner. [1981 c 339 § 14; 1947 c 79 § .17.34; Rem. Supp. 1947 § 45.17.34.]

48.17.380 Adjusters—Qualifications for license. (Effective until July 1, 2009.) The commissioner shall license as an adjuster only an individual, firm, or corporation which has otherwise complied with this code therefor and the individual or responsible officer of the firm or corporation has furnished evidence satisfactory to the commissioner that he is qualified as follows:

(1) Is eighteen or more years of age.

(2) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state.

(3) Is a trustworthy person.

(4) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster.

(5) Has successfully passed any examination as required under this chapter.

(6) If for a public adjuster's license, has filed the bond required by RCW 48.17.430. [1981 c 339 § 15; 1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

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

48.17.380 Adjusters—Qualifications for license—Bond. (Effective July 1, 2009.) The commissioner shall license as an adjuster only an individual or business entity which has otherwise complied with this code therefor and the individual or responsible officer of the business entity has furnished evidence satisfactory to the commissioner that the individual or responsible officer of the business entity is qualified as follows:

(1) Is eighteen or more years of age.

(2) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state.

(3) Is a trustworthy person.

(4) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to

make the individual or responsible officer of the business entity competent to fulfill the responsibilities of an adjuster.

(5) Has successfully passed any examination as required under this chapter.

(6) If for a public adjuster's license, has filed the bond required by RCW 48.17.430. [2007 c 117 § 18; 1981 c 339 § 15; 1971 ex.s. c 292 § 48; 1947 c 79 § .17.38; Rem. Supp. 1947 § 45.17.38.]

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

48.17.390 Adjusters—Separate licenses. (Effective until July 1, 2009.) The commissioner may license an individual, firm, or corporation as an independent adjuster or as a public adjuster, and separate licenses shall be required for each type of adjuster. An individual, firm, or corporation may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster. The full license fee shall be paid for each such license. [1981 c 339 § 16; 1947 c 79 § .17.39; Rem. Supp. 1947 § 45.17.39.]

48.17.390 Adjusters—Separate licenses. (Effective July 1, 2009.) The commissioner may license an individual or business entity as an independent adjuster or as a public adjuster, and separate licenses shall be required for each type of adjuster. An individual or business entity may be concurrently licensed under separate licenses as an independent adjuster and as a public adjuster. The full license fee shall be paid for each such license. [2007 c 117 § 19; 1981 c 339 § 16; 1947 c 79 § .17.39; Rem. Supp. 1947 § 45.17.39.]

48.17.410 Authority of adjuster. (Effective until July 1, 2009.) An adjuster shall have authority under his license only to investigate or report to his principal upon claims as limited under RCW 48.17.050 on behalf only of the insurers if licensed as an independent adjuster, or on behalf only of insureds if licensed as a public adjuster. An adjuster licensed concurrently as both an independent and a public adjuster shall not represent both the insurer and the insured in the same transaction. [1947 c 79 § .17.41; Rem. Supp. 1947 § 45.17.41.]

48.17.410 Authority of adjuster. (Effective July 1, 2009.) An adjuster shall have authority under an adjuster's license only to investigate or report to the adjuster's principal upon claims as limited under RCW 48.17.010(1) on behalf only of the insurers if licensed as an independent adjuster, or on behalf only of insureds if licensed as a public adjuster. An adjuster licensed concurrently as both an independent and a public adjuster shall not represent both the insurer and the insured in the same transaction. [2007 c 117 § 20; 1947 c 79 § .17.41; Rem. Supp. 1947 § 45.17.41.]

48.17.420 Agent may adjust—Nonresident adjusters. (Effective until July 1, 2009.) (1) On behalf of and as authorized by an insurer for which he is licensed as agent, an agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(2) No license by this state shall be required of a nonresident independent adjuster, for the adjustment in this state of

a single loss, or of losses arising out of a catastrophe common to all such losses. [1947 c 79 § .17.42; Rem. Supp. 1947 § 45.17.42.]

48.17.420 Appointed agent may adjust—Nonresident adjusters. (Effective July 1, 2009.) (1) On behalf of and as authorized by an insurer for which an insurance producer or title insurance agent has been appointed as an agent, an insurance producer or title insurance agent may from time to time act as an adjuster and investigate and report upon claims without being required to be licensed as an adjuster.

(2) No license by this state shall be required of a nonresident independent adjuster, for the adjustment in this state of a single loss, or of losses arising out of a catastrophe common to all such losses. [2007 c 117 § 21; 1947 c 79 § .17.42; Rem. Supp. 1947 § 45.17.42.]

48.17.430 Public adjuster's bond. (1) Prior to the issuance of a license as public adjuster, the applicant therefor shall file with the commissioner and shall thereafter maintain in force while so licensed a surety bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of five thousand dollars. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of five thousand dollars. The bond shall be contingent on the accounting by the adjuster to any insured whose claim he is handling, for moneys or any settlement received in connection therewith.

(2) Any such bond shall remain in force until the surety is released from liability by the commissioner, or until canceled by the surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel a bond upon thirty days advance notice in writing filed with the commissioner.

(3) Such bond shall be required of any adjuster acting as a public adjuster as of the effective date of this code, or thereafter under any unexpired license heretofore issued. [1977 ex.s. c 182 § 5; 1947 c 79 § .17.43; Rem. Supp. 1947 § 45.17.43.]

48.17.450 Place of business. (Effective until July 1, 2009.) (1) Every licensed agent, broker, and adjuster, other than an agent licensed for life or disability insurances only, shall have and maintain in this state, or, if a nonresident agent or nonresident broker, in this state or in the state of the licensee's domicile, a place of business accessible to the public. Such place of business shall be that wherein the agent or broker principally conducts transactions under that person's licenses. The address of the licensee's place of business shall appear on all of that person's licenses, and the licensee shall promptly notify the commissioner of any change thereof. A licensee maintaining more than one place of business in this state shall obtain a duplicate license or licenses for each additional such place, and shall pay the full fee therefor.

(2) Any notice, order, or written communication from the commissioner to a person licensed under this chapter which directly affects the person's license shall be sent by mail to the person's last residential address, if an individual, and to the person's last business address, if licensed as a firm

or corporation, as such address is shown in the commissioner's licensing records. A licensee shall promptly notify the commissioner of any change of residential or business address. [1990 1st ex.s. c 3 § 5; 1988 c 248 § 11; 1953 c 197 § 6; 1947 c 79 § .17.45; Rem. Supp. 1947 § 45.17.45.]

48.17.450 Place of business. (Effective July 1, 2009.)

(1) Every licensed insurance producer, title insurance agent, and adjuster, other than an insurance producer licensed for life or disability insurances only, shall have and maintain in this state, or, if a nonresident insurance producer or title insurance agent, in this state or in the state of the licensee's domicile, a place of business accessible to the public. Such place of business shall be that wherein the insurance producer or title insurance agent principally conducts transactions under that person's licenses. A licensee maintaining more than one place of business in this state shall obtain a duplicate license or licenses for each additional such place, and shall pay the full fee therefor.

(2) Any notice, order, or written communication from the commissioner to a person licensed under this chapter which directly affects the person's license shall be sent by mail to the person's last address of record with the commissioner. [2007 c 117 § 22; 1990 1st ex.s. c 3 § 5; 1988 c 248 § 11; 1953 c 197 § 6; 1947 c 79 § .17.45; Rem. Supp. 1947 § 45.17.45.]

48.17.460 Display of license. (Effective until July 1, 2009.) (1) The license or licenses of each agent, other than licenses as to life or disability insurances only, or of each broker or adjuster shall be displayed in a conspicuous place in that part of his place of business which is customarily open to the public.

(2) The license of a solicitor shall be so displayed in the place of business of the agent or broker by whom he is employed. [1947 c 79 § .17.46; Rem. Supp. 1947 § 45.17.46.]

48.17.460 Display of license. (Effective July 1, 2009.) The license or licenses of each insurance producer, title insurance agent, or adjuster shall be displayed in a conspicuous place in that part of the place of business which is customarily open to the public. [2007 c 117 § 23; 1947 c 79 § .17.46; Rem. Supp. 1947 § 45.17.46.]

48.17.470 Records of agents, brokers, adjusters. (Effective until July 1, 2009.) (1) Every agent, or broker, or adjuster shall keep at his address as shown on his license, a record of all transactions consummated under his license. This record shall be in organized form and shall include:

(a) If an agent or broker,

(i) a record of each insurance contract procured, issued, or countersigned, together with the names of the insurers and insureds, the amount of premium paid or to be paid, and a statement of the subject of the insurance;

(ii) the names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid.

(b) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of

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any fee, commission, or other compensation received or to be received by the adjuster on account of such investigation or adjustment.

(c) Such other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years immediately after the date of the completion of such transaction.

(3) This section shall not apply as to life or disability insurances. [1947 c 79 § .17.47; Rem. Supp. 1947 § 45.17.47.]

48.17.470 Records of insurance producers, title insurance agents, adjusters. (Effective July 1, 2009.) (1) Every insurance producer, title insurance agent, or adjuster shall retain a record of all transactions consummated under the license. This record shall be in organized form and shall include:

(a) If an insurance producer or title insurance agent:

(i) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, and a statement of the subject of the insurance;

(ii) The names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid.

(b) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of such investigation or adjustment.

(c) Such other and additional information as shall be customary, or as may reasonably be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years immediately after the date of the completion of such transaction.

(3) This section shall not apply as to life or disability insurances. [2007 c 117 § 24; 1947 c 79 § .17.47; Rem. Supp. 1947 § 45.17.47.]

48.17.475 Licensee to reply promptly to inquiry by commissioner. (Effective until July 1, 2009.) Every insurance agent, broker, adjuster, or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. [1967 c 150 § 13.]

48.17.475 Licensee to reply promptly to inquiry by commissioner. (Effective July 1, 2009.) Every insurance producer, title insurance agent, adjuster, or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a timely response constitutes a violation of this section. [2007 c 117 § 25; 1967 c 150 § 13.]

48.17.480 Reporting and accounting for premiums. (Effective until July 1, 2009.) (1) An agent or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the agent. Each willful violation of this provision is a misdemeanor.

(2) All funds representing premiums or return premiums received by an agent, solicitor or broker, shall be so received in his or her fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, or agent as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any agent, solicitor, broker, adjuster or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 269; 1988 c 248 § 12; 1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

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

48.17.480 Reporting and accounting for premiums. (Effective July 1, 2009.) (1) An insurance producer, title insurance agent, or any other representative of an insurer involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as premium for such contract, and such amount shall likewise be shown in the contract and in the records of the insurance producer, title insurance agent, or other representative. Each willful violation of this provision is a misdemeanor.

(2) All funds representing premiums or return premiums received by an insurance producer or title insurance agent shall be so received in the insurance producer's or title insurance agent's fiduciary capacity, and shall be promptly accounted for and paid to the insured, insurer, title insurance agent, or insurance producer as entitled thereto.

(3) Any person licensed under this chapter who receives funds which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have received the funds in a fiduciary capacity. The licensee shall promptly account for and pay the funds to the person entitled to the funds.

(4) Any insurance producer, title insurance agent, adjuster, or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW. [2007 c 117 § 26; 2003 c 53 § 269; 1988 c 248 § 12; 1947 c 79 § .17.48; Rem. Supp. 1947 § 45.17.48.]

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

48.17.490 Sharing commissions. (Effective until July 1, 2009.) (1) No agent, general agent, solicitor, or broker shall compensate or offer to compensate in any manner any person other than an agent, general agent, solicitor, or broker, licensed in this or any other state or province, for procuring or in any manner helping to procure applications for or to place insurance in this state. This provision shall not prohibit the payment of compensation not contingent upon volume of business transacted, in the form of salaries to the regular employees of such agent, general agent, solicitor or broker, or the payment for services furnished by an unlicensed person who does not participate in the transaction of insurance in any way requiring licensing as an agent, solicitor, broker, or adjuster and who is not compensated on any basis dependent upon a sale of insurance being made.

(2) No such licensee shall be promised or allowed any compensation on account of the procuring of applications for or the placing of kinds of insurance which he himself is not then licensed to procure or place.

(3) The commissioner shall suspend or revoke the licenses of all licensees participating in any violation of this section. [1988 c 248 § 13; 1947 c 79 § .17.49; Rem. Supp. 1947 § 45.17.49.]

48.17.490 Must be licensed to receive a commission, service fee, or other valuable consideration. (Effective July 1, 2009.) (1) An insurance company, insurance producer, or title insurance agent shall not pay a commission, service fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter or chapter 48.15 RCW and is not so licensed.

(2) A person shall not accept a commission, service fee, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter or chapter 48.15 RCW and is not so licensed.

(3) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person was required to be licensed under this chapter or chapter 48.15 RCW at the time of the sale, solicitation, or negotiation, and was so licensed at that time.

(4) An insurer, except a title insurer, or insurance producer may pay or assign commissions, service fees, or other valuable consideration to an insurance agency, or to persons who do not sell, solicit, or negotiate insurance in this state, unless the payment would violate RCW 48.30.140, 48.30.150, 48.30.155, 48.30.157, or 48.30.170. [2007 c 117 § 27; 1988 c 248 § 13; 1947 c 79 § .17.49; Rem. Supp. 1947 § 45.17.49.]

48.17.500 Expiration and renewal of licenses. (Effective until July 1, 2009.) (1) All agents' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless:

(a) Suspended or revoked; or
(b) The licensee ceases to hold a valid appointment by an insurer.

(2) All brokers', solicitors', and adjusters' licenses shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(3) The commissioner, by rule, shall determine renewal dates for licenses of all agents, brokers, solicitors, and adjusters. If a staggered system is used, fees shall be prorated in the conversion to a staggered system.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any agent's, broker's, solicitor's, or adjuster's license as provided in this code, any such license may be renewed into another like period by filing with the commissioner on or before the expiration date a written request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010. An agent or broker shall make and file renewal requests on behalf of his solicitors.

If the request and fee for renewal of an agent's, broker's, solicitor's, or adjuster's license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed order of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

(5) As to all licenses, if request for renewal of an agent's license or appointment or broker's, solicitor's, or adjuster's license or payment of the fee is not received by the commissioner prior to the expiration date as required under subsection (4) of this section, the insurer or applicant for renewal shall pay to the commissioner and the commissioner shall collect, in addition to the regular fee, a surcharge as follows: For the first thirty days or part thereof of delinquency the surcharge shall be fifty percent of the fee; for all delinquencies extending more than thirty days, the surcharge shall be one hundred percent of the fee. This subsection shall not be deemed to exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment, or affect the commissioner's right, at his discretion, to consider such delinquent application as one for a new license or appointment. [1979 ex.s. c 269 § 6; 1977 ex.s. c 182 § 6; 1965 ex.s. c 70 § 20; 1957 c 193 § 9; 1953 c 197 § 7; 1947 c 79 § .17.50; Rem. Supp. 1947 § 45.17.50.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

48.17.510 Temporary licenses. (Effective until July 1, 2009.) (1) The commissioner may issue an agent's or broker's temporary license in the following circumstances:

(a) To the surviving spouse or next of kin or to the administrator or executor, or the employee of the administrator or executor, of a licensed agent or broker becoming deceased.

(b) To the spouse, next of kin, employee, or legal guardian of a licensed agent or broker becoming disabled because of sickness, insanity, or injury.

(c) To a surviving member of a firm or surviving officer or employee of a corporation licensed as agent or broker upon the death of an individual designated in the firm or corporation's license to exercise powers thereunder.

(2) An individual to be eligible for any such temporary license must be qualified as for a permanent license except as to experience, training, or the taking of any examination.

(3) Any fee paid to the commissioner for issuance of a temporary license as specified in RCW 48.14.010 shall be credited toward the fee required for a permanent license which is issued to replace the temporary license prior to the expiration of such temporary license. [1982 c 181 § 7; 1955 c 303 § 15; 1953 c 197 § 8; 1947 c 79 § .17.51; Rem. Supp. 1947 § 45.17.51.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.510 Temporary licenses—Restrictions—Commissioner's discretion. (Effective July 1, 2009.) (1) The commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty days without requiring an examination if the commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

(a) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the insurance producer or for the recovery or return of the insurance producer to the business, or to provide for the training and licensing of new personnel to operate the insurance producer's business;

(b) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

(c) To the designee of a licensed insurance producer entering active service in the armed forces of the United States; or

(d) In any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license.

(2) The commissioner may, by order, limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The commissioner may require the temporary licensee to have a suitable sponsor who is a licensed insurance producer or insurer and who assumes responsibility for all acts of the temporary licensee, and may impose other similar requirements designed to protect insureds and the public. The commissioner may, by order, revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representatives dispose of the business. [2007 c 117 § 28; 1982 c 181 § 7; 1955 c 303 § 15; 1953 c 197 § 8; 1947 c 79 § .17.51; Rem. Supp. 1947 § 45.17.51.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.17.520 Temporary licenses—Duration—Limitations. (Effective until July 1, 2009.) (1) No such temporary license shall be effective for more than ninety days in any twelve month period, subject to extension for an additional period of not more than ninety days at the commissioner's discretion and for good cause shown. The commissioner may refuse so to license again any person who has previously been so licensed.

(2) An individual requesting temporary agent's license on account of death or disability of an agent, shall not be so

licensed for any insurer as to which such agent was not licensed at the time of death or commencement of disability. [1985 c 264 § 8; 1953 c 197 § 9; 1947 c 79 § .17.52; Rem. Supp. 1947 § 47.17.52.]

48.17.530 Refusal, suspension, revocation of licenses. (Effective until July 1, 2009.) (1) The commissioner may suspend, revoke, or refuse to issue or renew any license which is issued or may be issued under this chapter or any surplus line broker's license for any cause specified in any other provision of this code, or for any of the following causes:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) If the licensee or applicant wilfully violates or knowingly participates in the violation of any provision of this code or any proper order or regulation of the commissioner.

(c) If the licensee or applicant has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required under this chapter.

(d) If the licensee or applicant has misappropriated or converted to his own use or has illegally withheld moneys required to be held in a fiduciary capacity.

(e) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction.

(f) If the licensee or applicant has been guilty of "twisting," as defined in RCW 48.30.180, or of rebating, as defined in chapter 48.30 RCW.

(g) If the licensee or applicant has been convicted, by final judgment, of a felony.

(h) If the licensee or applicant has shown himself to be, and is so deemed by the commissioner, incompetent, or untrustworthy, or a source of injury and loss to the public.

(i) If the licensee has dealt with, or attempted to deal with, insurances, or to exercise powers relative to insurance outside the scope of his licenses.

(2) If any natural person named under a firm or corporate license, or application therefor, commits or has committed any act or fails or has failed to perform any duty which is a ground for the commissioner to revoke, suspend or refuse to issue or renew the license or application for license, the commissioner may revoke, suspend, refuse to renew, or refuse to issue:

(a) The license, or application therefor, of the corporation or firm; or

(b) The right of the natural person to act thereunder; or

(c) Any other license held or applied for by the natural person; or

(d) He may take all such steps.

(3) Any conduct of an applicant or licensee which constitutes ground for disciplinary action under this code shall be deemed such ground notwithstanding that such conduct took place in another state.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request. [1973 1st ex.s. c

152 § 2; 1969 ex.s. c 241 § 11; 1967 c 150 § 23; 1947 c 79 § .17.53; Rem. Supp. 1947 § 45.17.53.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.17.530 Commissioner may place on probation, suspend, revoke, or refuse to issue or renew a license. (Effective July 1, 2009.) (1) The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license, an insurance producer's license, a title insurance agent's license, or any surplus line broker's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or

(m) Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements.

(2) The license of a business entity may be suspended, revoked, or refused if the commissioner finds that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the partnership or corporation, and the violation was neither reported to the commissioner nor corrective action taken.

(3) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and this title against any person who is under investigation for or charged with a violation of

this chapter or this title, even if the person's license or registration has been surrendered or has lapsed by operation of law.

(4) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request.

(5) The commissioner may probate a suspension or revocation of a license under reasonable terms determined by the commissioner. In addition, the commissioner may require a licensee who is placed on probation to:

(a) Report regularly to the commissioner on matters that are the basis of the probation;

(b) Limit practice to an area prescribed by the commissioner; or

(c) Continue or renew continuing education until the licensee attains a degree of skill satisfactory to the commissioner in the area that is the basis of the probation.

(6) At any time during a probation term where the licensee has violated the probation order, the commissioner may:

(a) Rescind the probation and enforce the commissioner's original order; and

(b) Impose any disciplinary action permitted under this section in addition to or in lieu of enforcing the original order. [2007 c 117 § 29; 1973 1st ex.s. c 152 § 2; 1969 ex.s. c 241 § 11; 1967 c 150 § 23; 1947 c 79 § .17.53; Rem. Supp. 1947 § 45.17.53.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.17.535 License or certificate suspension—Non-compliance with support order—Reissuance. The commissioner shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the commissioner's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 857.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

48.17.540 Procedure to suspend, revoke, or refuse—Effect of conviction of felony. (1) The commissioner may revoke or refuse to renew any license issued under this chapter, or any surplus line broker's license, immediately and without hearing, upon sentencing of the licensee for conviction of a felony by final judgment of any court of competent

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jurisdiction, if the facts giving rise to such conviction demonstrate the licensee to be untrustworthy to maintain any such license.

(2) The commissioner may suspend, revoke, or refuse to renew any such license:

(a) By an order served by mail or personal service upon the licensee not less than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in RCW 48.04.010; or

(b) By an order on hearing made as provided in chapter 34.05 RCW, the Administrative Procedure Act, effective not less than ten days after the date of the service of the order, subject to the right of the licensee to appeal to the superior court.

(3) The commissioner may temporarily suspend such license by an order served by mail or by personal service upon the licensee not less than three days prior to the effective date thereof, provided the order contains a notice of revocation and includes a finding that the public safety or welfare imperatively requires emergency action. Such suspension shall continue only until proceedings for revocation are concluded. The commissioner also may temporarily suspend such license in cases where proceedings for revocation are pending if he or she finds that the public safety or welfare imperatively requires emergency action.

(4) Service by mail under this section shall mean posting in the United States mail, addressed to the licensee at the most recent address shown in the commissioner's licensing records for the licensee. Service by mail is complete upon deposit in the United States mail. [1990 1st ex.s. c 3 § 6; 1989 c 175 § 113; 1988 c 248 § 14; 1982 c 181 § 8; 1973 1st ex.s. c 107 § 2; 1967 c 150 § 24; 1947 c 79 § .17.54; Rem. Supp. 1947 § 45.17.54.]

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

Severability—1982 c 181: See note following RCW 48.03.010.

Severability—1973 1st ex.s. c 107: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 107 § 5.]

48.17.550 Duration of suspension. Every order suspending any such license shall specify the period during which suspension will be effective, and which period shall in no event exceed twelve months. [1947 c 79 § .17.55; Rem. Supp. 1947 § 45.17.55.]

48.17.560 Fines may be imposed. After hearing or upon stipulation by the licensee or insurance education provider, and in addition to or in lieu of the suspension, revocation, or refusal to renew any such license or insurance education provider approval, the commissioner may levy a fine upon the licensee or insurance education provider. (1) For each offense the fine shall be an amount not more than one thousand dollars. (2) The order levying such fine shall specify that the fine shall be fully paid not less than fifteen nor more than thirty days from the date of the order. (3) Upon failure to pay any such fine when due, the commissioner shall revoke the licenses of the licensee or the approval(s) of the insurance education provider, if not already revoked. The fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so col-

lected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1989 c 323 § 3; 1975 1st ex.s. c 266 § 8; 1967 c 150 § 25; 1947 c 79 § .17.56; Rem. Supp. 1947 § 45.17.56.]

Effective date—1989 c 323: See note following RCW 48.17.125.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.17.563 Insurance education providers—Commissioner's approval—Renewal fee. (1) The commissioner may require insurance education providers to furnish specific information regarding their curricula, faculty, methods of monitoring attendance, and other matters reasonably related to providing insurance education under this chapter. The commissioner may grant approvals to such providers who demonstrate the ability to conduct and certify completion of one or more courses satisfying the insurance education requirements of RCW 48.17.150.

(2) Provider and course approvals are valid for the time period established by the commissioner and shall expire if not timely renewed. Each provider shall pay the renewal fee set forth in *RCW 48.14.010(1)(n).

(3) In granting approvals for courses required by **RCW 48.17.150(1)(d):

(a) The commissioner may require the availability of a licensed agent with appropriate experience on the premises whenever instruction is being offered; and

(b) The commissioner shall not deny approval to any provider on the grounds that the proposed method of education employs nontraditional teaching techniques, such as substituting taped lectures for live instruction, offering instruction without fixed schedules, or providing education at individual learning rates. [1994 c 131 § 6; 1989 c 323 § 7.]

Reviser's note: *(1) The reference to RCW 48.14.010(1)(n) appears to be erroneous. See RCW 48.14.010.

** (2) RCW 48.17.150 was amended by 2007 c 117 § 10, deleting subsection (1)(d), effective July 1, 2009.

Effective date—1989 c 323: See note following RCW 48.17.125.

48.17.565 Insurance education providers—Violations—Costs awarded. (Effective until July 1, 2009.) If an investigation of any provider culminates in a finding by the commissioner or by any court of competent jurisdiction, that the provider has failed to comply with or has violated any statute or regulation pertaining to insurance education, the provider shall pay the expenses reasonably attributable and allocable to such investigation.

(1) The commissioner shall calculate such expenses and render a bill therefor by registered mail to the provider. Within thirty days after receipt of such bill, the provider shall pay the full amount to the commissioner. The commissioner shall transmit such payment to the state treasurer. The state treasurer shall credit the payment to the office of the insurance commissioner regulatory account, treating such payment as recovery of a prior expenditure.

(2) In any action brought under this section, if the insurance commissioner prevails, the court may award to the office of the insurance commissioner all costs of the action, including a reasonable attorneys' fee to be fixed by the court. [1989 c 323 § 4.]

Effective date—1989 c 323: See note following RCW 48.17.125.

48.17.565 Insurance education providers—Violations—Costs awarded. (Effective July 1, 2009.) If an investigation of any insurance education provider culminates in a finding by the commissioner or by any court of competent jurisdiction, that the insurance education provider has failed to comply with or has violated any statute or regulation pertaining to insurance education, the insurance education provider shall pay the expenses reasonably attributable and allocable to such investigation.

(1) The commissioner shall calculate such expenses and render a bill therefor by registered mail to the insurance education provider. Within thirty days after receipt of such bill, the insurance education provider shall pay the full amount to the commissioner. The commissioner shall transmit such payment to the state treasurer. The state treasurer shall credit the payment to the office of the insurance commissioner regulatory account, treating such payment as recovery of a prior expenditure.

(2) In any action brought under this section, if the insurance commissioner prevails, the court may award to the office of the commissioner all costs of the action, including a reasonable attorneys' fee to be fixed by the court. [2007 c 117 § 30; 1989 c 323 § 4.]

Effective date—1989 c 323: See note following RCW 48.17.125.

48.17.568 Insurance education providers—Bond. In addition to the regulatory requirements imposed pursuant to RCW 48.17.150, the commissioner may require each insurance education provider to post a bond, cash deposit, or irrevocable letter of credit. Every insurance education provider, other than an insurer, health care service contractor, health maintenance organization, or educational institution established by Washington statutes, is subject to the requirement.

(1) The provider shall file with each request for course approval and shall maintain in force while so approved, the bond, cash deposit, or irrevocable letter of credit in favor of the state of Washington, according to criteria which the commissioner shall establish by regulation. The amount of such bond, cash deposit, or irrevocable letter of credit, shall not exceed five thousand dollars for the provider's first approved course and one thousand dollars for each additional approved course.

(2) Proceeds from the bond, cash deposit, or irrevocable letter of credit shall inure to the commissioner for payment of investigation expenses or for payment of any fine ordered per Washington statutes or regulations governing insurance education: PROVIDED, That recoverable investigation expenses or fines shall not be limited to the amount of such required bond, cash deposit, or irrevocable letter of credit. [1989 c 323 § 5.]

Effective date—1989 c 323: See note following RCW 48.17.125.

48.17.591 Termination of agency contract—Effect on insured. (Effective until July 1, 2009.) (1) No insurer authorized to do business in this state may cancel or refuse to renew any policy because that insurer's contract with the independent agent through whom such policy is written has been terminated by the insurer, the agent, or by mutual agreement.

(2) If an insurer intends to terminate a written agency contract with an independent agent, the insurer shall give the agent not less than one hundred twenty days' advance written notice of the intent, unless the termination is based upon the agent's abandonment of the agency, the agent's gross and willful misconduct, the agent's loss of license by order of the insurance commissioner, the agent's sale of, or material change of ownership in, the agency, the agent's fraud or material misrepresentation relative to the business of insurance, or the agent's default in payments due the insurer under the terms of the agreement. During the notice period the insurer shall not amend the existing contract without the consent of the agent.

(a) Unless the agency contract provides otherwise, during the one hundred twenty day notice period the independent agent shall not write or bind any new business on behalf of the terminating insurer without specific written approval. However, routine adjustments by insureds are permitted. The terminating insurer shall permit renewal of all its policies in the agent's book of business for a period of one year following the effective date of the termination, to the extent the policies meet the insurer's underwriting standards and the insurer has no other reason for nonrenewal. The rate of commission for any policies renewed under this provision shall be the same as the agent would have received had the agency agreement not been terminated.

(b) An independent agent whose agency contract has been terminated shall have a reasonable opportunity to transfer affected policies to other insurers with which the agent has an appointment: PROVIDED, HOWEVER, That prior to the conclusion of the one-year renewal period following the effective date of the termination, an insurer without a reason for not renewing an insured's policy and which has not received notification of the placement of such policy with another insurer shall provide its insured with appropriate written notice of an offer to continue the policy. In such cases, except where the terminated agent has placed the policy with another agent of the insurer, the insurer shall, where practical, assign the policy to an appointed agent located reasonably near the insured willing to accept the assignment.

(c) An insurer is not required to continue the appointment of a terminated independent agent during or after the one year renewal period. However, an agent whose contract has been terminated by the insurer remains an agent of the terminating insurer as to actions associated with the policies subject to this section just as if he or she were appointed by the insurer as its agent.

(3) In the absence of receipt of notice from the insured that coverage will not be continued with the existing insurer, an insurer whose agency contract has been terminated by an independent agent, or by the mutual agreement of the insurer and the agent, that elects to renew or lacks a reason not to renew, shall give the renewal notice required by chapter 48.18 RCW to affected insureds, and continue renewed coverage in accordance with the methods specified in subsection (2)(b) of this section. Agents affected by this subsection may provide the notice to an insurer that an insured does not intend to continue existing coverage with the insurer, after receiving written authority to do so from an insured.

(4) For purposes of this section an "independent agent" is a licensed insurance agent representing an insurer on an inde-

pendent contractor basis and not as an employee. This term includes only those agents not obligated by contract to place insurance accounts with a particular insurer or group of insurers.

(5) This section does not apply to (a) agents or policies of an insurer or group of insurers if the business is not owned by the agent and the termination of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; (b) general agents, to the extent that they are acting in that capacity; (c) life, disability, surety, ocean marine and foreign trade, and title insurance policies; (d) situations where the termination of the agency contract results from the insolvency or liquidation of the terminating insurer.

(6) No insurer may terminate its agency contract with an appointed agent unless it complies with this section.

(7) Nothing contained in this section excuses an insurer from giving cancellation and renewal notices that may be required by chapter 48.18 RCW. [1990 c 121 § 1. Formerly RCW 48.18.285.]

Reviser's note: Previously codified as RCW 48.18.285. Recodified to reflect legislative directive under 1990 c 121.

48.17.591 Termination of agency contract—Effect on insured—Definition—Application of section. (Effective July 1, 2009.)

(1) No insurer authorized to do business in this state may cancel or refuse to renew any policy because that insurer's contract with the independent insurance producer through whom such policy is written has been terminated by the insurer, the insurance producer, or by mutual agreement.

(2) If an insurer intends to terminate a written agency contract with an independent insurance producer, the insurer shall give the insurance producer not less than one hundred twenty days' advance written notice of the intent, unless the reason for termination is one of the reasons set forth in RCW 48.17.530. During the notice period the insurer shall not amend the existing contract without the consent of the insurance producer.

(a) Unless the agency contract provides otherwise, during the one hundred twenty day notice period the independent insurance producer shall not write or bind any new business on behalf of the terminating insurer without specific written approval. However, routine adjustments by insureds are permitted. The terminating insurer shall permit renewal of all its policies in the insurance producer's book of business for a period of one year following the effective date of the termination, to the extent the policies meet the insurer's underwriting standards and the insurer has no other reason for nonrenewal. The rate of commission for any policies renewed under this provision shall be the same as the insurance producer would have received had the agency agreement not been terminated.

(b) An independent insurance producer whose agency contract has been terminated shall have a reasonable opportunity to transfer affected policies to other insurers with which the insurance producer has an appointment: PROVIDED, HOWEVER, That prior to the conclusion of the one-year renewal period following the effective date of the termination, an insurer without a reason for not renewing an insured's policy and which has not received notification of the placement of such policy with another insurer shall provide its insured with appropriate written notice of an offer to

continue the policy. In such cases, except where the terminated insurance producer has placed the policy with another agent of the insurer, the insurer shall, where practical, assign the policy to an appointed insurance producer located reasonably near the insured willing to accept the assignment.

(c) An insurer is not required to continue the appointment of a terminated independent insurance producer during or after the one year renewal period. However, an insurance producer whose contract has been terminated by the insurer remains an agent of the terminating insurer as to actions associated with the policies subject to this section just as if the insurance producer were appointed by the insurer as its agent.

(3) In the absence of receipt of notice from the insured that coverage will not be continued with the existing insurer, an insurer whose agency contract has been terminated by an independent insurance producer, or by the mutual agreement of the insurer and the insurance producer, that elects to renew or lacks a reason not to renew, shall give the renewal notice required by chapter 48.18 RCW to affected insureds, and continue renewed coverage in accordance with the methods specified in subsection (2)(b) of this section. Insurance producers affected by this subsection may provide the notice to an insurer that an insured does not intend to continue existing coverage with the insurer, after receiving written authority to do so from an insured.

(4) For purposes of this section an "independent insurance producer" is a licensed insurance producer representing an insurer on an independent contractor basis and not as an employee. This term includes only those insurance producers not obligated by contract to place insurance accounts with a particular insurer or group of insurers.

(5) This section does not apply to:

(a) Insurance producers or policies of an insurer or group of insurers if the business is not owned by the insurance producer and the termination of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance;

(b) Managing general agents, to the extent that they are acting in that capacity;

(c) Life, disability, surety, ocean marine and foreign trade, and title insurance policies;

(d) Situations where the termination of the agency contract results from the insolvency or liquidation of the terminating insurer.

(6) No insurer may terminate its agency contract with an appointed insurance producer unless it complies with this section.

(7) Nothing contained in this section excuses an insurer from giving cancellation and renewal notices that may be required by chapter 48.18 RCW. [2007 c 117 § 31; 1990 c 121 § 1. Formerly RCW 48.18.285.]

48.17.595 Termination of business relationship with an insurance producer or title insurance agent—Notice—Confidentiality of information—Immunity from civil liability. (Effective July 1, 2009.) (1) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer or title insurance agent shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by

the commissioner, if the reason for termination is one of the reasons set forth in RCW 48.17.530 or the insurer has knowledge the insurance producer or title insurance agent was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in RCW 48.17.530. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer or title insurance agent.

(2) An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer or title insurance agent for any reason not set forth in RCW 48.17.530, shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.

(3) The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection (1) of this section had the insurer then known of its existence.

(4) A copy of the notification to the commissioner shall be provided to the insurance producer or title insurance agent.

(a) Within fifteen days after making the notification required by subsections (1), (2), and (3) of this section, the insurer shall mail a copy of the notification to the insurance producer or title insurance agent at the insurance producer's or title insurance agent's last known address. If the insurance producer or title insurance agent is terminated for cause for any of the reasons listed in RCW 48.17.530, the insurer shall provide a copy of the notification to the insurance producer or title insurance agent at the insurance producer's or title insurance agent's last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.

(b) Within thirty days after the insurance producer or title insurance agent has received the original or additional notification, the insurance producer or title insurance agent may file written comments concerning the substance of the notification with the commissioner. The insurance producer or title insurance agent shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the insurance producer or title insurance agent as permitted under subsection (6) of this section.

(5) Immunities shall apply as follows:

(a) In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, title insurance agent, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respec-

tive agents or employees, as a result of any statement or information required by or provided under this section, or any information relating to any statement that may be requested in writing by the commissioner, from an insurer, insurance producer, or title insurance agent; or a statement by a terminating insurer, insurance producer, or title insurance agent to an insurer, insurance producer, or title insurance agent limited solely and exclusively to whether a termination for cause under subsection (1) of this section was reported to the commissioner, provided that the propriety of any termination for cause under subsection (1) of this section is certified in writing by an officer or authorized representative of the insurer, insurance producer, or title insurance agent terminating the relationship.

(b) In any action brought against a person that may have immunity under (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that (a) of this subsection does not apply because the person making the statement or providing the information did so with actual malice.

(c) Subsection (5)(a) or (b) of this section shall not abrogate or modify any existing statutory or common law privileges or immunities.

(6) Information provided under this section is confidential.

(a) Any documents, materials, or other information in the control or possession of the commissioner that is furnished by an insurer, insurance producer, title insurance agent, or an employee or agent thereof acting on behalf of the insurer, insurance producer, or title insurance agent, or obtained by the commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to disclosure under chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.

(b) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential or privileged documents, materials, or information subject to (a) of this subsection.

(c) In order to assist in the performance of the commissioner's duties under chapter 117, Laws of 2007 and in accordance with RCW 48.02.065, the commissioner:

(i) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to (a) of this subsection, with other state, federal, and international regulatory agencies, with the NAIC, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(ii) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, its affiliates, or

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subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (5)(c) of this section.

(e) Nothing in this chapter shall prohibit the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to chapter 42.56 RCW to a database or other clearinghouse service maintained by the NAIC, its affiliates, or subsidiaries.

(7) An insurer, the authorized representative of the insurer, insurance producer, or title insurance agent that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked, and may be fined in accordance with this title. [2007 c 117 § 32.]

48.17.597 Administrative action taken against a licensee in another jurisdiction or governmental agency—Report to commissioner. (Effective July 1, 2009.) (1) An insurance producer, title insurance agent, or adjuster shall report to the commissioner any administrative action taken against the insurance producer, title insurance agent, or adjuster in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

(2) Within thirty days of the initial pretrial hearing date, an insurance producer, title insurance agent, or adjuster shall report to the commissioner any criminal prosecution of the insurance producer, title insurance agent, or adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. [2007 c 117 § 34.]

48.17.600 Separation of premium funds. (Effective until July 1, 2009.) (1) All funds representing premiums or return premiums received by an agent, solicitor or broker in his or her fiduciary capacity shall be accounted for and maintained in a separate account from all other business and personal funds.

(2) An agent, solicitor or broker shall not commingle or otherwise combine premiums with any other moneys, except as provided in subsection (3) of this section.

(3) An agent, solicitor or broker may commingle with premium funds any additional funds as he or she may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in his or her business of receiving and transmitting premium or return premium funds.

(4) Each willful violation of this section shall constitute a misdemeanor.

(5) This section shall not apply to agents for title insurance companies or insurance brokers whose average daily balance for premiums received on behalf of insureds in the state of Washington equals or exceeds one million dollars. [1988 c 248 § 15; 1986 c 69 § 1.]

Effective date—1986 c 69: "This act shall take effect on January 1, 1987." [1986 c 69 § 2.]

48.17.600 Separation of premium funds. (Effective July 1, 2009.) (1) All funds representing premiums or return premiums received by an insurance producer or title insurance agent in the insurance producer's or title insurance agent's fiduciary capacity shall be accounted for and maintained in a separate account from all other business and personal funds.

(2) An insurance producer or title insurance agent shall not commingle or otherwise combine premiums with any other moneys, except as provided in subsection (3) of this section.

(3) An insurance producer or title insurance agent may commingle with premium funds any additional funds as the insurance producer or title insurance agent may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in the insurance producer's or title insurance agent's business of receiving and transmitting premium or return premium funds.

(4) Each willful violation of this section shall constitute a misdemeanor. [2007 c 117 § 33; 1988 c 248 § 15; 1986 c 69 § 1.]

Effective date—1986 c 69: "This act shall take effect on January 1, 1987." [1986 c 69 § 2.]

48.17.900 Severability—2007 c 117. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 117 § 38.]

48.17.901 Effective date—2007 c 117. This act takes effect July 1, 2009. [2007 c 117 § 40.]

Chapter 48.18 RCW

THE INSURANCE CONTRACT

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Exemptions of proceeds of insurance on exempt property: RCW 6.15.030.

False claims or proof: RCW 48.30.230.

Misrepresentation in application: RCW 48.30.210.

48.18.010 Scope of chapter. This chapter applies to insurances other than ocean marine and foreign trade insurances. [2005 c 337 § 2; 1947 c 79 § .18.01; Rem. Supp. 1947 § 45.18.01.]

Finding—Intent—2005 c 337: See note following RCW 48.18.030.

48.18.020 Power to contract. (1) Any person eighteen years or older shall be considered of full legal age and may contract for or with respect to insurance. Any person seven-teen years or younger shall be considered a minor for purposes of Title 48 RCW.

(2) A minor not less than fifteen years of age as at nearest birthday may, notwithstanding such minority, contract for life or disability insurance on his own life or body, for his own benefit or for the benefit of his father, mother, spouse, child, brother, sister, or grandparent, and may exercise all rights and powers with respect to or under the contract as though of full legal age, and may surrender his interest therein and give a valid discharge for any benefit accruing or money payable thereunder. The minor shall not, by reason of his minority, be entitled to rescind, avoid, or repudiate the contract, or any exercise of a right or privilege thereunder, except, that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise any premium on any such insurance contract. [1973 1st ex.s. c 163 § 2; 1970 ex.s. c 17 § 4; 1947 c 79 § .18.02; Rem. Supp. 1947 § 45.18.02.]

48.18.030 Insurable interest—Personal insurances—Nonprofit organizations—Rules. (1) Any individual of competent legal capacity may insure his or her own life or body for the benefit of any person. A person may not insure the life or body of another individual unless the benefits under the contract are payable to the individual insured or the individual's personal representative, or to a person having, at the time when the contract was made, an insurable interest in the individual insured.

(2) If the beneficiary, assignee or other payee under any contract made in violation of this section receives from the insurer any benefits accruing upon the death, disability, or injury of the individual insured, the individual insured or the individual's executor or administrator may maintain an action to recover any benefits from the person receiving them.

(3)(a) "Insurable interest" as used in this section and in RCW 48.18.060 includes only the following interests:

(i) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection; and

(ii) In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest that would arise only by, or would be enhanced in value by, the death, disability, or injury of the individual insured.

(b) An individual who is party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a close corporation or of an interest in those shares, has an insurable interest in the life of each individual party to the contract and for the purposes of

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that contract only, in addition to any insurable interest that may otherwise exist as to the life of such individual.

(c) A guardian, trustee, or other fiduciary has an insurable interest in the life of any person for whose benefit the fiduciary holds property, and in the life of any other individual in whose life the person has an insurable interest.

(d) Subject to rules adopted under subsection (4) of this section, upon joint application with a nonprofit organization for, or transfer to a nonprofit organization of, an insurance policy on the life of a person naming the organization as owner and beneficiary, a nonprofit organization's interest in the life of a person if:

(i) The nonprofit organization was established exclusively for religious, charitable, scientific, literary, or educational purposes, or to promote amateur athletic competition, to conduct testing for public safety, or to prevent cruelty to children or animals; and

(ii) The nonprofit organization:

(A) Has existed for a minimum of five years; or

(B) Has been issued a certificate of exemption to conduct a charitable gift annuity business under RCW 48.38.010, or is authorized to conduct a charitable gift annuity business under RCW 28B.10.485; or

(C) Has been organized, and at all times has been operated, exclusively for benefit of, to perform the functions of, or to carry out the purposes of one or more nonprofit organizations described in (d)(ii)(A) or (B) of this subsection and is operated, supervised, or controlled by or in connection with one or more of those nonprofit organizations; and

(iii) For a joint application, the person is not an employee, officer, or director of the organization who receives significant compensation from the organization and who became affiliated with the organization in that capacity less than one year before the joint application.

(4) The commissioner may adopt rules governing joint applications for, and transfers of, life insurance under subsection (3)(d) of this section. The rules may include:

(a) Standards for full and fair disclosure that set forth the manner, content, and required disclosure for the sale of life insurance issued under subsection (3)(d) of this section; and

(b) For joint applications, a grace period of thirty days during which the insured person may direct the nonprofit organization to return the policy and the insurer to refund any premium paid to the party that, directly or indirectly, paid the premium; and

(c) Standards for granting an exemption from the five-year existence requirement of subsection (3)(d)(ii)(A) of this section to a private foundation that files with the insurance commissioner documents, stipulations, and information as the insurance commissioner may require to carry out the purpose of subsection (3)(d) of this section.

(5) Nothing in this section permits the personal representative of the insured's estate to recover the proceeds of a policy on the life of a deceased insured person that was applied for jointly by, or transferred to, an organization covered by subsection (3)(d) of this section, where the organization was named owner and beneficiary of the policy.

This subsection applies to all life insurance policies applied for by, or transferred to, an organization covered by subsection (3)(d) of this section, regardless of the time of application or transfer and regardless of whether the organi-

zation would have been covered at the time of application or transfer. [2005 c 337 § 3; 1992 c 51 § 1; 1973 1st ex.s. c 89 § 3; 1947 c 79 § .18.03; Rem. Supp. 1947 § 45.18.03.]

Finding—Intent—2005 c 337: "The legislature finds that there is a long-standing principle that corporations have an insurable interest in the lives of key personnel. Nationally, some corporations have begun to insure the lives of personnel that have not met the insurable interest standard of Washington. Entry-level workers have been insured by their corporate employer for the benefit of the corporate employer. The legislature intends to clarify this subject and preclude corporations from insuring the lives of employees when the employees are not key personnel and the corporations have no insurable interest in the lives of those employees." [2005 c 337 § 1.]

Use of trust funds by fiduciaries for life insurance: RCW 11.110.120.

48.18.040 Insurable interest—Property insurances.

(1) No contract of insurance on property or of any interest therein or arising therefrom shall be enforceable except for the benefit of persons having an insurable interest in the things insured.

(2) "Insurable interest" as used in this section means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage. [1947 c 79 § .18.04; Rem. Supp. 1947 § 45.18.04.]

48.18.050 Named insured—Interest insured. When the name of a person intended to be insured is specified in the policy, such insurance can be applied only to his own proper interest. This section shall not apply to life and disability insurances. [1947 c 79 § .18.05; Rem. Supp. 1947 § 45.18.05.]

48.18.060 Application—Consent—When required. A life or disability insurance contract upon an individual may not be made or take effect unless at the time the contract is made the individual insured applies for or consents to the contract in writing, except in the following cases:

- (1) A spouse may insure the life of the other spouse.
- (2) Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may insure the life of the minor.
- (3) A contract of group or blanket disability insurance may be effectuated upon an individual.
- (4) A contract of group life insurance may be effectuated upon an individual, except as otherwise provided in RCW 48.18.580. [2005 c 337 § 5; 1947 c 79 § .18.06; Rem. Supp. 1947 § 45.18.06.]

Finding—Intent—2005 c 337: See note following RCW 48.18.030.

48.18.070 Alteration of application. (1) Any application for insurance in writing by the applicant shall be altered solely by the applicant or by his written consent, except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant. Violation of this provision shall be a misdemeanor.

(2) Any insurer issuing an insurance contract upon such an application unlawfully altered by its officer, employee, or agent shall not have available in any action arising out of such contract, any defense which is based upon the fact of such alteration, or as to any item in the application which was so altered. [1947 c 79 § .18.07; Rem. Supp. 1947 § 45.18.07.]

48.18.080 Application as evidence. (1) No application for the issuance of any insurance policy or contract shall be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or otherwise made a part of the policy when issued and delivered. This provision shall not apply to policies or contracts of industrial life insurance.

(2) If any policy of life or disability insurance delivered in this state is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall, within fifteen days after receipt of such request at its home office or at any of its branch offices, deliver or mail to the person making such request, a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. [1947 c 79 § .18.08; Rem. Supp. 1947 § 45.18.08.]

48.18.090 Warranties and misrepresentations, effect of. (1) Except as provided in subsection (2) of this section, no oral or written misrepresentation or warranty made in the negotiation of an insurance contract, by the insured or in his behalf, shall be deemed material or defeat or avoid the contract or prevent it attaching, unless the misrepresentation or warranty is made with the intent to deceive.

(2) In any application for life or disability insurance made in writing by the insured, all statements therein made by the insured shall, in the absence of fraud, be deemed representations and not warranties. The falsity of any such statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer. [1947 c 79 § .18.09; Rem. Supp. 1947 § 45.18.09.]

48.18.100 Forms of policies—Filing, certification, and approval—Exceptions. (Effective until July 1, 2009.)

(1) No insurance policy form or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form may be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section does not apply to:

- (a) Surety bond forms;
- (b) Forms filed under RCW 48.18.103;
- (c) Forms exempted from filing requirements by the commissioner under RCW 48.18.103;
- (d) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject; or
- (e) Contracts of insurance procured under the provisions of chapter 48.15 RCW.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by the insurer immediately after filing with the commissioner. The commissioner

may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This subsection does not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section must be made not less than thirty days in advance of issuance, delivery, or use. At the expiration of the thirty days, the filed form shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may affirmatively approve or disapprove any form, by giving notice of the extension before expiration of the initial thirty-day period. At the expiration of the period that has been extended, and in the absence of prior affirmative approval or disapproval, the form shall be deemed approved. The commissioner may withdraw any approval at any time for cause. By approval of any form for immediate use, the commissioner may waive any unexpired portion of the initial thirty-day waiting period.

(4) The commissioner's order disapproving any form or withdrawing a previous approval must state the grounds for disapproval.

(5) No form may knowingly be issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by rule, exempt from the requirements of this section any class or type of insurance policy forms if filing and approval is not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. Deviations from the organization are permitted only when filed with the commissioner in accordance with this chapter.

(8) Medical malpractice insurance form filings are subject to the provisions of this section. [2006 c 8 § 214; 2005 c 223 § 8; 1997 c 428 § 3; 1989 c 25 § 1; 1982 c 181 § 16; 1947 c 79 § .18.10; Rem. Supp. 1947 § 45.18.10.]

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

Effective date—1989 c 25: "This act shall take effect on September 1, 1989." [1989 c 25 § 10.]

Severability—1982 c 181: See note following RCW 48.03.010.

Format of disability policies: RCW 48.20.012.

48.18.100 Forms of policies—Filing, certification, and approval—Exceptions. (Effective July 1, 2009.) (1) No insurance policy form or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form may be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section does not apply to:

- (a) Surety bond forms;
- (b) Forms filed under RCW 48.18.103;
- (c) Forms exempted from filing requirements by the commissioner under RCW 48.18.103;
- (d) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject; or

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(e) Contracts of insurance procured under the provisions of chapter 48.15 RCW.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by the insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This subsection does not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section must be made not less than thirty days in advance of issuance, delivery, or use. At the expiration of the thirty days, the filed form shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may affirmatively approve or disapprove any form, by giving notice of the extension before expiration of the initial thirty-day period. At the expiration of the period that has been extended, and in the absence of prior affirmative approval or disapproval, the form shall be deemed approved. The commissioner may withdraw any approval at any time for cause. By approval of any form for immediate use, the commissioner may waive any unexpired portion of the initial thirty-day waiting period.

(4) The commissioner's order disapproving any form or withdrawing a previous approval must state the grounds for disapproval.

(5) No form may knowingly be issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by rule, exempt from the requirements of this section any class or type of insurance policy forms if filing and approval is not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. Deviations from the organization are permitted only when filed with the commissioner in accordance with this chapter.

(8) Medical malpractice insurance form filings are subject to the provisions of this section.

(9) Variable contract forms; disability insurance policy forms; individual life insurance policy forms; life insurance policy illustration forms; industrial life insurance contract, individual medicare supplement insurance policy, and long-term care insurance policy forms, which are amended solely to comply with the changes in nomenclature required by RCW 48.18A.035, 48.20.013, 48.20.042, 48.20.072, 48.23.380, 48.23A.040, 48.23A.070, 48.25.140, 48.66.120, and 48.76.090 are exempt from this section. [2008 c 217 § 12; 2006 c 8 § 214; 2005 c 223 § 8; 1997 c 428 § 3; 1989 c 25 § 1; 1982 c 181 § 16; 1947 c 79 § .18.10; Rem. Supp. 1947 § 45.18.10.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

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

Effective date—1989 c 25: "This act shall take effect on September 1, 1989." [1989 c 25 § 10.]

Severability—1982 c 181: See note following RCW 48.03.010.

Format of disability policies: RCW 48.20.012.

48.18.103 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms.

(3) All commercial property casualty forms must be filed with the commissioner within thirty days after an insurer issues any policy using them. This subsection does not apply to:

(a) Types or classes of forms that the commissioner exempts from filing by rule; and

(b) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(4) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review an additional fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(5) Upon a final determination of a disapproval of a policy form under subsection (4) of this section, the insurer must amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(6) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not mean medical malpractice insurance.

(7) Except as provided in subsection (5) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(8) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. An insurer may deviate from forms filed on its behalf by an organization only if the insurer files the forms with the commissioner in accordance with this chapter.

(9) In the event a hearing is held on the actions of the commissioner under subsection (4) of this section, the burden of proof shall be on the commissioner. [2006 c 8 § 215; 2005 c 223 § 9; 2003 c 248 § 4; 1997 c 428 § 1.]

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

48.18.110 Grounds for disapproval. (1) The commissioner shall disapprove any such form of policy, application, rider, or endorsement, or withdraw any previous approval thereof, only:

(a) If it is in any respect in violation of or does not comply with this code or any applicable order or regulation of the commissioner issued pursuant to the code; or

(b) If it does not comply with any controlling filing theretofore made and approved; or

(c) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(d) If it has any title, heading, or other indication of its provisions which is misleading; or

(e) If purchase of insurance thereunder is being solicited by deceptive advertising.

(2) In addition to the grounds for disapproval of any such form as provided in subsection (1) of this section, the commissioner may disapprove any form of disability insurance policy if the benefits provided therein are unreasonable in relation to the premium charged. Rates, or any modification of rates effective on or after July 1, 2008, for individual health benefit plans may not be used until sixty days after they are filed with the commissioner. If the commissioner does not disapprove a rate filing within sixty days after the insurer has filed the documents required in RCW 48.20.025(2) and any rules adopted pursuant thereto, the filing shall be deemed approved. [2008 c 303 § 1; 2000 c 79 § 2; 1985 c 264 § 9; 1982 c 181 § 9; 1947 c 79 § .18.11; Rem. Supp. 1947 § 45.18.11.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Severability—1982 c 181: See note following RCW 48.03.010.

48.18.120 Standard forms. (1) The commissioner shall, after hearing, from time to time promulgate such rules and regulations as may be necessary to define and effect reasonable uniformity in all basic contracts of fire insurance which are commonly known as the standard form fire policies and may be so referred to in this code, and the usual supplemental coverages, riders, or endorsements thereon or thereto, to the end that such definitions shall be applied in the construction of the various sections of this code wherein such terms are used and that there be a reasonable concurrency of contract where two or more insurers insure the same subject and risk. All such forms heretofore approved by the commissioner and for use as of immediately prior to the effective date of this code, may continue to be so used until the further order of the commissioner made pursuant to this subsection or pursuant to any other provision of this code.

(2) The commissioner may from time to time, after hearing, promulgate such rules and regulations as he deems necessary to establish reasonable minimum standard conditions and terminology for basic benefits to be provided by disability insurance contracts which are subject to chapters 48.20 and 48.21 RCW, for the purpose of expediting his approval of such contracts pursuant to this code. No such promulgation shall be inconsistent with standard provisions as required pursuant to RCW 48.18.130, nor contain requirements incon-

sistent with requirements relative to the same benefit provision as formulated or approved by the National Association of Insurance Commissioners. [1957 c 193 § 10; 1947 c 79 § .18.12; Rem. Supp. 1947 § 45.18.12.]

48.18.125 Loss payable and mortgagee clauses for property and automobile physical damage insurances—Requirement to use adopted forms. The commissioner is hereby authorized, and shall within a reasonable time following July 30, 1967, adopt standard forms for loss payable and mortgagee clauses for property and automobile physical damage insurances, pursuant to the procedures set forth in RCW 48.18.120(1). Following the adoption of such forms, no insurer authorized to do business in the state shall use any form other than those so adopted. [1967 ex.s. c 12 § 1.]

48.18.130 Standard provisions. (1) Insurance contracts shall contain such standard provisions as are required by the applicable chapters of this code pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular standard provision in a particular insurance contract form if

(a) he finds such provision unnecessary for the protection of the insured, and inconsistent with the purposes of the contract, and

(b) the contract is otherwise approved by him.

(2) No insurance contract shall contain any provision inconsistent with or contradictory to any such standard provision used or required to be used, but the commissioner may, except as to the standard provisions of individual disability insurance contracts as required under chapter 48.20 RCW, approve any provision which is in his opinion more favorable to the insured than the standard provision or optional standard provision otherwise required. No endorsement, rider, or other documents attached to such contract shall vary, extend, or in any respect conflict with any such standard provision, or with any modification thereof so approved by the commissioner as being more favorable to the insured.

(3) In lieu of the standard provisions required by this code for contracts for particular kinds of insurance, substantially similar standard provisions required by the law of a foreign or alien insurer's domicile may be used when approved by the commissioner. [1947 c 79 § .18.13; Rem. Supp. 1947 § 45.18.13.]

Standard provisions

disability: Chapter 48.20 RCW.

group and blanket disability: Chapter 48.21 RCW.

group life and annuities: Chapter 48.24 RCW.

industrial life: Chapter 48.25 RCW.

life insurance and annuities: Chapter 48.23 RCW.

48.18.140 Contents of policies in general. (1) The written instrument, in which a contract of insurance is set forth, is the policy.

(2) A policy shall specify:

(a) The names of the parties to the contract. The insurer's name shall be clearly shown in the policy.

(b) The subject of the insurance.

(c) The risk insured against.

(d) The time at which the insurance thereunder takes effect and the period during which the insurance is to continue.

(e) A statement of the premium, and if other than life, disability, or title insurance, the premium rate where applicable.

(f) The conditions pertaining to the insurance.

(3) If under the contract the exact amount of premiums is determinable only at termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid shall be specified in the policy.

(4)(a) Periodic payment plans for private passenger automobile insurance shall allow a specific day of the month for a due date for payment of premiums. A late charge may not be required if payment is received within five days of the date payment is due.

(b) The commissioner shall adopt rules to implement this subsection and shall take no disciplinary action against an insurer until ninety days after the effective date of the rule.

(5) This section shall not apply to surety insurance contracts. [2002 c 344 § 1; 1989 c 25 § 2; 1957 c 193 § 11; 1947 c 79 § .18.14; Rem. Supp. 1947 § 45.18.14.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.18.150 Additional contents. A policy may contain additional provisions, which are not inconsistent with this code, and which are

(1) required to be so inserted by the laws of the insurer's state of domicile; or

(2) necessary, on account of the manner in which the insurer is constituted or operated, to state the rights and obligations of the parties to the contract. [1947 c 79 § .18.15; Rem. Supp. 1947 § 45.18.15.]

48.18.160 Charter or bylaw provisions. No policy shall contain any provision purporting to make any portion of the charter, bylaws, or other constituent document of the insurer a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid. [1947 c 79 § .18.16; Rem. Supp. 1947 § 45.18.16.]

48.18.170 "Premium" defined. "Premium" as used in this code means all sums charged, received, or deposited as consideration for an insurance contract or the continuance thereof. "Premium" does not include a regulatory surcharge imposed by RCW 48.02.190, except as otherwise provided in this section. Any assessment, or any "membership," "policy," "survey," "inspection," "service" or similar fee or charge made by the insurer in consideration for an insurance contract is deemed part of the premium. [2007 c 153 § 1; 1947 c 79 § .18.17; Rem. Supp. 1947 § 45.18.17.]

48.18.180 Stated premium must include all charges. (Effective until July 1, 2009.) (1) The premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

(2) No insurer or its officer, employee, agent, solicitor, or other representative shall charge or receive any fee, com-

pensation, or consideration for insurance which is not included in the premium specified in the policy.

(3) Each violation of this section is a gross misdemeanor.

(4) This section does not apply to:

(a) A fee paid to a *broker by an insured as provided in RCW 48.17.270; or

(b) A regulatory surcharge imposed by RCW 48.02.190. [2007 c 153 § 2; 1994 c 203 § 2; 1947 c 79 § .18.18; Rem. Supp. 1947 § 45.18.18.]

*Reviser's note: 2007 c 117 replaced the terms "agent" and "broker" with the term "producer," effective July 1, 2009.

48.18.180 Stated premium must include all charges. (Effective July 1, 2009.) (1) The premium stated in the policy shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

(2) No insurer or its officer, employee, appointed insurance producer, or other representative shall charge or receive any fee, compensation, or consideration for insurance which is not included in the premium specified in the policy.

(3) Each violation of this section is a gross misdemeanor.

(4) This section does not apply to:

(a) A fee paid to an insurance producer by an insured as provided in RCW 48.17.270; or

(b) A regulatory surcharge imposed by RCW 48.02.190. [2008 c 217 § 13; 2007 c 153 § 2; 1994 c 203 § 2; 1947 c 79 § .18.18; Rem. Supp. 1947 § 45.18.18.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.18.190 Policy must contain entire contract. No agreement in conflict with, modifying, or extending any contract of insurance shall be valid unless in writing and made a part of the policy. [1947 c 79 § .18.19; Rem. Supp. 1947 § 45.18.19.]

48.18.200 Limiting actions, jurisdiction. (1) No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement

(a) requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country; or

(b) depriving the courts of this state of the jurisdiction of action against the insurer; or

(c) limiting right of action against the insurer to a period of less than one year from the time when the cause of action accrues in connection with all insurances other than property and marine and transportation insurances. In contracts of property insurance, or of marine and transportation insurance, such limitation shall not be to a period of less than one year from the date of the loss.

(2) Any such condition, stipulation, or agreement in violation of this section shall be void, but such voiding shall not affect the validity of the other provisions of the contract. [1947 c 79 § .18.20; Rem. Supp. 1947 § 45.18.20.]

48.18.210 Execution of policies. (1) Every insurance contract shall be executed in the name of and on behalf of the

insurer by its officer, employee, or representative duly authorized by the insurer.

(2) A facsimile signature of any such executing officer, employee or representative may be used in lieu of an original signature.

(3) No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of any individual not authorized so to execute as of the date of the policy, if the policy is countersigned with the original signature of an individual then so authorized to countersign. [1947 c 79 § .18.21; Rem. Supp. 1947 § 45.18.21.]

48.18.220 Receipt of premium to bind coverage—Contents of receipt. (Effective until July 1, 2009.) Where an agent or other representative of an insurer receipts premium money at the time that agent or representative purports to bind coverage, the receipt shall state: (a) that it is a binder, (b) a brief description of the coverage bound, and (c) the identity of the insurer in which the coverage is bound. This section does not apply as to life and disability insurances. [1967 ex.s. c 12 § 2.]

48.18.220 Receipt of premium to bind coverage—Contents of receipt. (Effective July 1, 2009.) Where an insurance producer, title insurance agent, or other representative of an insurer receipts premium money at the time that the insurance producer, title insurance agent, or representative purports to bind coverage, the receipt shall state: (a) That it is a binder, (b) a brief description of the coverage bound, and (c) the identity of the insurer in which the coverage is bound. This section does not apply as to life and disability insurances. [2008 c 217 § 14; 1967 ex.s. c 12 § 2.]

48.18.220 Receipt of premium to bind coverage—Contents of receipt. (Effective July 1, 2009.) Where an insurance producer, title insurance agent, or other representative of an insurer receipts premium money at the time that the insurance producer, title insurance agent, or representative purports to bind coverage, the receipt shall state: (a) That it is a binder, (b) a brief description of the coverage bound, and (c) the identity of the insurer in which the coverage is bound. This section does not apply as to life and disability insurances. [2008 c 217 § 14; 1967 ex.s. c 12 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.18.230 Binders—Duration—Premium. (1) A "binder" is used to bind insurance temporarily pending the issuance of the policy. No binder shall be valid beyond the issuance of the policy as to which it was given, or beyond ninety days from its effective date, whichever period is the shorter.

(2) If the policy has not been issued a binder may be extended or renewed beyond such ninety days upon the commissioner's written approval, or in accordance with such rules and regulations relative thereto as the commissioner may promulgate.

(3) Where the premium used in the binder differs from the actual policy premium by less than ten dollars, the insurer shall not be required to notify the insured and may use the actual policy premium. [1996 c 95 § 1; 1947 c 79 § .18.23; Rem. Supp. 1947 § 45.18.23.]

48.18.240 Binders—Agent's liability. (Effective until July 1, 2009.) The commissioner may suspend or revoke the license of any agent issuing or purporting to issue any binder as to any insurer named therein as to which he is not then authorized so to bind. [1947 c 79 § .18.24; Rem. Supp. 1947 § 45.18.24.]

48.18.240 Binders—Insurance producer's or title insurance agent's liability. (*Effective July 1, 2009.*) The commissioner may suspend or revoke the license of any insurance producer or title insurance agent issuing or purporting to issue any binder as to any insurer named therein as to which he or she is not then authorized so to bind. [2008 c 217 § 15; 1947 c 79 § .18.24; Rem. Supp. 1947 § 45.18.24.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.18.250 Underwriters' and combination policies.

(1) Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policies shall plainly show the true name of the insurer.

(2) Two or more authorized insurers may, with the commissioner's approval, issue a combination policy which shall contain provisions substantially as follows:

(a) That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy.

(b) That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

(3) This section shall not apply to co-surety obligations. [1947 c 79 § .18.25; Rem. Supp. 1947 § 45.18.25.]

48.18.260 Delivery of policy. (1) Subject to the insurer's requirements as to payment of premium, every policy shall be delivered to the insured or to the person entitled thereto within a reasonable period of time after its issuance.

(2) In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle or aircraft, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle or aircraft is insured, a duplicate of such policy, or memorandum thereof setting forth the type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a conspicuous statement of such fact shall be printed, written, or stamped on the face of such duplicate policy or memorandum. [1947 c 79 § .18.26; Rem. Supp. 1947 § 45.18.26.]

Vehicle seller must furnish buyer itemized statement of insurance and other charges: RCW 46.70.130.

48.18.280 Renewal of policy. Any insurance policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor for a specific additional period or periods by a certificate or by endorsement of the policy, and without requiring the issuance

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of a new policy. [1947 c 79 § .18.28; Rem. Supp. 1947 § 45.18.28.]

48.18.289 Cancellation, nonrenewal, renewal offer—Notice to agent. (*Effective until July 1, 2009.*) Whenever a notice of cancellation or nonrenewal or an offer to renew is furnished to an insured in accord with any provision of this chapter, a copy of such notice or offer shall be provided within five working days to the agent on the account or to the broker of record for the insured. When possible, the copy to the agent or broker may be provided electronically. [2000 c 220 § 1; 1988 c 249 § 1; 1987 c 14 § 1.]

Effective date—1988 c 249: "This act shall take effect September 1, 1988." [1988 c 249 § 4.]

48.18.289 Cancellation, nonrenewal, renewal offer—Notice to insurance producer or title insurance agent. (*Effective July 1, 2009.*) Whenever a notice of cancellation or nonrenewal or an offer to renew is furnished to an insured in accord with any provision of this chapter, a copy of such notice or offer shall be provided within five working days to the insurance producer or title insurance agent on the account. When possible, the copy to the insurance producer or title insurance agent may be provided electronically. [2008 c 217 § 16; 2000 c 220 § 1; 1988 c 249 § 1; 1987 c 14 § 1.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—1988 c 249: "This act shall take effect September 1, 1988." [1988 c 249 § 4.]

48.18.290 Cancellation by insurer. (1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) For all insurance policies other than medical malpractice insurance policies or fire insurance policies canceled under RCW 48.53.040:

(i) The insurer must deliver or mail written notice of cancellation to the named insured at least forty-five days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy.

(b) For medical malpractice insurance policies:

(i) The insurer must deliver or mail written notice of the cancellation to the named insured at least ninety days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy and describe the significant risk factors that led to the insurer's underwriting action, as defined under RCW 48.18.547(1)(e).

(c) If an insurer cancels a policy described under (a) or (b) of this subsection for nonpayment of premium, the insurer must deliver or mail the cancellation notice to the named insured at least ten days before the effective date of the cancellation.

(d) If an insurer cancels a fire insurance policy under RCW 48.53.040, the insurer must deliver or mail the cancel-

lation notice to the named insured at least five days before the effective date of the cancellation.

(e) Like notice must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder. For purposes of this subsection (1)(e), "delivered" includes electronic transmittal, facsimile, or personal delivery.

(2) The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than forty-five days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made by cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid, or to contracts of insurance procured under the provisions of chapter 48.15 RCW. [2006 c 8 § 212; 1997 c 85 § 1; 1988 c 249 § 2; 1986 c 287 § 1; 1985 c 264 § 17; 1982 c 110 § 7; 1980 c 102 § 7; 1979 ex.s. c 199 § 5; 1975-'76 2nd ex.s. c 119 § 2; 1947 c 79 § .18.29; Rem. Supp. 1947 § 45.18.29.]

Application—2006 c 8 §§ 211-213: See note following RCW 48.18.547.

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

Effective date—1988 c 249: See note following RCW 48.18.289.

Application—1985 c 264 §§ 17-22: "Sections 17 through 22 of this act apply to all new or renewal policies issued or renewed after May 10, 1985. Sections 17 through 22 of this act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to May 10, 1985. Sections 17 through 22 of this act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within forty-five days after May 10, 1985. Sections 17 through 22 of this act shall not be construed to require notice, other than that already required, of intention not to renew any policy which expires less than forty-five days after May 10, 1985." [1985 c 264 § 24.]

48.18.2901 Renewal required—Exceptions. (1) Each insurer must renew any insurance policy subject to RCW 48.18.290 unless one of the following situations exists:

(a)(i) For all insurance policies subject to RCW 48.18.290(1)(a):

(A) The insurer must deliver or mail written notice of nonrenewal to the named insured at least forty-five days before the expiration date of the policy; and

(B) The notice must include the insurer's actual reason for refusing to renew the policy.

(ii) For medical malpractice insurance policies subject to RCW 48.18.290(1)(b):

(A) The insurer must deliver or mail written notice of the nonrenewal to the named insured at least ninety days before the expiration date of the policy; and

(B) The notice must include the insurer's actual reason for refusing to renew the policy and describe the significant risk factors that led to the insurer's underwriting action, as defined under RCW 48.18.547(1)(e);

(b) At least twenty days prior to its expiration date, the insurer has communicated, either directly or through its agent, its willingness to renew in writing to the named insured and has included in that writing a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof;

(c) The insured has procured equivalent coverage prior to the expiration of the policy period;

(d) The contract is evidenced by a written binder containing a clearly stated expiration date which has expired according to its terms; or

(e) The contract clearly states that it is not renewable, and is for a specific line, subclassification, or type of coverage that is not offered on a renewable basis. This subsection (1)(e) does not restrict the authority of the insurance commissioner under this code.

(2) Any insurer failing to include in the notice required by subsection (1)(b) of this section the amount of any increased premium resulting from a change of rates and an explanation of any change in the contract provisions shall renew the policy if so required by that subsection according to the rates and contract provisions applicable to the expiring policy. However, renewal based on the rates and contract provisions applicable to the expiring policy shall not prevent the insurer from making changes in the rates and/or contract provisions of the policy once during the term of its renewal after at least twenty days' advance notice of such change has been given to the named insured.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, or with respect to cancellation of fire policies under chapter 48.53 RCW.

(4) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term. However, (a) any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295 be considered as if written for a policy period or term of six months; and (b) any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.290 and 48.18.293

through 48.18.295, be considered as if written for successive policy periods or terms of one year.

(5) A midterm blanket reduction in rate, approved by the commissioner, for medical malpractice insurance shall not be considered a renewal for purposes of this section. [2006 c 8 § 213; 2002 c 347 § 1; 1993 c 186 § 1; 1988 c 249 § 3; 1986 c 287 § 2; 1985 c 264 § 20.]

Application—2006 c 8 §§ 211-213: See note following RCW 48.18.547.

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

Effective date—1988 c 249: See note following RCW 48.18.289.

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

48.18.291 Cancellation of private automobile insurance by insurer—Notice—Requirements. (1) A contract of insurance predicated wholly or in part upon the use of a private passenger automobile may not be terminated by cancellation by the insurer until at least twenty days after mailing written notice of cancellation to the named insured at the latest address filed with the insurer by or on behalf of the named insured, accompanied by the reason therefor. If cancellation is for nonpayment of premium, or is within the first thirty days after the contract has been in effect, at least ten days notice of cancellation, accompanied by the reason therefor, shall be given. In case of a contract evidenced by a written binder which has been delivered to the insured, if the binder contains a clearly stated expiration date, no additional notice of cancellation or nonrenewal is required.

(2)(a) A notice of cancellation by the insurer as to a contract of insurance to which subsection (1) of this section applies is not valid if sent more than sixty days after the contract has been in effect unless:

(i) The named insured fails to discharge when due any of his or her obligations in connection with the payment of premium for the policy or any installment thereof, whether payable directly to the insurer or to its agent or indirectly under any premium finance plan or extension of credit; or

(ii) The driver's license of the named insured, or of any other operator who customarily operates an automobile insured under the policy, has been suspended, revoked, or cancelled during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty days immediately preceding the effective date of the renewal policy.

(b) Modification by the insurer of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars is not a cancellation of the coverage or of the policy.

(3) The substance of subsections (1) and (2)(a) of this section must be set forth in each contract of insurance subject to the provisions of subsection (1) of this section, and may be in the form of an attached endorsement.

(4) A notice of cancellation of a policy that may be canceled only pursuant to subsection (2) of this section is not effective unless the reason therefor accompanies or is included in the notice of cancellation. [2003 c 248 § 5; 1985 c 264 § 18; 1979 ex.s. c 199 § 6; 1969 ex.s. c 241 § 19.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

(2008 Ed.)

Construction—1969 ex.s. c 241 §§ 19-25: "Sections 19 through 25 of this 1969 amendatory act shall become operative September 1, 1969, and shall apply to policies written or renewed, or which have a renewal anniversary thereafter. Sections 19 through 25 of this 1969 amendatory act shall not apply to or affect the validity of any notice of cancellation mailed or delivered prior to the operative date of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to affect cancellation of a renewal policy, if notice of cancellation is mailed or delivered within sixty days after the operative date of sections 19 through 25 of this amendatory act. Sections 19 through 25 of this 1969 amendatory act shall not be construed to require notice of intention not to renew any policy which expires less than thirty days after the operative date of sections 19 through 25 of this 1969 amendatory act." [1969 ex.s. c 241 § 25.]

48.18.292 Refusal to renew private automobile insurance by insurer—Change in amount of premium or deductibles. (Effective until July 1, 2009.) (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.291 unless one of the following situations exists:

(a) The insurer gives the named insured at least twenty days' notice in writing as provided for in RCW 48.18.291(1), that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) At least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made, and the insured fails to discharge when due his obligation in connection with the payment of such premium or portion thereof; or

(c) The insured's agent or broker has procured other coverage acceptable to the insured prior to the expiration of the policy period.

(2) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(3) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term: PROVIDED, HOWEVER, That any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.291 through 48.18.297 be considered as if written for a policy period or term of six months: PROVIDED, FURTHER, That any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.291 through 48.18.297, be considered as if written for successive policy periods or terms of one year.

(4) On and after January 1, 1980, no policy of insurance subject to RCW 48.18.291 shall be issued for a policy period or term of less than six months.

(5) No insurer shall refuse to renew the liability and/or collision coverage of an automobile insurance policy on the basis that an insured covered by the policy of the insurer has

submitted one or more claims under the comprehensive, road service, or towing coverage of the policy. Nothing in this subsection shall prohibit the nonrenewal of comprehensive, road service, or towing coverage on the basis of one or more claims submitted by an insured. [1985 c 264 § 19; 1981 c 339 § 17; 1979 ex.s. c 199 § 7; 1973 1st ex.s. c 152 § 3; 1969 ex.s. c 241 § 20.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

Construction—1969 ex.s. c 241 §§ 19-25: See note following RCW 48.18.291.

48.18.292 Refusal to renew private automobile insurance by insurer—Change in amount of premium or deductibles. (Effective July 1, 2009.) (1) Each insurer shall be required to renew any contract of insurance subject to RCW 48.18.291 unless one of the following situations exists:

(a) The insurer gives the named insured at least twenty days' notice in writing as provided for in RCW 48.18.291(1), that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth therein the actual reason for refusing to renew; or

(b) At least twenty days prior to its expiration date, the insurer has communicated its willingness to renew in writing to the named insured, and has included therein a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, including the amount by which the premium or deductibles have changed from the previous policy period, and the date by which such payment must be made, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof; or

(c) The insured's insurance producer has procured other coverage acceptable to the insured prior to the expiration of the policy period.

(2) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(3) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term: PROVIDED, HOWEVER, That any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.291 through 48.18.297 be considered as if written for a policy period or term of six months: PROVIDED, FURTHER, That any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.291 through 48.18.297, be considered as if written for successive policy periods or terms of one year.

(4) On and after January 1, 1980, no policy of insurance subject to RCW 48.18.291 shall be issued for a policy period or term of less than six months.

(5) No insurer shall refuse to renew the liability and/or collision coverage of an automobile insurance policy on the basis that an insured covered by the policy of the insurer has submitted one or more claims under the comprehensive, road service, or towing coverage of the policy. Nothing in this subsection shall prohibit the nonrenewal of comprehensive, road service, or towing coverage on the basis of one or more claims submitted by an insured. [2008 c 217 § 17; 1985 c 264 § 19; 1981 c 339 § 17; 1979 ex.s. c 199 § 7; 1973 1st ex.s. c 152 § 3; 1969 ex.s. c 241 § 20.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

Construction—1969 ex.s. c 241 §§ 19-25: See note following RCW 48.18.291.

48.18.293 Nonliability of commissioner, agents, insurer for information giving reasons for cancellation or refusal to renew—Proof of mailing of notice. (1) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, his agents, or members of his staff, or against any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in any written notice of cancellation or refusal to renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith.

(2) Proof of mailing of notice of cancellation or refusal to renew or of reasons for cancellation, to the named insured, at the latest address filed with the insurer by or on behalf of the named insured shall be sufficient proof of notice. [1969 ex.s. c 241 § 21.]

Construction—1969 ex.s. c 241 §§ 19-25: See note following RCW 48.18.291.

48.18.295 RCW 48.18.290 through 48.18.297 not to prevent cancellation or nonrenewal, when. Nothing in RCW 48.18.290 through 48.18.297 shall be construed to prevent the cancellation or nonrenewal of any such insurance where:

(1) Such cancellation or nonrenewal is ordered by the commissioner under a statutory delinquency proceeding commenced under the provisions of chapter 48.31 RCW, or

(2) Permission for such cancellation or nonrenewal has been given by the commissioner on a showing that the continuation of such coverage can reasonably be expected to create a condition in the company hazardous to its policyholder, or to its creditors, or to its members, subscribers, or stockholders, or to the public. [1985 c 264 § 21; 1969 ex.s. c 241 § 22; 1967 ex.s. c 95 § 2.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241 §§ 19-25: See note following RCW 48.18.291.

Severability—1967 ex.s. c 95: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons and circumstances is not affected." [1967 ex.s. c 95 § 16.]

48.18.296 Contracts to which RCW 48.18.291 through 48.18.297 inapplicable. The provisions of RCW 48.18.291 through 48.18.297 shall not apply to:

(1) Contracts of insurance issued under the assigned risk plan;

(2) Any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; and

(3) Contracts of insurance procured under the provisions of chapter 48.15 RCW. [1986 c 287 § 3; 1985 c 264 § 22; 1983 1st ex.s. c 32 § 6; 1969 ex.s. c 241 § 23.]

Application—1985 c 264 §§ 17-22: See note following RCW 48.18.290.

Construction—1969 ex.s. c 241 §§ 19-25: See note following RCW 48.18.291.

48.18.297 Private passenger automobile defined. A private passenger automobile as used in RCW 48.18.291 through 48.18.297 shall mean:

(1) An individually owned motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others.

(2) Any other individually owned four-wheel motor vehicle with a load capacity of fifteen hundred pounds or less which is not used in the occupation, profession, or business of the insured. [1969 ex.s. c 241 § 24.]

Construction—1969 ex.s. c 241 §§ 19-25: See note following RCW 48.18.291.

48.18.298 Disability insurance—Refusal to renew by insurer. No insurer shall refuse to renew any policy of individual disability insurance issued after July 1, 1973 because of a change in the physical or mental condition or health of any person covered thereunder: PROVIDED, That after approval of the insurance commissioner, an insurer may discharge its obligation to renew the contract by obtaining for the insured coverage with another insurer which is comparable in terms of premiums and benefits. [1973 1st ex.s. c 188 § 1.]

Severability—1973 1st ex.s. c 188: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 188 § 5.]

48.18.299 Disability insurance—Cancellation by insurer. No contract of insurance enumerated in RCW 48.18.298 shall be terminated by cancellation by the insurer during the period of contract except for nonpayment of premium. This section shall not be deemed to affect the right of the insurer to rescind the policy as limited and defined in RCW 48.18.090. [1973 1st ex.s. c 188 § 2.]

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

(2008 Ed.)

48.18.300 Cancellation by insured. (1) Cancellation by the insured of any policy which by its terms is cancellable at the insured's option or of any binder based on such policy may be effected by written notice thereof to the insurer or surrender of the policy or binder for cancellation prior to or on the effective date of such cancellation. In [the] event the policy or binder has been lost or destroyed and cannot be so surrendered, the insurer may in lieu of such surrender accept and in good faith rely upon the insured's written statement setting forth the fact of such loss or destruction.

(2) As soon as possible, and no later than thirty days after the receipt of the notice of cancellation from the policyholder for homeowners', dwelling fire, and private passenger auto insurance, the insurer shall pay to the insured or to the person entitled thereto as shown by the insurer's records, any unearned portion of any premium paid on the policy as computed on the customary short rate or as otherwise specified in the policy: PROVIDED, That the refund of any unearned portion of any premium paid on a contract of dwelling fire insurance, homeowners' insurance, or insurance predicated upon the use of a private passenger automobile (as defined in RCW 48.18.297 and excluding contracts of insurance and policies enumerated in RCW 48.18.296) shall be computed on a pro rata basis and the insurer shall refund not less than ninety percent of any unearned portion not exceeding one hundred dollars, plus ninety-five percent of any unearned portion over one hundred dollars but not exceeding five hundred dollars, and not less than ninety-seven percent of the amount of any unearned portion in excess of five hundred dollars. If the amount of any refund is less than two dollars, no refund need be made. If no premium has been paid on the policy, the insured shall be liable to the insurer for premium for the period during which the policy was in force.

(3) The surrender of a policy to the insurer for any cause by any person named therein as having an interest insured thereunder shall create a presumption that such surrender is concurred in by all persons so named.

(4) This section shall not apply to life insurance policies or to annuity contracts. [1980 c 102 § 8; 1979 ex.s. c 199 § 8; 1955 c 303 § 16; 1947 c 79 § .18.30; Rem. Supp. 1947 § 45.18.30.]

48.18.310 Cancellation by commissioner. The commissioner may order the immediate cancellation of any policy the procuring or effectuation of which was accomplished through or accompanied by a violation of this code, except in cases where the policy by its terms is not cancellable by the insurer and the insured did not knowingly participate in any such violation. [1947 c 79 § .18.31; Rem. Supp. 1947 § 45.18.31.]

48.18.320 Annulment of liability policies. No insurance contract insuring against loss or damage through legal liability for the bodily injury or death by accident of any individual, or for damage to the property of any person, shall be retroactively annulled by any agreement between the insurer and insured after the occurrence of any such injury, death, or damage for which the insured may be liable, and any such annulment attempted shall be void. [1947 c 79 § .18.32; Rem. Supp. 1947 § 45.18.32.]

48.18.340 Dividends payable to real party in interest.

(1) Every insurer issuing participating policies, shall pay dividends, unused premium refunds or savings distributed on account of any such policy, only to the real party in interest entitled thereto as shown by the insurer's records, or to any person to whom the right thereto has been assigned in writing of record with the insurer, or given in the policy by such real party in interest.

(2) Any person who is shown by the insurer's records to have paid for his own account, or to have been ultimately charged for, the premium for insurance provided by a policy in which another person is the nominal insured, shall be deemed such real party in interest proportionate to premium so paid or so charged. This subsection shall not apply as to any such dividend, refund, or distribution which would amount to less than one dollar.

(3) This section shall not apply to contracts of group life insurance, group annuities, or group disability insurance. [1947 c 79 § .18.34; Rem. Supp. 1947 § 45.18.34.]

48.18.350 Breach of warranty prior to loss—Effect.

If any breach of a warranty or condition in any insurance contract occurs prior to a loss under the contract, such breach shall not avoid the contract nor avail the insurer to avoid liability, unless the breach exists at the time of the loss. [1947 c 79 § .18.35; Rem. Supp. 1947 § 45.18.35.]

48.18.360 Assignment of policies—Life and disability. Subject to the terms of the policy relating to its assignment, life insurance policies, other than industrial or group life insurance policies, and disability policies providing benefits for accidental death, whether such policies were heretofore or are hereafter issued, and under the terms of which the beneficiary may be changed upon the sole request of the insured, may be assigned either by pledge or transfer of title, by an assignment executed by the insured alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Industrial life insurance policies may be made assignable only to a bank or trust company. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment. [1947 c 79 § .18.36; Rem. Supp. 1947 § 45.18.36.]

48.18.370 Payment discharges insurer—Life and disability. Whenever the proceeds of, or payments under a life or disability insurance policy, heretofore or hereafter issued, become payable and the insurer makes payment thereof in accordance with the terms of the policy, or in accordance with any written assignment thereof pursuant to RCW 48.18.360, the person then designated in the policy or by such assignment as being entitled thereto, shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payment shall fully discharge the insurer from all claims under the policy unless, before payment is made, the insurer has received at its home office, written notice by or on behalf of some other person that such

other person claims to be entitled to such payment or some interest in the policy. [1947 c 79 § .18.37; Rem. Supp. 1947 § 45.18.37.]

48.18.375 Assignment of interests under group insurance policy. A person whose life is insured under a group insurance policy may, subject and pursuant to the terms of the policy, or pursuant to an arrangement between the insured, the group policyholder and the insurer, assign to any or all his spouse, children, parents, or a trust for the benefit of any or all of them, all or any part of his incidents of ownership, rights, title, and interests, both present and future, under such policy including specifically, but not by way of limitation, the right to designate a beneficiary or beneficiaries thereunder and the right to have an individual policy issued to him in case of termination of employment or of said group insurance policy. Such an assignment by the insured, made either before or after July 16, 1973, is valid for the purpose of vesting in the assignee, in accordance with any provisions included therein as to the time at which it is to be effective, all of such incidents of ownership, rights, title, and interests so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment. This section acknowledges, declares, and codifies the existing right of assignment of interests under group insurance policies. [1973 1st ex.s. c 163 § 3.]

48.18.390 Simultaneous deaths—Payment of proceeds—Life insurance. Where the individual insured and the beneficiary designated in a life insurance policy or policy insuring against accidental death have died and there is not sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, unless otherwise expressly provided in the policy. [1947 c 79 § .18.39; Rem. Supp. 1947 § 45.18.39.]

Simultaneous death, uniform act: Chapter 11.05A RCW.

48.18.400 Exemption of proceeds—Disability. The proceeds or avails of all contracts of disability insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for his use. [1947 c 79 § .18.40; Rem. Supp. 1947 § 45.18.40.]

48.18.410 Exemption of proceeds—Life. (1) The lawful beneficiary, assignee, or payee of a life insurance policy, other than an annuity, heretofore or hereafter effected by any person on his own life, or on the life of another, in favor of a person other than himself, shall be entitled to the proceeds and avails of the policy against the creditors and representatives of the insured and of the person effecting the insurance, and such proceeds and avails shall also be exempt from all liability for any debt of such beneficiary, existing at the time the proceeds or avails are made available for his own use.

(2) The provisions of subsection (1) of this section shall apply

(a) whether or not the right to change the beneficiary is reserved or permitted in the policy; or

(b) whether or not the policy is made payable to the person whose life is insured or to his estate if the beneficiary, assignee or payee shall predecease such person; except, that this subsection shall not be construed so as to defeat any policy provision which provides for disposition of proceeds in the event the beneficiary shall predecease the insured.

(3) The exemptions provided by subsection (1) of this section, subject to the statute of limitations, shall not apply

(a) to any claim to or interest in such proceeds or avails by or on behalf of the insured, or the person so effecting the insurance, or their administrators or executors, in whatever capacity such claim is made or such interest is asserted; or

(b) to any claim to or interest in such proceeds or avails by or on behalf of any person to whom rights thereto have been transferred with intent to defraud creditors; but an insurer shall be liable to all such creditors only as to amounts aggregating not to exceed the amount of such proceeds or avails remaining in the insurer's possession at the time the insurer receives at its home office written notice by or on behalf of such creditors, of claims to recover for such transfer, with specification of the amounts claimed; or

(c) to so much of such proceeds or avails as equals the amount of any premiums or portion thereof paid for the insurance with intent to defraud creditors, with interest thereon, and if prior to the payment of such proceeds or avails the insurer has received at its home office written notice by or on behalf of the creditor, of a claim to recover for premiums paid with intent to defraud creditors, with specification of the amount claimed.

(4) For the purposes of subsection (1) of this section a policy shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the policy permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

(5) No person shall be compelled to exercise any rights, powers, options or privileges under any such policy. [1947 c 79 § .18.41; Rem. Supp. 1947 § 45.18.41.]

48.18.420 Exemption of proceeds—Group life. (1) A policy of group life insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied to any legal or equitable process to pay any liability of any person having a right under the policy. The proceeds thereof, when not made payable to a named beneficiary or to a third person pursuant to a facility-of-payment clause, shall not constitute a part of the estate of the individual insured for the payment of his debts.

(2) This section shall not apply to group life insurance policies issued under RCW 48.24.040 (debtor groups) to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued. [1947 c 79 § .18.42; Rem. Supp. 1947 § 45.18.42.]

(2008 Ed.)

48.18.430 Exemption of proceeds, commutation—Annuities. (1) The benefits, rights, privileges, and options under any annuity contract that are due the annuitant who paid the consideration for the annuity contract are not subject to execution and the annuitant may not be compelled to exercise those rights, powers, or options, and creditors are not allowed to interfere with or terminate the contract, except:

(a) As to amounts paid for or as premium on an annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice at its home office prior to making the payments to the annuitant out of which the creditor seeks to recover. The notice must specify the amount claimed or the facts that will enable the insurer to determine the amount, and must set forth the facts that will enable the insurer to determine the insurance or annuity contract, the person insured or annuitant and the payments sought to be avoided on the basis of fraud.

(b) The total exemption of benefits presently due and payable to an annuitant periodically or at stated times under all annuity contracts may not at any time exceed two thousand five hundred dollars per month for the length of time represented by the installments, and a periodic payment in excess of two thousand five hundred dollars per month is subject to garnishee execution to the same extent as are wages and salaries.

(c) If the total benefits presently due and payable to an annuitant under all annuity contracts at any time exceeds payment at the rate of two thousand five hundred dollars per month, then the court may order the annuitant to pay to a judgment creditor or apply on the judgment, in installments, the portion of the excess benefits that the court determines to be just and proper, after due regard for the reasonable requirements of the judgment debtor and the judgment debtor's dependent family, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

(2) The benefits, rights, privileges, or options accruing under an annuity contract to a beneficiary or assignee are not transferable or subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained in this section for the annuitant apply to the beneficiary or assignee.

(3) An annuity contract within the meaning of this section is any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable consideration, regardless of whether or not the sums are payable to one or more persons, jointly or otherwise, but does not include payments under life insurance contracts at stated times during life or lives, or for a specified term or terms. [2005 c 223 § 10; 1949 c 190 § 25; 1947 c 79 § .18.43; Rem. Supp. 1949 § 45.18.43.]

48.18.440 Spouse's rights in life insurance policy. (1) Every life insurance policy heretofore or hereafter made payable to or for the benefit of the spouse of the insured, and every life insurance policy heretofore or hereafter assigned, transferred, or in any way made payable to a spouse or to a trustee for the benefit of a spouse, regardless of how such assignment or transfer is procured, shall, unless contrary to the terms of the policy, inure to the separate use and benefit of such spouse: PROVIDED, That the beneficial interest of a

spouse in a policy upon the life of a child of the spouses, however such interest is created, shall be deemed to be a community interest and not a separate interest, unless expressly otherwise provided by the policy.

(2) In any life insurance policy heretofore or hereafter issued upon the life of a spouse the designation heretofore or hereafter made by such spouse of a beneficiary in accordance with the terms of the policy, shall create a presumption that such beneficiary was so designated with the consent of the other spouse, but only as to any beneficiary who is the child, parent, brother, or sister of either of the spouses. The insurer may in good faith rely upon the representations made by the insured as to the relationship to him of any such beneficiary. [1947 c 79 § .18.44; Rem. Supp. 1947 § 45.18.44.]

48.18.450 Life insurance payable to trustee named as beneficiary in the policy. Life insurance may be made payable to a trustee to be named as beneficiary in the policy and the proceeds of such insurance paid to such trustee shall be held and disposed of by the trustee as provided in a trust agreement or declaration of trust made by the insured during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such insurance proceeds as beneficiary, and any such trustee may also receive assets, other than insurance proceeds, by testamentary disposition and administer them according to the terms of the trust agreement or declaration of trust as they exist at the death of the testator. [1963 c 227 § 1.]

48.18.452 Life insurance designating as beneficiary a trustee named by will. A policy of life insurance may designate as beneficiary a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurance company. Immediately after the proving of the will the proceeds of such insurance shall be paid to the trustee or trustees named therein to be held and disposed of under the terms of the will as they exist at the death of the testator, but if no qualified trustee makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company within such one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to those thereafter entitled. The proceeds of the insurance as collected by the trustee or trustees shall not be subject to debts of the insured and inheritance tax to any greater extent than if such proceeds were payable to any other named beneficiary other than the estate of the insured. Enactment of this section shall not invalidate previous life insurance policy beneficiary designations naming trustees of trusts established by will. [1963 c 227 § 2.]

48.18.460 Proof of loss—Furnishing forms—May require oath. An insurer shall furnish, upon request of any person claiming to have a loss under any insurance contract, forms of proof of loss for completion by such person. But such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such com-

pletion or attempted completion. If a person makes a claim under a policy of insurance, the insurer may require that the person be examined under an oath administered by a person authorized by state or federal law to administer oaths. [1995 c 285 § 17; 1949 c 190 § 26; 1947 c 79 § .18.46; Rem. Supp. 1949 § 45.18.46.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.18.470 Claims administration—Not waiver. None of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

(a) Acknowledgment of the receipt of notice of loss or of claim under the policy.

(b) Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.

(c) Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim. [1947 c 79 § .18.47; Rem. Supp. 1947 § 45.18.47.]

48.18.480 Discrimination prohibited. No insurer shall make or permit any unfair discrimination between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, and expense elements, in the terms or conditions of any insurance contract, or in the rate or amount of premium charged therefor, or in the benefits payable or in any other rights or privileges accruing thereunder. This provision shall not prohibit fair discrimination by a life insurer as between individuals having unequal expectation of life. [1957 c 193 § 12; 1947 c 79 § .18.48; Rem. Supp. 1947 § 45.18.48.]

48.18.510 Validity of noncomplying forms. Any insurance policy, rider, or endorsement hereafter issued and otherwise valid, which contains any condition or provision not in compliance with the requirements of this code, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this code. [1947 c 79 § .18.51; Rem. Supp. 1947 § 45.18.51.]

48.18.520 Construction of policies. Every insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, or modified by any rider, endorsement, or application attached to and made a part of the policy. [1947 c 79 § .18.52; Rem. Supp. 1947 § 45.18.52.]

48.18.540 Cancellations, denials, refusals to renew—Written notification. Every insurer upon canceling, denying, or refusing to renew any disability policy, shall, upon written request, directly notify in writing the applicant or insured, as the case may be, of the reasons for the action by the insurer and to any person covered under a group contract. Any benefits, terms, rates, or conditions of such a contract that are restricted, excluded, modified, increased, or reduced

shall, upon written request, be set forth in writing and supplied to the insured and to any person covered under a group contract. The written communications required by this section shall be phrased in simple language that is readily understandable to a person of average intelligence, education, and reading ability. [1993 c 492 § 281.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.18.543 Single premium credit insurance—Residential mortgage loan—Restrictions—Definitions. (Effective until July 1, 2009.) (1) For the purposes of this section:

(a) "Licensee" means every insurance *agent, broker, or solicitor licensed under chapter 48.17 RCW.

(b) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple family dwelling of four or less units.

(c) "Single premium credit insurance" means credit insurance purchased with a single premium payment at inception of coverage.

(2) An insurer or licensee may not issue or sell any single premium credit insurance product in connection with a residential mortgage loan unless:

(a) The term of the single premium credit insurance policy is the same as the term of the loan;

(b) The debtor is given the option to buy credit insurance paid with monthly premiums; and

(c) The single premium credit insurance policy provides for a full refund of premiums to the debtor if the credit insurance is canceled within sixty days of the date of the loan.

(3) This section does not apply to residential mortgage loans if:

(a) The loan amount does not exceed ten thousand dollars, exclusive of fees;

(b) The repayment term of the loan does not exceed five years; and

(c) The term of the single premium credit insurance does not exceed the repayment term of the loan. [2003 c 116 § 1.]

***Reviser's note:** 2007 c 117 replaced the terms "agent" and "broker" with the term "producer," effective July 1, 2009.

48.18.543 Single premium credit insurance—Residential mortgage loan—Restrictions—Definitions. (Effective July 1, 2009.) (1) For the purposes of this section:

(a) "Licensee" means every insurance producer licensed under chapter 48.17 RCW.

(b) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single-family dwelling or multiple family dwelling of four or less units.

(c) "Single premium credit insurance" means credit insurance purchased with a single premium payment at inception of coverage.

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(2) An insurer or licensee may not issue or sell any single premium credit insurance product in connection with a residential mortgage loan unless:

(a) The term of the single premium credit insurance policy is the same as the term of the loan;

(b) The debtor is given the option to buy credit insurance paid with monthly premiums; and

(c) The single premium credit insurance policy provides for a full refund of premiums to the debtor if the credit insurance is canceled within sixty days of the date of the loan.

(3) This section does not apply to residential mortgage loans if:

(a) The loan amount does not exceed ten thousand dollars, exclusive of fees;

(b) The repayment term of the loan does not exceed five years; and

(c) The term of the single premium credit insurance does not exceed the repayment term of the loan. [2008 c 217 § 18; 2003 c 116 § 1.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.18.545 Underwriting restrictions that apply to personal insurance—Credit history or insurance score—Rules. (1) For the purposes of this section:

(a) "Adverse action" has the same meaning as defined in the fair credit reporting act, 15 U.S.C. Sec. 1681 et seq. Adverse actions include, but are not limited to:

(i) Cancellation, denial, or nonrenewal of personal insurance coverage;

(ii) Charging a higher insurance premium for personal insurance than would have been offered if the credit history or insurance score had been more favorable, whether the charge is by:

(A) Application of a rating rule;

(B) Assignment to a rating tier that does not have the lowest available rates; or

(C) Placement with an affiliate company that does not offer the lowest rates available to the consumer within the affiliate group of insurance companies; or

(iii) Any reduction, adverse, or unfavorable change in the terms of coverage or amount of any personal insurance due to a consumer's credit history or insurance score. A reduction, adverse, or unfavorable change in the terms of coverage occurs when:

(A) Coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or

(B) The consumer is not eligible for benefits such as dividends that are available through affiliate insurers.

(b) "Affiliate" has the same meaning as defined in RCW 48.31B.005(1).

(c) "Consumer" means an individual policyholder or applicant for insurance.

(d) "Consumer report" has the same meaning as defined in the fair credit reporting act, 15 U.S.C. Sec. 1681 et seq.

(e) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serv-

ing as a factor in determining personal insurance premiums or eligibility for coverage.

(f) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history.

(g) "Personal insurance" means:

- (i) Private passenger automobile coverage;
- (ii) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;
- (iii) Dwelling property coverage;
- (iv) Earthquake coverage for a residence or personal property;
- (v) Personal liability and theft coverage;
- (vi) Personal inland marine coverage; and
- (vii) Mechanical breakdown coverage for personal auto or home appliances.

(h) "Tier" means a category within a single insurer into which insureds with substantially like insuring, risk or exposure factors, and expense elements are placed for purposes of determining rate or premium.

(2) An insurer that takes adverse action against a consumer based in whole or in part on credit history or insurance score shall provide written notice to the applicant or named insured. The notice must state the significant factors of the credit history or insurance score that resulted in the adverse action. The insurer shall also inform the consumer that the consumer is entitled to a free copy of their consumer report under the fair credit reporting act.

(3) An insurer shall not cancel or nonrenew personal insurance based in whole or in part on a consumer's credit history or insurance score. An offer of placement with an affiliate insurer does not constitute cancellation or nonrenewal under this section.

(4) An insurer may use credit history to deny personal insurance only in combination with other substantive underwriting factors. For the purposes of this subsection:

(a) "Deny" means an insurer refuses to offer insurance coverage to a consumer;

(b) An offer of placement with an affiliate insurer does not constitute denial of coverage; and

(c) An insurer may reject an application when coverage is not bound or cancel an insurance contract within the first sixty days after the effective date of the contract.

(5) Insurers shall not deny personal insurance coverage based on:

(a) The absence of credit history or the inability to determine the consumer's credit history, if the insurer has received accurate and complete information from the consumer;

(b) The number of credit inquiries;

(c) Credit history or an insurance score based on collection accounts identified with a medical industry code;

(d) The initial purchase or finance of a vehicle or house that adds a new loan to the consumer's existing credit history, if evident from the consumer report; however, an insurer may consider the bill payment history of any loan, the total number of loans, or both;

(e) The consumer's use of a particular type of credit card, charge card, or debit card; or

(f) The consumer's total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

(6)(a) If disputed credit history is used to determine eligibility for coverage and a consumer is placed with an affiliate that charges higher premiums or offers less favorable policy terms:

(i) The insurer shall reissue or rerate the policy retroactive to the effective date of the current policy term; and

(ii) The policy, as reissued or rerated, shall provide premiums and policy terms the consumer would have been eligible for if accurate credit history had been used to determine eligibility.

(b) This subsection only applies if the consumer resolves the dispute under the process set forth in the fair credit reporting act and notifies the insurer in writing that the dispute has been resolved.

(7) The commissioner may adopt rules to implement this section.

(8) This section applies to all personal insurance policies issued or renewed after January 1, 2003. [2002 c 360 § 1.]

Captions not law—2002 c 360: "Captions used in this act are not any part of the law." [2002 c 360 § 3.]

48.18.547 Underwriting restrictions that apply to medical malpractice insurance—Rules. (1) For the purposes of this section:

(a) "Affiliate" has the same meaning as in RCW 48.31B.005(1).

(b) "Claim" means a demand for monetary damages by a claimant.

(c) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.

(d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).

(e) "Underwrite" or "underwriting" means the process of selecting, rejecting, or pricing a risk, and includes each of these activities:

(i) Evaluation, selection, and classification of risk, including placing a risk with an affiliate insurer that has higher rates and/or rating plan components that will result in higher premiums;

(ii) Application of classification plans, rates, rating rules, and rating tiers to an insured risk; and

(iii) Determining eligibility for:

(A) Insurance coverage provisions;

(B) Higher policy limits; or

(C) Premium payment plans.

(2) During each underwriting process, an insurer may consider the following factors only in combination with other substantive underwriting factors:

(a) An insured has inquired about the nature or scope of coverage under a medical malpractice insurance policy;

(b) An insured has notified their insurer about an incident that may be covered under the terms of their medical malpractice insurance policy, and that incident does not result in a claim; or

(c) A claim made against an insured was closed by the insurer without payment. An insurer may consider the effect

of multiple claims if they have a significant effect on the insured's risk profile.

(3) If any underwriting activity related to the insured's risk profile results in higher premiums as described under subsection (1)(e)(i) and (ii) of this section or reduced coverage as described under subsection (1)(e)(iii) of this section, the insurer must provide written notice to the insured, in clear and simple language, that describes the significant risk factors which led to the underwriting action. The commissioner must adopt rules that define the components of a risk profile that require notice under this subsection. [2006 c 8 § 211.]

Application—2006 c 8 §§ 211-213: "Sections 211, 212, and 213 of this act apply to insurance policies issued or renewed on or after January 1, 2007." [2006 c 8 § 403.]

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

48.18.550 Victims of domestic abuse—Prohibition on certain cancellations, denials, refusals to renew, and different rates—Domestic abuse defined. (1) No insurer shall deny or refuse to accept an application for insurance, refuse to insure, refuse to renew, cancel, restrict, or otherwise terminate a policy of insurance, or charge a different rate for the same coverage, on the basis that the applicant or insured person is, has been, or may be a victim of domestic abuse.

(2) Nothing in this section shall prevent an insurer from taking any of the actions set forth in subsection (1) of this section on the basis of loss history or medical condition or for any other reason not otherwise prohibited by this section, any other law, regulation, or rule.

(3) Any form filed or filed after June 11, 1998, subject to RCW 48.18.120(1) or subject to a rule adopted under RCW 48.18.120(1) may exclude coverage for losses caused by intentional or fraudulent acts of any insured. Such an exclusion, however, shall not apply to deny an insured's otherwise-covered property loss if the property loss is caused by an act of domestic abuse by another insured under the policy, the insured claiming property loss files a police report and cooperates with any law enforcement investigation relating to the act of domestic abuse, and the insured claiming property loss did not cooperate in or contribute to the creation of the property loss. Payment by the insurer to an insured may be limited to the person's insurable interest in the property less payments made to a mortgagee or other party with a legal secured interest in the property. An insurer making payment to an insured under this section has all rights of subrogation to recover against the perpetrator of the act that caused the loss.

(4) Nothing in this section prohibits an insurer from investigating a claim and complying with chapter 48.30A RCW.

(5) As used in this section, "domestic abuse" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; (b) sexual assault of one family or household member by another; (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member; or (d) intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another family or household member. [1998 c 301 § 1.]

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48.18.553 Victims of malicious harassment—Restrictions of underwriting actions—Definitions. (1) For the purposes of this section:

(a) "Insured" means a current policyholder or a person or entity that is covered under the insurance policy.

(b) "Malicious harassment" has the same meaning as RCW 9A.36.080. Under this section, the perpetrator does not have to be identified for an act of malicious harassment to have occurred.

(c) "Underwriting action" means an insurer:

(i) Cancels or refuses to renew an insurance policy; or
(ii) Changes the terms or benefits in an insurance policy.

(2) This section applies to property insurance policies if the insured is:

(a) An individual;

(b) A religious organization;

(c) An educational organization; or

(d) Any other nonprofit organization that is organized and operated for religious, charitable, or educational purposes.

(3) An insurer may not take an underwriting action on a policy described in subsection (2) of this section because an insured has made one or more insurance claims for any loss that occurred during the preceding sixty months that is the result of malicious harassment. An insurer may take an underwriting action due to other factors that are not prohibited by this subsection.

(4) If an insured sustains a loss that is the result of malicious harassment, the insured must file a report with the police or other law enforcement authority within thirty days of discovery of the incident, and a law enforcement authority must determine that a crime has occurred. The report must contain sufficient information to provide an insurer with reasonable notice that the loss was the result of malicious harassment. The insured has a duty to cooperate with any law enforcement official or insurer investigation. For incidents of malicious harassment occurring prior to July 27, 2003, the insured must file the report within six months of the discovery of the incident.

(5) Annually, each insurer must report underwriting actions to the commissioner if the insurer has taken an underwriting action against any insured who has filed a claim during the preceding sixty months that was the result of malicious harassment. The report must include the policy number, name of the insured, location of the property, and the reason for the underwriting action. [2003 c 117 § 1.]

48.18.555 Property insurance—Actions resulting from arson or malicious mischief—Definitions. (1) For the purposes of this section:

(a) "Arson" has the same meaning as in chapter 9A.48 RCW.

(b) "Health care facility" has the same meaning as defined in RCW 48.43.005.

(c) "Health care provider" has the same meaning as defined in RCW 48.43.005.

(d) "Insured" means a current policyholder or a person or entity that is covered under the insurance policy.

(e) A perpetrator does not have to be identified for an act of arson or malicious mischief to have occurred.

(f) "Malicious mischief" has the same meaning as in chapter 9A.48 RCW.

(g) "Underwriting action" means an insurer:

- (i) Cancels or refuses to renew an insurance policy; or
- (ii) Changes the terms or benefits in an insurance policy.

(2) This section applies to property insurance policies if the insured is:

- (a) A health care facility;
- (b) A health care provider; or
- (c) A religious organization.

(3) An insurer may not take an underwriting action on a policy described in subsection (2) of this section because an insured has made one or more insurance claims for any loss that occurred during the preceding sixty months that is the result of arson or malicious mischief. An insurer may take an underwriting action due to other factors that are not prohibited by this subsection.

(4) If an insured sustains a loss that is the result of arson or malicious mischief, the insured must file a report with the police or other law enforcement authority within thirty days of discovery of the incident, and a law enforcement authority must determine that a crime has occurred. The report must contain sufficient information to provide an insurer with reasonable notice that the loss was the result of arson or malicious mischief. The insured has a duty to cooperate with any law enforcement official or insurer investigation.

(5) Annually, each insurer must report underwriting actions to the commissioner if the insurer has taken an underwriting action against any insured who has filed a claim during the preceding sixty months that was the result of arson or malicious mischief. The report must include the policy number, name of the insured, location of the property, and the reason for the underwriting action. [2006 c 145 § 2.]

Finding—Intent—2006 c 145: "The legislature finds that access to insurance can be imperiled by the response of insurers to criminal acts. Rather than allow criminals to achieve their objectives, it is the intent of the legislature that criminals, through criminal acts, should not dictate insurance underwriting decisions. It is the intent of the legislature that courts should use restitution from perpetrators of intentional property crimes to make property owners and insurers whole." [2006 c 145 § 1.]

48.18.565 Homeowner's insurance—Foster parent.

An insurer licensed to write homeowner's insurance in this state shall not deny an application for a homeowner's insurance policy, or cancel, refuse to renew, or modify an existing homeowner's insurance policy for the principal reason that the applicant or insured is a foster parent licensed under chapter 74.15 RCW. [2004 c 84 § 1.]

48.18.570 Life insurance—Lawful travel destinations. (1) No life insurer may deny or refuse to accept an application for insurance, or refuse to insure, refuse to renew, cancel, restrict, or otherwise terminate a policy of insurance, or charge a different rate for the same coverage, based upon the applicant's or insured person's past or future lawful travel destinations.

(2) Nothing in this section prohibits a life insurer from excluding or limiting coverage of specific lawful travel, or charging a differential rate for such coverage, when bona fide statistical differences in risk or exposure have been substantiated. [2005 c 441 § 1.]

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48.18.580 Employer-owned life insurance—Requirements. (1) "Employer-owned life insurance policy" as used in this section and RCW 48.18.583 means an insurance policy purchased by an employer on the life of an employee, for the benefit of a person other than the employee or the employee's personal representative.

(2) An employer-owned life insurance policy may not be made or take effect unless at the time the contract is made the individual insured consents to the contract in writing.

(3) An employer may not retaliate in any manner against an employee for providing written notice that he or she does not want to be insured under an employer-owned life insurance policy.

(4) No later than thirty days after the date on which an employer purchases an employer-owned life insurance policy on the life of an employee, the employer must provide to the employee a written notice that contains the following information:

- (a) A statement that the employer carries an employer-owned life insurance policy on the life of the employee;
- (b) The identity of the insurance carrier of the policy;
- (c) The maximum face amount of the policy at issue; and
- (d) The identity of the beneficiary of the policy. [2005 c 337 § 4.]

Finding—Intent—2005 c 337: See note following RCW 48.18.030.

48.18.583 Employer-owned life insurance—Application to policies. With respect to employer-owned life insurance policies, chapter 337, Laws of 2005 shall apply only to policies issued and delivered after July 24, 2005. [2005 c 337 § 6.]

Finding—Intent—2005 c 337: See note following RCW 48.18.030.

48.18.586 Employer-owned life insurance—Rules. The commissioner shall adopt rules to implement RCW 48.18.010, 48.18.030, 48.18.060, 48.18.580, and 48.18.583. [2005 c 337 § 7.]

Finding—Intent—2005 c 337: See note following RCW 48.18.030.

Chapter 48.18A RCW

VARIABLE CONTRACT ACT

Sections

- 48.18A.010 Short title—Intent.
- 48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets.
- 48.18A.030 Statements required in contracts—Payment on death, incidental benefit provision.
- 48.18A.035 Return of policy and refund of premium—Notice required—Effect of return.
- 48.18A.040 Requirements for operation under this chapter—Considerations—Authorization of subsidiary or affiliate—Exceptions.
- 48.18A.050 Applicability of other code provisions—Contract requirements.
- 48.18A.060 Licensing requirement.
- 48.18A.070 Authority of commissioner.
- 48.18A.900 Effective date—1969 c 104.

Reviser's note: Powers, duties, and functions of the department of licensing relating to securities were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

48.18A.010 Short title—Intent. This chapter shall be known as the "Variable Contract Act" and is intended to

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authorize the sale of both individual and group variable contracts. [1969 c 104 § 1.]

48.18A.020 Separate accounts authorized—Allocations—Benefits—Limitations—Valuation—Sale, transfer, or exchange of assets. A domestic life insurer may, by or pursuant to resolution of its board of directors, establish one or more separate accounts, and may allocate thereto amounts (including without limitation proceeds applied under optional modes of settlement or under dividend options) to provide for life insurance or annuities (and other benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

(1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(2)(a) Except as hereinafter provided, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurers: PROVIDED, That to the extent that the insurer's reserve liability with regard to (i) benefits guaranteed as to dollar amount and duration, and (ii) funds guaranteed as to principal amount or stated rate of interest is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested under such conditions as the commissioner may prescribe. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to the investments of the insurer.

(b) With respect to seventy-five percent of the market value of the total assets in a separate account no insurer shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market value, would exceed ten percent of the market value of the assets of such separate account: PROVIDED, That the commissioner may waive such limitation if, in his opinion, such waiver will not render the operation of such separate account hazardous to the public or the policyholders in this state.

(c) Unless otherwise permitted by law or approved by the commissioner, no insurer shall purchase or otherwise acquire for its separate accounts the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts, in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer: PROVIDED, That the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.

(d) The limitations provided in paragraphs (b) and (c) of this subsection shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the United States Investment Company Act of 1940: PROVIDED, That the investments of such investment company shall comply in substance therewith.

(3) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account: PROVIDED, That unless otherwise approved by the commissioner, the portion, if any, of the assets of such separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (2) of this section shall be valued in accordance with the rules otherwise applicable to the insurer's assets.

(4) Amounts allocated to a separate account in the exercise of the power granted by this chapter shall be owned by the insurer and the insurer shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the insurer may conduct.

(5) No sale, exchange or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made (a) by a transfer of cash, or (b) by a transfer of securities having a readily determinable market value: PROVIDED, That such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts, if, in his opinion, such transfers would not be inequitable.

(6) To the extent such insurer deems it necessary to comply with any applicable federal or state law, such insurer, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having interest therein, as may be appropriate, voting and other rights and special procedures for the conduct of the business of such account, including without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such insurer, to manage the business of such account. [1973 1st ex.s. c 163 § 4; 1969 c 104 § 2.]

48.18A.030 Statements required in contracts—Payment on death, incidental benefit provision. (1) Every variable contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a

statement to the effect that the benefits thereunder are on a variable basis.

(2) Variable annuity contracts delivered or issued for delivery in this state may include as an incidental benefit provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at time of death. For this purpose such benefit shall not be deemed to be life insurance and therefore not subject to any statutory provisions governing life insurance contracts. A provision for any other benefits on death during the deferred period will be subject to such insurance law provisions. [1973 1st ex.s. c 163 § 5; 1969 c 104 § 3.]

48.18A.035 Return of policy and refund of premium—Notice required—Effect of return. (Effective until July 1, 2009.) Every individual variable contract issued shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the market value of the assets purchased by its premium, less taxes and investment brokerage commissions, if any, refunded, if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy owner pursuant to such notice returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [1983 1st ex.s. c 32 § 7; 1982 c 181 § 15.]

Effective date—1982 c 181 § 15: "Section 15 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1982." [1982 c 181 § 26.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18A.035 Return of policy and refund of premium—Notice required—Effect of return. (Effective July 1, 2009.) (1) Every individual variable contract issued shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the market value of the assets purchased by its premium, less taxes and investment brokerage commissions, if any, refunded, if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or insurance producer. If a policy owner pursuant to such notice returns the policy to the insurer at its home or branch office or to the insurance producer through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued.

(2) No later than January 1, 2010, or when the insurer has used all of its existing paper variable contract forms which were in its possession on July 1, 2009, whichever is earlier, the notice required by subsection (1) of this section shall use

the term insurance producer in place of agent. [2008 c 217 § 19; 1983 1st ex.s. c 32 § 7; 1982 c 181 § 15.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—1982 c 181 § 15: "Section 15 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1982." [1982 c 181 § 26.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18A.040 Requirements for operation under this chapter—Considerations—Authorization of subsidiary or affiliate—Exceptions. No insurer shall deliver or issue, for delivery within this state, contracts under this chapter unless it is licensed or organized to do a life insurance or annuity business in this state, and unless the commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things:

- (1) The history and financial condition of the insurer;
- (2) The character, responsibility and fitness of the officers and directors of the insurer; and
- (3) The law and regulation under which the insurer is authorized in the state of domicile to issue variable contracts.

An insurer which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to do business in this state may be deemed to have met the provisions of this section if either it or the parent or affiliated company meets the requirements hereof: PROVIDED, That no insurer may provide variable benefits in its contracts unless it is an admitted insurer having and continually maintaining a combined capital and surplus of at least five million dollars. [1982 c 181 § 10; 1969 c 104 § 4.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.18A.050 Applicability of other code provisions—Contract requirements. The provisions of RCW 48.23.020, 48.23.030, 48.23.080 through 48.23.120, 48.23.140, 48.23.150, 48.23.200 through 48.23.240, 48.23.310, and 48.23.360, and the provisions of chapters 48.24 and 48.76 RCW are inapplicable to variable contracts. Any provision in the code requiring contracts to be participating is not applicable to variable contracts. Except as otherwise provided in this chapter, all pertinent provisions of the insurance code apply to separate accounts and contracts relating thereto. Any individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state must contain grace, reinstatement, and nonforfeiture provisions appropriate to those contracts, and any variable life insurance contract must provide that the investment experience of the separate account may not operate to reduce the death benefit below an amount equal to the face amount of the contract at the time the contract was issued. Any individual variable life insurance contract may contain a provision for deduction from the death proceeds of amounts of due and unpaid premiums or of indebtedness which are appropriate to that contract. The reserve liability for variable annuities must be established in accordance with actuarial procedures that

recognize the variable nature of the benefits provided and any mortality guarantees. [2003 c 248 § 6; 1983 c 3 § 150; 1979 c 157 § 2; 1973 1st ex.s. c 163 § 6; 1969 c 104 § 5.]

48.18A.060 Licensing requirement. (Effective until July 1, 2009.) No person shall be or act as an agent for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a life insurance agent with respect to the insurer, and while duly licensed as a security salesman or securities broker under a license issued by the director of financial institutions pursuant to the securities act of this state; except that any person who participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be licensed pursuant to the securities act of this state. [1994 c 92 § 502; 1973 1st ex.s. c 163 § 7; 1969 c 104 § 6.]

48.18A.060 Licensing requirement. (Effective July 1, 2009.) No person shall be or act as an insurance producer for the solicitation or sale of variable contracts except while duly appointed and licensed under the insurance code as a variable life and variable annuity products insurance producer with respect to the insurer, and while duly licensed as a security salesman or securities broker under a license issued by the director of financial institutions pursuant to the securities act of this state; except that any person who participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under sections 401 or 403 of the United States internal revenue code need not be licensed pursuant to the securities act of this state. [2008 c 217 § 20; 1994 c 92 § 502; 1973 1st ex.s. c 163 § 7; 1969 c 104 § 6.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.18A.070 Authority of commissioner. Notwithstanding any other provision of law, the commissioner shall have sole and exclusive authority to regulate the issuance and sale of variable contracts; except for the examination, issuance or renewal, suspension or revocation, of a security salesman's license issued to persons selling variable contracts. To carry out the purposes and provisions of this chapter he or she may independently, and in concert with the director of financial institutions, issue such reasonable rules and regulations as may be appropriate. [1994 c 92 § 503; 1969 c 104 § 7.]

48.18A.900 Effective date—1969 c 104. This 1969 act shall take effect July 1, 1969. [1969 c 104 § 10.]

Chapter 48.19 RCW RATES

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Anti-compact law: RCW 48.30.020.

Discrimination prohibited: RCW 48.18.480.

Rate wars prohibited: RCW 48.30.240.

48.19.010 Scope of chapter. (1) Except as is otherwise expressly provided the provisions of this chapter apply to all insurances upon subjects located, resident or to be performed in this state except:

- (a) life insurance;
- (b) disability insurance;
- (c) reinsurance except as to joint reinsurance as provided in RCW 48.19.360;
- (d) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;
- (e) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity; and such other risks commonly insured under marine, as distinguished from inland marine, insurance contracts as may be defined by ruling of the commissioner for the purposes of this provision;
- (f) title insurance.

(2) Except, that every insurer shall, as to disability insurance, before using file with the commissioner its manual of classification, manual of rules and rates, and any modifications thereof. [1987 c 185 § 24; 1947 c 79 § .19.01; Rem. Supp. 1947 § 45.19.01.]

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

48.19.020 Rate standard. Premium rates for insurance shall not be excessive, inadequate, or unfairly discriminatory. [1983 1st ex.s. c 32 § 13; 1947 c 79 § .19.02; Rem. Supp. 1947 § 45.19.02.]

48.19.030 Making of rates—Criteria. Rates shall be used, subject to the other provisions of this chapter, only if made in accordance with the following provisions:

(1) In the case of insurances under standard fire policies and that part of marine and transportation insurances not exempted under RCW 48.19.010, manual, minimum, class or classification rates, rating schedules or rating plans, shall be made and adopted; except as to specific rates on inland marine risks individually rated, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans.

(2) In the case of casualty and surety insurances:

(a) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(b) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) Due consideration in making rates for all insurances shall be given to:

(a) Past and prospective loss experience within this state for experience periods acceptable to the commissioner. If the information is not available or is not statistically credible, an insurer may use loss experience in those states which are likely to produce loss experience similar to that in this state.

(b) Conflagration and catastrophe hazards, where present.

(c) A reasonable margin for underwriting profit and contingencies.

(d) Dividends, savings and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(e) Past and prospective operating expenses.

(f) Past and prospective investment income.

(g) All other relevant factors within and outside this state.

(4) In addition to other factors required by this section, rates filed by an insurer on its own behalf may also be related to the insurer's plan of operation and plan of risk classification.

(5) Except to the extent necessary to comply with RCW 48.19.020 uniformity among insurers in any matter within the scope of this section is neither required nor prohibited. [1989 c 25 § 3; 1947 c 79 § .19.03; Rem. Supp. 1947 § 45.19.03.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.035 Making of rates—Definitions—Personal insurance—Use of credit history or insurance scores—Rules. (1) For the purposes of this section:

(a) "Affiliate" has the same meaning as defined in RCW 48.31B.005(1).

(b) "Consumer" means an individual policyholder or applicant for insurance.

(c) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums or eligibility for coverage.

(d) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history.

(e) "Personal insurance" means:

(i) Private passenger automobile coverage;

(ii) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;

(iii) Dwelling property coverage;

(iv) Earthquake coverage for a residence or personal property;

(v) Personal liability and theft coverage;

(vi) Personal inland marine coverage; and

(vii) Mechanical breakdown coverage for personal auto or home appliances.

(2)(a) Credit history shall not be used to determine personal insurance rates, premiums, or eligibility for coverage unless the insurance scoring models are filed with the commissioner. Insurance scoring models include all attributes and factors used in the calculation of an insurance score. RCW 48.19.040(5) does not apply to any information filed under this subsection, and the information shall be withheld from public inspection and kept confidential by the commissioner. All information filed under this subsection shall be considered trade secrets under RCW 48.02.120(3). Information filed under this subsection may be made public by the commissioner for the sole purpose of enforcement actions taken by the commissioner.

(b) Each insurer that uses credit history or an insurance score to determine personal insurance rates, premiums, or eligibility for coverage must file all rates and rating plans for that line of coverage with the commissioner. This requirement applies equally to a single insurer and two or more affiliated insurers. RCW 48.19.040(5) applies to information filed under this subsection except that any eligibility rules or

guidelines shall be withheld from public inspection under RCW 48.02.120(3) from the date that the information is filed and after it becomes effective.

(3) Insurers shall not use the following types of credit history to calculate a personal insurance score or determine personal insurance premiums or rates:

(a) The absence of credit history or the inability to determine the consumer's credit history, unless the insurer has filed actuarial data segmented by demographic factors in a manner prescribed by the commissioner that demonstrates compliance with RCW 48.19.020;

(b) The number of credit inquiries;

(c) Credit history or an insurance score based on collection accounts identified with a medical industry code;

(d) The initial purchase or finance of a vehicle or house that adds a new loan to the consumer's existing credit history, if evident from the consumer report; however, an insurer may consider the bill payment history of any loan, the total number of loans, or both;

(e) The consumer's use of a particular type of credit card, charge card, or debit card; or

(f) The consumer's total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

(4) If a consumer is charged higher premiums due to disputed credit history, the insurer shall redate the policy retroactive to the effective date of the current policy term. As rerated, the consumer shall be charged the same premiums they would have been charged if accurate credit history was used to calculate an insurance score. This subsection applies only if the consumer resolves the dispute under the process set forth in the fair credit reporting act and notifies the insurer in writing that the dispute has been resolved.

(5) The commissioner may adopt rules to implement this section.

(6) This section applies to all personal insurance policies issued or renewed on or after June 30, 2003. [2004 c 86 § 1; 2002 c 360 § 2.]

Captions not law—2002 c 360: See note following RCW 48.18.545.

48.19.040 Filing required—Contents. (1) Every insurer or rating organization shall, before using, file with the commissioner every classifications manual, manual of rules and rates, rating plan, rating schedule, minimum rate, class rate, and rating rule, and every modification of any of the foregoing which it proposes. The insurer need not so file any rate on individually rated risks as described in subdivision (1) of RCW 48.19.030; except that any such specific rate made by a rating organization shall be filed.

(2) Every such filing shall indicate the type and extent of the coverage contemplated and must be accompanied by sufficient information to permit the commissioner to determine whether it meets the requirements of this chapter. An insurer or rating organization shall offer in support of any filing:

(a) The experience or judgment of the insurer or rating organization making the filing;

(b) An exhibit detailing the major elements of operating expense for the types of insurance affected by the filing;

(c) An explanation of how investment income has been taken into account in the proposed rates; and

(d) Any other information which the insurer or rating organization deems relevant.

(3) If an insurer has insufficient loss experience to support its proposed rates, it may submit loss experience for similar exposures of other insurers or of a rating organization.

(4) Every such filing shall state its proposed effective date.

(5) A filing made pursuant to this chapter shall be exempt from the provisions of RCW 48.02.120(3). However, the filing and all supporting information accompanying it shall be open to public inspection only after the filing becomes effective.

(6) Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect, except as is provided by RCW 48.19.090. [1994 c 131 § 8; 1989 c 25 § 4; 1983 1st ex.s. c 32 § 14; 1947 c 79 § .19.04; Rem. Supp. 1947 § 45.19.04.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.043 Forms of commercial property casualty policies—Legislative intent—Issuance prior to filing—Disapproval by commissioner—Definition. (1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not mean medical malpractice insurance.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden

of proof is on the commissioner. [2006 c 8 § 216; 2003 c 248 § 7; 1997 c 428 § 2.]

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

48.19.050 Filings by rating bureau. (1) If so authorized by an insurer, the commissioner shall accept, in lieu of filings by the insurer, filings on its behalf made by a rating organization then licensed as provided in this chapter.

(2) As to fire insurance under a standard form fire policy, and the following insurances (other than vehicle insurance coverages) when issued as part of a standard form fire policy, an insurer may so authorize a rating organization to make all [of] its filings only, and may not make a portion of such filings upon its own behalf and authorize a rating organization to make other such filings:

(a) Additional property insurance coverages; or

(b) Coverages including any kind of insurance in addition to fire for a single undivided premium.

(3) Except, that notwithstanding the provisions of subsection (2) an insurer which prior to the first day of January, 1947, made its own filings in this state as to a particular class of fire risks, and its filings in this state as to other classes of fire risks were made by a rating organization authorized by the insurer so to do, may:

(a) Continue to make all [of] its own filings as to such specific class of risks or authorize a rating organization to make its filings as to such specific class of risks or any part thereof; and

(b) Authorize a different rating organization to make all only of its filings [all of its filings only] as to all other classes of risks insured by it in this state against fire under the standard form fire policy; or

(c) Make all [of] its own filings as to all classes of risks insured by it against fire under the standard form fire policy, or make all [of] its own such filings except as to any which may relate to any such specific class of risks, which filings so excepted the insurer may authorize a rating organization to make; or

(d) Authorize a rating organization to make all only of its filings [all of its filings only] as to all classes or risks insured by it against fire in this state under the standard form fire policy. [1957 c 193 § 13; 1947 c 79 § .19.05; Rem. Supp. 1947 § 45.19.05.]

48.19.060 Filings—Review, waiting period, disapproval. (1) The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070 and 48.19.043:

(a) No such filing shall become effective within thirty days after the date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he or she gives notice within such waiting period to the insurer or rating organization which made the filing that he or she needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or part thereof as to a filing that he or she has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

(3) Medical malpractice insurance rate filings are subject to the provisions of this section. [2006 c 8 § 217; 1997 c 428 § 4; 1989 c 25 § 5; 1947 c 79 § .19.06; Rem. Supp. 1947 § 45.19.06.]

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

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.070 Special filings. The following special filings, when not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and for so long thereafter as the filing remains in effect:

(1) Special filings with respect to surety or guaranty bonds required by law or by court or executive order or by order, rule or regulation of a public body.

(2) Specific rates on inland marine risks individually rated by a rating organization, which risks are not reasonably susceptible to manual or schedule rating, and which risks by general custom of the business are not written according to manual rates or rating plans. [1947 c 79 § .19.07; Rem. Supp. 1947 § 45.19.07.]

48.19.080 Waiver of filing. Under such rules and regulations as he shall adopt the commissioner may, by order, suspend or modify the requirement of filing as to any kind of insurance. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standard prescribed in RCW 48.19.020. [1981 c 339 § 18; 1947 c 79 § .19.08; Rem. Supp. 1947 § 45.19.08.]

48.19.090 Excess rates on specific risks. Upon written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk. [1947 c 79 § .19.09; Rem. Supp. 1947 § 45.19.09.]

48.19.100 Disapproval of filing. If within the waiting period or any extension thereof as provided in RCW 48.19.060, the commissioner finds that a filing does not meet the requirements of this chapter, he shall disapprove such filing, and shall give notice of such disapproval, specifying the respect in which he finds the filing fails to meet such requirements, and stating that the filing shall not become effective, to the insurer or rating organization which made the filing. [1989 c 25 § 6; 1947 c 79 § .19.10; Rem. Supp. 1947 § 45.19.10.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.110 Disapproval of special filing. (1) If within thirty days after a special filing subject to RCW 48.19.070 has become effective, the commissioner finds that the filing does not meet the requirements of this chapter, he shall disap-

prove the filing and shall give notice to the insurer or rating organization which made the filing, specifying in what respects he finds that the filing fails to meet such requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective.

(2) Such disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval. [1947 c 79 § .19.11; Rem. Supp. 1947 § 45.19.11.]

48.19.120 Subsequent disapproval. (1) If at any time subsequent to the applicable review period provided in RCW 48.19.060 or 48.19.110, the commissioner finds that a filing does not meet the requirements of this chapter, he shall, after a hearing, notice of which was given to every insurer and rating organization which made such filing, issue his order specifying in what respect he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filings shall be deemed no longer effective.

(2) Such order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(3) Any person aggrieved with respect to any filing then in effect, other than the insurer or rating organization which made the filing, may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding the hearing, he shall, within thirty days after receipt of the application, hold a hearing as required in subsection (1) of this section. [1989 c 25 § 7; 1983 1st ex.s. c 32 § 15; 1947 c 79 § .19.12; Rem. Supp. 1947 § 45.19.12.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.140 Rating organizations—Discrimination—"Subscriber" defined. (1) Every rating organization operating in this state shall furnish its services without discrimination as between its subscribers.

(2) "Subscriber," for the purposes of this chapter and where the context does not otherwise specify, means any insurer which employs the services of a rating organization for the purpose of making filings, whether or not the insurer is a "member" of such rating organization.

(3) This chapter is not intended to and does not govern or affect the "membership" relation as such between a rating organization and insurers who are its "members." [1947 c 79 § .19.14; Rem. Supp. 1947 § 45.19.14.]

48.19.150 Subscribership not required. No provision of this code shall require, or be deemed to require, any insurer to be a subscriber of, or in any other respect affiliated with, any rating organization. [1947 c 79 § .19.15; Rem. Supp. 1947 § 45.19.15.]

48.19.160 Rating organization license. No rating organization shall do business in this state or make filings with the commissioner unless then licensed by the commis-

sioner as a rating organization. [1947 c 79 § .19.16; Rem. Supp. 1947 § 45.19.16.]

48.19.170 Application for license. (1) Any person, whether domiciled within or outside this state, except as provided in subsection (2) of this section, may make application to the commissioner for a license as a rating organization for such kinds of insurance or subdivisions thereof, if for casualty or surety insurances, or for such subdivision, class of risks or a part or combination thereof, if for other insurances, as are specified in its application, and shall file therewith:

(a) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and of its bylaws, rules and regulations governing the conduct of its business;

(b) A list of its members and a list of its subscribers;

(c) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and

(d) A statement of its qualifications as a rating organization.

(2) Any rating organization proposing to act as such as to insurance under standard form fire policies, shall be licensed only if all the following conditions are complied with:

(a) The applicant and the operators of such rating organization shall be domiciled in and shall actually reside in this state.

(b) The ownership of such rating organization shall be vested in trustees for all its subscribers under such trust agreement as is approved by the commissioner, and the rating organization shall be and shall be conducted as a nonprofit public service institution.

(c) Such rating organization shall not be connected with any insurer or insurers except to the extent that any such insurer may be a subscriber to its services. [1947 c 79 § .19.17; Rem. Supp. 1947 § 45.19.17.]

48.19.180 Issuance of license. (1) If the commissioner finds that the applicant for a license as a rating organization is competent, trustworthy and otherwise qualified so to act, and that its constitution, articles of agreement or association or certificate of incorporation or trust agreement, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall, upon payment of a license fee of twenty-five dollars, issue a license specifying the kinds of insurance, or subdivisions or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization.

(2) The commissioner shall grant or deny in whole or in part every such application within sixty days of the date of its filing with him.

(3) A license issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. [1947 c 79 § .19.18; Rem. Supp. 1947 § 45.19.18.]

48.19.190 Suspension or revocation of license. (1) The commissioner may, after a hearing, suspend or revoke the license issued to a rating organization for any of the following causes:

(a) If he finds that the licensee no longer meets the qualifications for the license.

(b) For failure to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.

(2) The commissioner shall not so suspend or revoke a license for failure to comply with an order until the time prescribed by this code for an appeal from such order to the superior court has expired or if such appeal has been taken, until such order has been affirmed.

(3) The commissioner may determine when a suspension or revocation of license shall become effective. A suspension of license shall remain in effect for the period fixed by him, unless he modifies or rescinds the suspension, or until the order, failure to comply with which constituted grounds for the suspension, is modified, rescinded or reversed. [1947 c 79 § .19.19; Rem. Supp. 1947 § 45.19.19.]

48.19.200 Notice of changes. Every rating organization shall notify the commissioner promptly of every change in

(1) its constitution, its articles of agreement or association, or its certificate of incorporation, or trust agreement, and its bylaws, rules and regulations governing the conduct of its business;

(2) its list of members and subscribers;

(3) the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served. [1947 c 79 § .19.20; Rem. Supp. 1947 § 45.19.20.]

48.19.210 Subscribers—Rights, limitations. (1) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer to subscribe to its rating services for any kind of insurance or subdivision thereof, for which it is authorized to act as a rating organization, subject to subsection (2) of RCW 48.19.050.

(2) Notice of proposed changes in such rules and regulations shall be given to each subscriber.

(3) An insurer shall not concurrently be a subscriber to the services of more than one rating organization as to the same subdivision, class of risk or part or combination of a kind of insurance.

(4) As to fire insurance under standard form fire policies, an insurer may not concurrently be a subscriber to the services of more than one rating organization except as provided in subsection (2) of RCW 48.19.050. [1947 c 79 § .19.21; Rem. Supp. 1947 § 45.19.21.]

48.19.220 Review of rules and refusal to admit insurers. (1) The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon notice to the rating organization, and to the subscriber or insurer.

(2) If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers who are not members of the rating organization.

(3) If a rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action. [1947 c 79 § .19.22; Rem. Supp. 1947 § 45.19.22.]

48.19.230 Subscriber committees. The subscribers of any rating organization may, from time to time, individually or through committees representing various subscribers, consult with the rating organization with respect to matters within this chapter which affect such subscribers. [1947 c 79 § .19.23; Rem. Supp. 1947 § 45.19.23.]

48.19.240 Rules cannot affect dividends. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. [1947 c 79 § .19.24; Rem. Supp. 1947 § 45.19.24.]

48.19.250 Cooperative activities. (1) Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, if the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally.

(2) The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what respect such activity or practice is so unfair, unreasonable, or inconsistent, and requiring the discontinuance of such activity or practice. [1947 c 79 § .19.25; Rem. Supp. 1947 § 45.19.25.]

48.19.260 Technical services. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all subscribers without discrimination. [1947 c 79 § .19.26; Rem. Supp. 1947 § 45.19.26.]

48.19.270 Records—Examinations. Each rating organization shall keep an accurate and complete record of all work performed by it, and of all its receipts and disbursements. Such rating organization and its records shall be examined by the commissioner at such times and in such manner as is provided in chapter 48.03 RCW of this code. [1947 c 79 § .19.27; Rem. Supp. 1947 § 45.19.27.]

48.19.280 Deviations. (1) Every member or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization. Deviations from the organization's filings are permitted only when filed with the commissioner in accordance with this chapter.

(2) Every such deviation shall terminate upon a material change of the basic rate from which the deviation is made. The commissioner shall determine whether a change of the basic rate is so material as to require such termination of deviations. [1989 c 25 § 8; 1957 c 193 § 14; 1947 c 79 § .19.28; Rem. Supp. 1947 § 45.19.28.]

Effective date—1989 c 25: See note following RCW 48.18.100.

48.19.290 Appeal from rating organization's action.

(1) Any subscriber to a rating organization may appeal to the commissioner from the rating organization's action or decision in approving or rejecting any proposed change in or addition to the rating organization's filings. The commissioner shall, after a hearing on the appeal:

(a) Issue an order approving the rating organization's action or decision or directing it to give further consideration to such proposal; or

(b) If the appeal is from the rating organization's action or decision in rejecting a proposed addition to its filings, he may, in event he finds that the action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

(2) If such appeal is based upon the rating organization's failure to make a filing on behalf of such subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in subdivision (2) of RCW 48.19.030, from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal the commissioner shall apply the standards set forth in RCW 48.19.020 and 48.19.030. [1947 c 79 § .19.29; Rem. Supp. 1947 § 45.19.29.]

48.19.300 Service to insureds. Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. [1947 c 79 § .19.30; Rem. Supp. 1947 § 45.19.30.]

48.19.310 Complaints of insureds. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon notice to the appellant and to the rating organization or insurer, may

affirm or reverse such action. [1947 c 79 § .19.31; Rem. Supp. 1947 § 45.19.31.]

48.19.320 Advisory organizations—Definition. (1)

Every group, association or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

(2) This section does not apply to subscribers' committees provided for in RCW 48.19.230. [1947 c 79 § .19.32; Rem. Supp. 1947 § 45.19.32.]

48.19.330 Requisites of advisory organization. Every advisory organization before serving as such to any rating organization or independently filing insurer doing business in this state, shall file with the commissioner:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules and regulations governing its activities;

(2) A list of its members;

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served; and

(4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of RCW 48.03.010. [1947 c 79 § .19.33; Rem. Supp. 1947 § 45.19.33.]

48.19.340 Desist orders. If, after a hearing, the commissioner finds that the furnishing of information or assistance by an advisory organization, as referred to in RCW 48.19.320, involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this code, he may issue a written order specifying in what respect such act or practice is unfair or unreasonable or so otherwise inconsistent, and requiring the discontinuance of such act or practice. [1947 c 79 § .19.34; Rem. Supp. 1947 § 45.19.34.]

48.19.350 Disqualification of data. No insurer which makes its own filing nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this chapter or with any order of the commissioner involving such statistics or recommendations issued under RCW 48.19.340. If the commissioner finds such insurer or rating organization to be in violation of this section he may issue an order requiring the discontinuance of the violation. [1947 c 79 § .19.35; Rem. Supp. 1947 § 45.19.35.]

48.19.360 Joint underwriting or joint reinsurance.

(1) Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as is provided in this section, subject, however, with respect to joint underwriting, to all other provisions of this chapter, and, with

respect to joint reinsurance, to RCW 48.19.270, 48.01.080 and 48.19.430; and to chapter 48.03 RCW of this code.

(2) If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair, or unreasonable or so inconsistent, and requiring the discontinuance of the activity or practice. [1947 c 79 § .19.36; Rem. Supp. 1947 § 45.19.36.]

48.19.370 Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in RCW 48.19.020 and 48.19.030. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states.

(3) No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

(4) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

(5) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans. [1947 c 79 § .19.37; Rem. Supp. 1947 § 45.19.37.]

48.19.380 Exchange of information. Every rating organization and insurer may exchange information and experience data with insurers and rating organizations in this and other states and may consult with them with respect to rate making and the application of rating systems. [1947 c 79 § .19.38; Rem. Supp. 1947 § 45.19.38.]

48.19.390 False or misleading information. No person shall wilfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any rating organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. [1947 c 79 § .19.39; Rem. Supp. 1947 § 45.19.39.]

48.19.400 Assigned risks. Agreements may be made among casualty insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner. [1947 c 79 § .19.40; Rem. Supp. 1947 § 45.19.40.]

48.19.410 Examination of contracts. (1) The commissioner may permit the organization and operation of examining bureaus for the examination of policies, daily reports, binders, renewal certificates, endorsements, and other evidences of insurance or of the cancellation thereof, for the purpose of ascertaining that lawful rates are being charged.

(2) A bureau shall examine documents with regard to such kinds of insurance as the commissioner may, after hearing, reasonably require to be submitted for examination. A bureau may examine documents as to such other kinds of insurance as the issuing insurers may voluntarily submit for examination. Upon request of the commissioner, a bureau shall also examine affidavits filed pursuant to RCW 48.15.040, surplus lines contracts and related documents, and shall make recommendations to the commissioner to assist the commissioner in determining whether surplus lines have been procured in accordance with chapter 48.15 RCW and rules issued thereunder.

(3) No bureau shall operate unless licensed by the commissioner as to the kinds of insurance as to which it is permitted so to examine. To qualify for a license a bureau shall:

(a) Be owned in trust for the benefit of all the insurers regularly using its services, under a trust agreement approved by the commissioner.

(b) Make its services available without discrimination to all authorized insurers applying therefor, subject to such reasonable rules and regulations as to the obligations of insurers using its services, as to the conduct of its affairs, and as to the correction of errors and omissions in documents examined by it as are approved by the commissioner.

(c) Have no manager or other employee who is an employee of an insurer other than to the extent that he is an employee of the bureau owned by insurers through such trust agreement.

(d) Pay to the commissioner a fee of ten dollars for issuance of its license.

(4) Such license shall be of indefinite duration and shall remain in force until revoked by the commissioner or terminated at the request of the bureau. The commissioner may revoke the license, after hearing,

(a) if the bureau is no longer qualified therefor;

(b) if the bureau fails to comply with a proper order of the commissioner;

(c) if the bureau violates or knowingly participates in the violation of any provision of this code.

(5) Any person aggrieved by any rule, regulation, act or omission of a bureau may appeal to the commissioner therefrom. The commissioner shall hold a hearing upon such appeal, and shall make such order upon the hearing as he deems to be proper.

(6) Every such bureau operating in this state shall be subject to the supervision of the commissioner, and the commissioner shall examine it as provided in chapter 48.03 RCW of this code.

(7) Every examining bureau shall keep adequate records of the outstanding errors and omissions found in coverages examined by it and of its receipts and disbursements, and shall hold as confidential all information contained in documents submitted to it for examination.

(8) The commissioner shall not license an additional bureau for the examination of documents relative to a kind of insurance if such documents are being examined by a then existing licensed bureau. Any examining bureau operating in this state immediately prior to the effective date of this code under any law of this state repealed as of such date, shall have prior right to apply for and secure a license under this section. [1983 1st ex.s. c 32 § 8; 1947 c 79 § .19.41; Rem. Supp. 1947 § 45.19.41.]

48.19.420 Rate agreements. Two or more insurers mutually may agree to adhere to rates, rating plans, rating systems or underwriting practices or uniform modifications thereof, all subject to the following conditions:

(1) All of the terms of the agreements shall be in writing executed on behalf of each such insurer.

(2) An executed copy of every such written agreement and of every modification thereof shall be filed with the commissioner.

(3) Within a reasonable length of time after every such filing, the commissioner shall either approve or disapprove such agreement or modification. No such agreement or modification shall be effective unless and until approved by the commissioner.

(4) The commissioner shall not approve any such agreement or modification which:

(a) Constitutes or would tend to result in an unreasonable restraint upon free competition;

(b) contains terms otherwise tending to injure the public interest.

(5) No cause of action shall lie in favor of any insurer which is party to any such agreement against any other insurer party thereto on account of any breach thereof.

(6) All rate filings covered by such agreement shall be subject to the provisions of this chapter or of other applicable law.

(7) The commissioner may after a hearing thereon and for cause withdraw any approval previously given any such agreement or modification. [1947 c 79 § .19.42; Rem. Supp. 1947 § 45.19.42.]

48.19.430 Penalties. Any person violating any provision of this chapter shall be subject to a penalty of not more than fifty dollars for each such violation, but if such violation is found to be wilful a penalty of not more than five hundred dollars for each such violation may be imposed. Such penalties may be in addition to any other penalty provided by law. [1947 c 79 § .19.43; Rem. Supp. 1947 § 45.19.43.]

48.19.450 Casualty rate filing—Credit. The commissioner shall, in reviewing a casualty rate filing, determine in (2008 Ed.)

accordance with sound and reliable actuarial principles whether chapter 305, Laws of 1986 requires an insurer to grant its policyholders a credit in such casualty rate filing. Upon determining that data in support of such a credit is actuarially credible, the commissioner shall approve or disapprove such casualty rate filing in accordance therewith. The commissioner shall not approve any casualty rate that is inadequate, excessive, or unfairly discriminatory. [1986 c 305 § 907.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

48.19.460 Automobile insurance—Premium reductions for older insureds completing accident prevention course. Any schedule of rates or rating plan for automobile liability and physical damage insurance submitted to or filed with the commissioner shall provide for an appropriate reduction in premium charges except for underinsured motorist coverage for those insureds who are fifty-five years of age and older, for a two-year period after successfully completing a motor vehicle accident prevention course meeting the criteria of the department of licensing with a minimum of eight hours, or additional hours as determined by rule of the department of licensing. The classroom course may be conducted by a public or private agency approved by the department. An eight-hour course meeting the criteria of the department of licensing may be offered via an alternative delivery method of instruction, which may include internet, video, or other technology-based delivery methods. An agency seeking approval from the department to offer an alternative delivery method course of instruction is not required to conduct classroom courses under this section. The department of licensing may adopt rules to ensure that insureds who seek certification for taking a course offered via an alternative delivery method have completed the course. [2007 c 258 § 1; 1987 c 377 § 1; 1986 c 235 § 1.]

48.19.470 Automobile insurance—Premium reductions for persons eligible under RCW 48.19.460. All insurance companies writing automobile liability and physical damage insurance in this state shall allow an appropriate reduction in premium charges except for underinsured motorist coverage to all eligible persons subject to RCW 48.19.460. [1986 c 235 § 2.]

48.19.480 Automobile insurance—Completion of accident prevention course, certificate. Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency, a certificate that shall be the basis of qualification for the discount on insurance. [1986 c 235 § 3.]

48.19.490 Automobile insurance—Continued eligibility for discount. Each participant shall take an approved course every two years to continue to be eligible for the discount on insurance. [1986 c 235 § 4.]

48.19.500 Motor vehicle insurance—Seat belts, etc. Due consideration in making rates for motor vehicle insurance shall be given to any anticipated change in losses that

may be attributable to the use of seat belts, child restraints, and other lifesaving devices. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance. [1989 c 11 § 20; 1987 c 310 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

48.19.501 Motor vehicle insurance—Anti-theft devices—Lights—Multiple vehicles. Due consideration in making rates for motor vehicle insurance shall be given to:

(1) Any anticipated change in losses that may be attributable to the use of properly installed and maintained anti-theft devices in the insured private passenger automobile. An exhibit detailing these losses and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

(2) Any anticipated change in losses that may be attributable to the use of lights and lighting devices that have been proven effective in increasing the visibility of motor vehicles during daytime or in poor visibility conditions and to the use of rear stop lights that have been proven effective in reducing rear-end collisions. An exhibit detailing these losses and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance.

(3) Any anticipated change in losses per vehicle covered that may be attributable to the fact that the insured has more vehicles covered under the policy than there are insured drivers in the same household. An exhibit detailing these changes and any credits or discounts resulting from any such changes shall be included in each filing pertaining to private passenger automobile (or motor vehicle) insurance. [1989 c 11 § 21; 1987 c 320 § 1.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Effective date—1987 c 320: "This act shall take effect on January 1, 1988." [1987 c 320 § 2.]

Chapter 48.20 RCW DISABILITY INSURANCE

Sections

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48.20.530	Nonresident pharmacies.
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48.20.580	Mental health services—Definition—Coverage required, when.

Approval of policy forms: RCW 48.18.100.

Assignment of policies: RCW 48.18.360.

Exemption of proceeds: RCW 48.18.400.

General provisions regarding filing, approval, contents of policies, execution, applications, etc.: Chapter 48.18 RCW.

Grounds for disapproval of policy forms: RCW 48.18.110.

Insurable interest, personal insurance, nonprofit organizations: RCW 48.18.030.

Minimum standard conditions and terminology for disability policies, established by commissioner: RCW 48.18.120(2).

Minor contracting for life or disability insurance: RCW 48.18.020.

Payment to person designated in policy or by assignment discharges insurer: RCW 48.18.370.

Rates, manuals, classifications—Filing: RCW 48.19.010(2).

Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.20.002 Scope of chapter. Nothing in this chapter shall apply to or affect (1) any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group policy of insurance; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract. [1987 c 185 § 25; 1951 c 229 § 1.]

Reviser's note: For prior laws governing standard provision requirements for individual accident or health insurance policies see 1947 c 79 §§ .20.01 through .20.33 and .20.37 and Rem. Supp. 1947 §§ 45.20.01 through 45.20.33 and 45.20.37.

Many of the sections enacted in 1951 c 229 are in substance amendatory of sections previously appearing in chapter 48.20 RCW, although they appear in 1951 c 229 as new sections. To assist those using the code, the prior enactment on the same subject is shown in the history note following the new section wherever practical.

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

48.20.012 Format of disability policies. No disability policy shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this code, and complies with the following:

(1) It shall purport to insure only one person, except as to family expense insurance written pursuant to RCW 48.20.340.

(2) The style, arrangement and over-all appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower-case unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description if any, and caption and subcaptions).

(3) The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in RCW 48.20.042 to *48.20.272, inclusive, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies.

(4) Each such form, including riders and endorsements, shall be identified by a form number in the lower left hand corner of the first page thereof.

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(5) It shall contain no provision purporting to make any portion of the insurer's charter, rules, constitution, or bylaws a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner. [1951 c 229 § 2; 1947 c 79 § .20.02; formerly Rem. Supp. 1949 § 45.20.02.]

***Reviser's note:** RCW 48.20.272 was repealed by 2004 c 112 § 6.

48.20.013 Return of policy and refund of premium—Notice required—Effect of return. (Effective until July 1, 2009.) Every individual disability insurance policy issued after January 1, 1968, except single premium nonrenewable policies, shall have printed on its face or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten days of its delivery to the purchaser and to have the premium paid refunded if, after examination of the policy, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy holder or purchaser pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [1983 1st ex.s. c 32 § 9; 1967 c 150 § 26.]

48.20.013 Return of policy and refund of premium—Notice required—Effect of return. (Effective July 1, 2009.) Every individual disability insurance policy issued after January 1, 1968, except single premium nonrenewable policies, shall have printed on its face or attached thereto a notice stating in substance that the person to whom the policy is issued shall be permitted to return the policy within ten days of its delivery to the purchaser and to have the premium paid refunded if, after examination of the policy, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or insurance producer. If a policy holder or purchaser pursuant to such notice, returns the policy to the insurer at its home or branch office or to the insurance producer through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. [2008 c 217 § 21; 1983 1st ex.s. c 32 § 9; 1967 c 150 § 26.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.20.015 Endorsements. If a contract is issued on any basis other than as applied for, an endorsement setting forth such modification(s) must accompany and be attached to the policy; and no endorsement shall be effective unless signed by the policyowner, and a signed copy thereof returned to the insurer. [1975 1st ex.s. c 266 § 9.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.022 Policies issued by domestic insurer for delivery in another state. If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or corresponding public official of such other state has advised the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that such policy meet the applicable standards set forth in this chapter and in chapter 48.18 RCW. [1951 c 229 § 3.]

48.20.025 Schedule of rates for individual health benefit plans—Loss ratio—Remittance of premiums—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the insurer of health care services, as defined in RCW 48.43.005, provided to a policyholder or paid to or on behalf of the policyholder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for a policyholder.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for an insurer means the percentage of the total number of applicants for individual health benefit plans received by that insurer in the aggregate in the applicable year which are not accepted for enrollment by that insurer based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) An insurer must file supporting documentation of its method of determining the rates charged for its individual health benefit plans. At a minimum, the insurer must provide the following supporting documentation:

(a) A description of the insurer's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the insurer's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020.

(3) By the last day of May each year any insurer issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the insurer.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the insurer, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio established in subsection (5) of this section, a remittance is due and the following shall apply:

(a) The insurer shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.

(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the insurer's actual declination rate in the preceding year, minus the premium tax rate applicable to the insurer's individual health benefit plans under RCW 48.14.020.

Actual Declination Rate	Loss Ratio
Under Six Percent (6%)	Seventy-Four Percent (74%)
Six Percent (6%) or more (but less than Seven Percent)	Seventy-Five Percent (75%)
Seven Percent (7%) or more (but less than Eight Percent)	Seventy-Six Percent (76%)
Eight Percent (8%) or more	Seventy-Seven Percent (77%)

[2008 c 303 § 4; 2003 c 248 § 8; 2001 c 196 § 1; 2000 c 79 § 3.]

Effective date—2001 c 196: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 196 § 14.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.20.028 Calculation of premiums—Adjusted community rating method—Definitions. (1) Premiums for health benefit plans for individuals shall be calculated using the adjusted community rating method that spreads financial risk across the carrier's entire individual product population, except the individual product population covered under RCW 48.20.029. All such rates shall conform to the following:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be con-

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sidered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, except individuals purchasing coverage under RCW 48.20.029, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(3) As used in this section, "health benefit plan," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005.

(4) This section shall not apply to premiums for health benefit plans covered under RCW 48.20.029. [2006 c 100 § 1; 2000 c 79 § 4; 1997 c 231 § 207; 1995 c 265 § 13.]

Legality of purchasing pools—Federal opinion requested—2006 c 100: "No policy or contract may be solicited, or contribution collected under this act until a federal opinion is received by the insurance commissioner indicating whether the purchasing pools referenced in sections 2, 4, and 6 of this act are legal. The commissioner shall request such an opinion from the federal departments of labor, treasury, health and human services, or other appropriate federal agencies no later than August 1, 2006. Upon receipt, the commissioner shall forward the opinion to the legislature, and within thirty days, provide the legislature with a report assessing the legality and potential impact of these purchasing pools on the uninsured and insurance markets in Washington state." [2006 c 100 § 7.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.20.029 Calculation of premiums—Members of a purchasing pool—Adjusted community rating method—Definitions. (1) Premiums for health benefit plans for individuals who purchase the plan as a member of a purchasing pool:

- (a) Consisting of five hundred or more individuals affiliated with a particular industry;
- (b) To whom care management services are provided as a benefit of pool membership; and
- (c) Which allows contributions from more than one employer to be used towards the purchase of an individual's health benefit plan;

shall be calculated using the adjusted community rating method that spreads financial risk across the entire purchasing pool of which the individual is a member. All such rates shall conform to the following:

- (i) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:
 - (A) Geographic area;
 - (B) Family size;
 - (C) Age;
 - (D) Tenure discounts; and
 - (E) Wellness activities.

(ii) The adjustment for age in (c)(i)(C) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(iii) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer, and coverage for which medicare is not the primary payer. Both rates are subject to the requirements of this subsection.

(iv) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(v) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(vi) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(A) Changes to the family composition;

(B) Changes to the health benefit plan requested by the individual; or

(C) Changes in government requirements affecting the health benefit plan.

(vii) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(viii) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(3) As used in this section, "health benefit plan," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005. [2006 c 100 § 2.]

Legality of purchasing pools—Federal opinion requested—2006 c 100: See note following RCW 48.20.028.

48.20.032 Standard provisions required—Substitutions—Captions. Except as provided in RCW 48.18.130, each such policy delivered or issued for delivery to any person in this state shall contain the provisions as specified in RCW 48.20.042 to 48.20.152, inclusive, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded by the applicable caption shown or, at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 4; 1947 c 79 § .20.03; formerly Rem. Supp. 1947 § 45.20.03.]

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48.20.042 Standard provision No. 1—Entire contract; changes. (*Effective until July 1, 2009.*) There shall be a provision as follows:

ENTIRE CONTRACTS; CHANGES: This policy, including the endorsements and attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions. [1951 c 229 § 5. Prior law: (i) 1947 c 79 § .20.05; Rem. Supp. 1947 § 45.20.05. (ii) 1947 c 79 § .20.06; Rem. Supp. 1947 § 45.20.06.]

48.20.042 Standard provision No. 1—Entire contract; changes. (*Effective July 1, 2009.*) There shall be a provision as follows:

ENTIRE CONTRACTS; CHANGES: This policy, including the endorsements and attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No insurance producer has authority to change this policy or to waive any of its provisions. [2008 c 217 § 22; 1951 c 229 § 5. Prior law: (i) 1947 c 79 § .20.05; Rem. Supp. 1947 § 45.20.05. (ii) 1947 c 79 § .20.06; Rem. Supp. 1947 § 45.20.06.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.20.050 Standard provision No. 2—Misstatement of age or sex. There shall be a provision as follows:

"MISSTATEMENT OF AGE OR SEX: If the age or sex of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age or sex."

The amount of any underpayments which may have been made on account of any such misstatement under a disability income policy shall be paid the insured along with the current payment and the amount of any overpayment may be charged against the current or succeeding payments to be made by the insurer. Interest may be applied to such underpayments or overpayments as specified in the insurance policy form but not exceeding six percent per annum. [1983 1st ex.s. c 32 § 16.]

48.20.052 Standard provision No. 3—Time limit on certain defenses. There shall be a provision as follows:

"TIME LIMIT ON CERTAIN DEFENSES: (a) After two years from the date of issue of this policy no misstatements except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two year period."

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two year period, nor to limit the application of RCW 48.20.050, 48.20.172, 48.20.192, 48.20.202, and 48.20.212 in the event of misstatement with respect to age or occupation or other insurance.)

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(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE":

"After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."

"(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy."

(More stringent provisions may be required by the commissioner in connection with individual disability policies sold without any application or with minimal applications.) [1983 1st ex.s. c 32 § 17; 1975 1st ex.s. c 266 § 12; 1973 1st ex.s. c 152 § 4; 1969 ex.s. c 241 § 12; 1951 c 229 § 6.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.20.062 Standard provision No. 4—Grace period.

There shall be a provision as follows:

GRACE PERIOD: A grace period of . . . (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.")

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision: "Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted." [1951 c 229 § 7.]

48.20.072 Standard provision No. 5—Reinstatement. (Effective until July 1, 2009.) There shall be a provision as follows:

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy: **PROVIDED, HOWEVER,** That if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon

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approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.) [1951 c 229 § 8; 1947 c 79 § .20.07; formerly Rem. Supp. 1947 § 45.20.07.]

48.20.072 Standard provision No. 5—Reinstatement. (Effective July 1, 2009.) There shall be a provision as follows:

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any insurance producer duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy: **PROVIDED, HOWEVER,** That if the insurer or such insurance producer requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.) [2008 c 217 § 23; 1951 c 229 § 8; 1947 c 79 § .20.07; formerly Rem. Supp. 1947 § 45.20.07.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.20.082 Standard provision No. 6—Notice of claim.

There shall be a provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.") [1951 c 229 § 9. Prior law: 1947 c 79 § .20.08; Rem. Supp. 1947 § 45.20.08.]

48.20.092 Standard provision No. 7—Claim forms.

There shall be a provision as follows:

CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss written proof covering the occurrence, the character and the extent of the loss for which claim is made. [1951 c 229 § 10; 1947 c 79 § .20.10; formerly Rem. Supp. 1947 § 45.20.10.]

Furnishing claim forms does not constitute waiver of any defense by insurer: RCW 48.18.470.

Insurer has no responsibility as to completion of claim forms: RCW 48.18.460.

48.20.102 Standard provision No. 8—Proofs of loss.

There shall be a provision as follows:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time

required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required. [1951 c 229 § 11. Prior: (i) 1947 c 79 § .20.11; Rem. Supp. 1947 § 45.20.11. (ii) 1947 c 79 § .20.09, part; Rem. Supp. 1947 § 45.20.09, part.]

48.20.112 Standard provision No. 9—Time of payment of claims. There shall be a provision as follows:

TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof. [1951 c 229 § 12. Prior: (i) 1947 c 79 § .20.13; Rem. Supp. 1947 § 45.20.13. (ii) 1947 c 79 § .20.14; Rem. Supp. 1947 § 45.20.14.]

48.20.122 Standard provision No. 10—Payment of claims. (1) There shall be a provision as follows:

PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(2) The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed \$1000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person." [1951 c 229 § 13. Prior: 1947 c 79 § .20.15; Rem. Supp. 1947 § 45.20.15.]

Proceeds of disability policy are exempt from creditors: RCW 48.18.400.

48.20.132 Standard provision No. 11—Physical examination and autopsy. There shall be a provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law. [1951 c 229 § 14. Prior: 1947 c 79 § .20.12; Rem. Supp. 1947 § 45.20.12.]

48.20.142 Standard provision No. 12—Legal actions. There shall be a provision as follows:

LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished. [1951 c 229 § 15. Prior: 1947 c 79 § .20.18; Rem. Supp. 1947 § 45.20.18.]

48.20.152 Standard provision No. 13—Change of beneficiary. There shall be a provision as follows:

CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.) [1951 c 229 § 16. Prior: 1947 c 79 § .20.17; Rem. Supp. 1947 § 45.20.17.]

48.20.162 Optional standard provisions. Except as provided in RCW 48.18.130, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in RCW 48.20.172 to *48.20.272, inclusive, unless such provisions are in the words in which the same appear in the applicable section; except, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the insurer's option, by such appropriate individual or group caption or subcaption as the commissioner may approve. [1951 c 229 § 17. Prior: 1947 c 79 § .20.20; Rem. Supp. 1947 § 45.20.20.]

*Reviser's note: RCW 48.20.272 was repealed by 2004 c 112 § 6.

48.20.172 Optional standard provision No. 14—Change of occupation. There may be a provision as follows:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation any-

thing pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation. [1951 c 229 § 18.]

48.20.192 Optional standard provision No. 15—Other insurance in this insurer. There may be a provision as follows:

OTHER INSURANCE IN THIS INSURER: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$. (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies. [1951 c 229 § 20. Prior: 1947 c 79 § .20.24; Rem. Supp. 1947 § 45.20.24.]

48.20.202 Optional standard provision No. 16—Insurance with other insurers (Provision of service or expense incurred basis). (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the

amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW 48.20.212, there shall be added to the caption of the foregoing provision the phrase ". expense incurred benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1987 c 185 § 26; 1951 c 229 § 21. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

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

48.20.212 Optional standard provision No. 17—Insurance with other insurers. (1) There may be a provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in RCW 48.20.202, there shall be added to the caption of the foregoing provision the phrase ". other benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to

any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage." [1987 c 185 § 27; 1951 c 229 § 22. Prior: 1947 c 79 § .20.22; Rem. Supp. 1947 § 45.20.22.]

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

48.20.222 Optional standard provision No. 18—Relation of earnings to insurance. (1) There may be a provision as follows:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(2) The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (a) until at least age 50 or, (b) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute), or benefits provided by union welfare plans or by

employer or employee benefit organizations. [1987 c 185 § 28; 1951 c 229 § 23.]

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

48.20.232 Optional standard provision No. 19—Unpaid premium. There may be a provision as follows:

UNPAID PREMIUM: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom. [1951 c 229 § 24. Prior: 1947 c 79 § .20.23; Rem. Supp. 1947 § 45.20.23.]

48.20.242 Optional standard provision No. 20—Cancellation. There may be a provision as follows:

CANCELLATION: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation. [1951 c 229 § 25. Prior: 1947 c 79 § .20.21; Rem. Supp. 1947 § 45.20.21.]

48.20.252 Optional standard provision No. 21—Conformity with state statutes. There may be a provision as follows:

CONFORMITY WITH STATE STATUTES: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes. [1951 c 229 § 26.]

48.20.262 Optional standard provision No. 22—Illegal occupation. There may be a provision as follows:

ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation. [1951 c 229 § 27. Prior: 1947 c 79 § .20.26; Rem. Supp. 1947 § 45.20.26.]

48.20.282 Order of certain policy provisions. The provisions which are the subject of RCW 48.20.042 to *48.20.272, inclusive, or any corresponding provisions which are used in lieu thereof in accordance with such sections, shall be printed in the consecutive order of the provisions in such sections or, at the insurer's option, any such provision may appear as a unit in any part of the policy, with

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other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued. [1951 c 229 § 29.]

*Reviser's note: RCW 48.20.272 was repealed by 2004 c 112 § 6.

48.20.292 Third party ownership. The word "insured," as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein. [1951 c 229 § 30.]

Insurable interest defined, personal insurance, nonprofit organizations: RCW 48.18.030.

48.20.302 Requirements of other jurisdictions. (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or to the beneficiary than the provisions of this chapter and which is prescribed or required by the laws of the state under which the insurer is organized.

(2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country. [1951 c 229 § 31.]

Domestic insurer may transact insurance in other state as permitted by laws thereof: RCW 48.07.140.

48.20.312 Age limit. If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force subject to any right of cancellation until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy. [1951 c 229 § 32. Prior: 1947 c 79 § .20.25; Rem. Supp. 1947 § 45.20.25.]

48.20.322 Effective date of standard provision and certain other sections—Five year period. The provisions contained in RCW 48.20.002 to 48.20.322, inclusive, shall take effect on September 1, 1951. A policy, rider or endorsement, which could have been lawfully used or delivered or issued for delivery to any person in this state immediately before such effective date may be used or delivered or issued for delivery to any such person during five years after such effective date. [1951 c 229 § 33.]

48.20.340 "Family expense disability insurance" defined. (1) Family expense disability insurance is that cov-

ering members of any one family including one or both spouses and dependents provided under a master policy issued to the head of the family.

(2) Any authorized disability insurer may issue family expense disability insurance.

(3) A disability policy providing such family expense coverage, in addition to other provisions required to be contained in disability policies under this chapter, shall contain the following provisions:

(a) A provision that the policy and the application of the head of the family shall constitute the entire contract between the parties.

(b) A provision that to the family group originally insured shall, on notice to the insurer, be added from time to time all new members of the family as they become eligible for insurance in such family group, and on the payment of such additional premium as may be required therefor. [1961 c 194 § 5; 1947 c 79 § .20.34; Rem. Supp. 1947 § 45.20.34.]

48.20.350 "Franchise plan" defined. (1) Disability insurance on a franchise plan is that issued to

(a) five or more employees of a common employer, or to

(b) ten or more members of any bona fide trade or professional association or labor union, which association or union was formed and exists for purposes other than that of obtaining insurance, and under which such employees or members, with or without their dependents, are issued individual policies which may vary as to amounts and kinds of coverage as applied for, under an arrangement whereby the premiums on the policies are to be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association, or by some designated employee or officer of the association acting on behalf of the employer or association members.

(2) An insurer may charge different rates, provide different benefits, or employ different underwriting procedure for individuals insured under a franchise plan, if such rates, benefits, or procedures as used do not discriminate as between franchise plans, and do not discriminate unfairly as between individuals insured under franchise plans and individuals otherwise insured under similar policies. [1947 c 79 § .20.35; Rem. Supp. 1947 § 45.20.35.]

48.20.360 Extended disability benefit. A disability insurance contract which provides a reasonable amount of disability indemnity for both accidental injuries and sickness, other than a contract of group or blanket insurance, may provide a benefit in amount not exceeding two hundred dollars payable in event of death from any causes. Such benefit shall be deemed to constitute the payment of disability benefits beyond the period for which otherwise payable, and shall not be deemed to constitute life insurance. [1947 c 79 § .20.36; Rem. Supp. 1947 § 45.20.36.]

48.20.380 Incontestability after reinstatement. The reinstatement of any policy of noncancellable disability insurance hereafter delivered or issued for delivery in this state shall be contestable only on account of fraud or misrepresentation of facts material to the reinstatement and only for the same period following reinstatement as is provided in the

policy with respect to the contestability thereof after the original issuance of the policy. [1947 c 79 § .20.38; Rem. Supp. 1947 § 45.20.38.]

48.20.385 When injury caused by intoxication or use of narcotics. An insurer may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the insured's being intoxicated or under the influence of a narcotic. [2004 c 112 § 2.]

Finding—2004 c 112: "The legislature finds that an alcohol or drug-related injury that requires treatment in an emergency department can be a critical moment in the life of a person with a substance abuse problem. Studies have demonstrated that appropriate interventions by hospital staff at these times can reduce substance abuse and lower future health care costs. The perception among health care providers that they may be penalized by insurers for conducting these interventions prevents many of them from performing interventions which can make all the difference to a person at the crossroads of a substance abuse problem." [2004 c 112 § 1.]

Application—2004 c 112: "This act applies to all contracts issued or renewed on or after June 10, 2004." [2004 c 112 § 7.]

48.20.390 Podiatric medicine and surgery. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 1.]

Application—1963 c 87: "This act shall apply to all contracts issued on or after the effective date of this act." [1963 c 87 § 3.]

48.20.391 Diabetes coverage. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All disability insurance contracts providing health care services, delivered or issued for delivery in this state and issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For disability insurance contracts that include pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot

care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all disability insurance contracts providing health care services, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the insurer from restricting patients to seeing only health care providers who have signed participating provider agreements with the insurer or an insuring entity under contract with the insurer.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The insurer need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plan that provides benefits identical to the schedule of services covered by the basic health plan, as required by RCW 48.20.028. [1997 c 276 § 2.]

Effective date—1997 c 276: See note following RCW 41.05.185.

48.20.392 Prostate cancer screening. (1) Each disability insurance policy issued or renewed after December 31, 2006, that provides coverage for hospital or medical expenses shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [2006 c 367 § 2.]

48.20.393 Mammograms—Insurance coverage. Each disability insurance policy issued or renewed after January 1, 1990, that provides coverage for hospital or medical expenses shall provide coverage for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

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This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 728; 1989 c 338 § 1.]

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

48.20.395 Reconstructive breast surgery. (1) Any disability insurance contract providing hospital and medical expenses and health care services delivered or issued in this state after July 24, 1983, shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Any disability insurance contract providing hospital and medical expenses and health care services delivered or issued in this state after January 1, 1986, shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 5; 1983 c 113 § 1.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.20.397 Mastectomy, lumpectomy. No person engaged in the business of insurance under this chapter may refuse to issue any contract of insurance or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 1.]

Effective date—1985 c 54: "This act shall take effect January 1, 1986." [1985 c 54 § 9.]

48.20.410 Optometry. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 2.]

Construction—1965 c 149: "Sections 1 through 3 of this act shall not apply to contracts in force prior to the effective date of this 1965 act, nor to any renewal of such contracts where there has been no change in any provisions thereof." [1965 c 149 § 4.]

48.20.411 Registered nurses or advanced registered nurses. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license for registered nursing practice or advanced registered nursing practice issued pursuant to

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chapter 18.79 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1994 sp.s. c 9 § 729; 1973 1st ex.s. c 188 § 3.]

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

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.20.412 Chiropractic. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 1.]

48.20.414 Psychological services. Notwithstanding any provision of any disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: PROVIDED, That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 1.]

Application—1971 ex.s. c 197: "Sections 1 and 2 of this act shall not apply to any contract in force prior to the effective date of this 1971 act, nor to any renewal of such contract where there has been no change in any provision thereof." [1971 ex.s. c 197 § 3.]

48.20.416 Dentistry. Notwithstanding any provision of any disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health care service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service has [had] been performed by a holder of a license issued [pursuant] to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 ex.s. c 42 § 1.]

48.20.418 Denturist services. Notwithstanding any provision of any disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 21 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.20.420 Dependent child coverage—Continuation for incapacity. Any disability insurance contract providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract, shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1985 c 264 § 10; 1969 ex.s. c 128 § 3.]

48.20.430 Dependent child coverage—From moment of birth—Congenital anomalies—Notification of birth. (1) Any disability insurance contract providing hospital and medical expenses and health care services, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured, shall provide coverage for newborn infants of the insured from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1983 1st ex.s. c 32 § 18; 1974 ex.s. c 139 § 1.]

48.20.435 Option to cover dependents under age twenty-five. (Effective January 1, 2009.) Any disability insurance contract that provides coverage for a subscriber's dependent must offer the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 19.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.20.450 Standardization and simplification of terms and coverages—Disclosure requirements. The commissioner shall issue regulations to establish specific standards, including standards of full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of disability insurance which shall be in addition to and in accordance with applicable laws of this state, including RCW 48.20.450 through 48.20.480, which may cover but shall not be limited to:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage provisions;
- (4) Coverage of dependents;
- (5) Preexisting conditions;
- (6) Termination of insurance;
- (7) Probationary periods;
- (8) Limitations;
- (9) Exceptions;
- (10) Reductions;
- (11) Elimination periods;
- (12) Requirements for replacement;
- (13) Recurrent conditions; and
- (14) The definition of terms including but not limited to

the following: Hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable, and noncancellable. [1985 c 264 § 11; 1975 1st ex.s. c 266 § 16.]

Purpose—1975 1st ex.s. c 266: "The purpose of *sections 14 through 18 of this 1975 amendatory act is to provide reasonable standardization and simplification of terms and coverages of individual disability insurance policies to facilitate public understanding and comparison, to eliminate provisions contained in individual disability insurance policies which may be misleading or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of disability coverages." [1975 1st ex.s. c 266 § 15.]

***Reviser's note:** During the course of passage of 1975 1st ex.s. c 266 [Substitute House Bill No. 198], the section numbering was changed, but the internal references were not changed accordingly. Thus the reference "sections 14 through 18 of this 1975 amendatory act" appears to be erroneous. Reference to "sections 15 through 19," codified herein as this section and RCW 48.20.450 through 48.20.480, was apparently intended.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.460 Standardization and simplification—Minimum standards for benefits and coverages. (1) The commissioner shall issue regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies, other than conversion policies issued pursuant to a contractual conversion privilege under a group policy, of disability insurance:

- (a) Basic hospital expense coverage;
- (b) Basic medical-surgical expense coverage;
- (c) Hospital confinement indemnity coverage;
- (d) Major medical expense coverage;
- (e) Disability income protection coverage;
- (f) Accident only coverage;
- (g) Specified disease or specified accident coverage;
- (h) Medicare supplemental coverage; and
- (i) Limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in items (a) through (f) of subsection (1) of this section.

(3) No policy shall be delivered or issued for delivery in this state which does not meet the prescribed minimum standards for the categories of coverage listed in items (a) through (i) of subsection (1) of this section, unless the commissioner finds such policy will be in the public interest and such policy meets the requirements set forth in RCW 48.18.110.

(4) The commissioner shall prescribe the method of identification of policies based upon coverages provided. [1981 c 339 § 19; 1975 1st ex.s. c 266 § 17.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.470 Standardization and simplification—Outline of coverage—Format and contents. (1) No policy of individual disability insurance shall be delivered or issued for delivery in this state unless an outline of coverage described in subsection (2) of this section is furnished to the applicant in accord with such rules or regulations as the commissioner shall prescribe.

(2) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) A statement identifying the applicable category or categories of coverage provided by the policy as prescribed in RCW 48.20.450;

(b) A description of the principal benefits and coverage provided in the policy;

(c) A statement of the exceptions, reductions and limitations contained in the policy;

(d) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums; and

(e) A statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions. [1985 c 264 § 12; 1975 1st ex.s. c 266 § 18.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.480 Standardization and simplification—Simplified application form—Coverage of loss from preexisting health condition. Notwithstanding the provisions of RCW 48.20.052, if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after twelve months from any preexisting condition not specifically excluded from coverage by terms of the policy, and, except as so provided, the policy shall not include wording that would permit a defense based upon preexisting conditions. [1975 1st ex.s. c 266 § 19.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.20.490 Continuation of coverage by former spouse and dependents. Every policy of disability insurance issued, amended, or renewed after June 12, 1980, for an individual and his/her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termination of marriage or death of the principal insured, shall have the right to continue the policy coverage without a physical examination, statement of health, or other proof of insurability. [1980 c 10 § 1.]

48.20.500 Coverage for adopted children. (1) Any disability insurance contract providing hospital and medical expenses and health care services, delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the insured, shall cover adoptive children placed with the insured on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 2.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.20.510 Cancellation of rider. Upon application by an insured, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the insured during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the insured from that condition, such agreement not to be unreasonably withheld. The option of the insured to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 1.]

48.20.520 Phenylketonuria. (1) The legislature finds that:

- (a) Phenylketonuria is a rare inherited genetic disorder.
- (b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.
- (c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.
- (d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.
- (e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any disability insurance contract delivered or issued for delivery or renewed in this state on or after September 1, 1988, that insures for hospital or medical expenses shall provide cover-

age for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 1.]

48.20.525 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Disability insurance companies who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 2.]

Findings—1993 c 253: "The legislature finds that many health care insurance entities are initially approving claims as eligible under an identified program, over the telephone, but denying those same claims when they are submitted for payment. The legislature finds this to be an untenable situation for the providers." [1993 c 253 § 1.]

Effective date—1993 c 253: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 253 § 6.]

48.20.530 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department of health may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs to residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 310; 1991 c 87 § 7.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—1991 c 87: See note following RCW 18.64.350.

48.20.550 Fixed payment insurance—Standard disclosure form. The commissioner shall adopt rules setting forth the content of a standard disclosure form to be provided to all applicants for individual, illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance. The standard disclosure shall provide information regarding the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions under the policy, as well as additional information to enhance consumer understanding. The disclosure

shall specifically disclose that the coverage is not comprehensive in nature and will not cover the cost of most hospital and other medical services. Such disclosure form must be filed for approval with the commissioner prior to use. The standard disclosure forms must be provided at the time of solicitation and completion of the application form. All advertising and marketing materials other than the standard disclosure form must be filed with the commissioner at least thirty days prior to use. [2007 c 296 § 2.]

48.20.555 Fixed payment insurance—Benefit restrictions. Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance policies are not considered to provide coverage for hospital or medical expenses under this chapter, if the benefits provided are a fixed dollar amount that is paid regardless of the amount charged. The benefits may not be related to, or be a percentage of, the amount charged by the provider of service and must be offered as an independent and noncoordinated benefit with any other health plan as defined in RCW 48.43.005(19). [2007 c 296 § 3.]

48.20.580 Mental health services—Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court-ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) Each disability insurance contract delivered, issued for delivery, or renewed on or after January 1, 2008, providing coverage for medical and surgical services shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the disability insurance contract. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the disability insurance contract imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same

extent, and under the same terms and conditions, as other prescription drugs covered by the disability insurance contract.

(3) Each disability insurance contract delivered, issued for delivery, or renewed on or after July 1, 2010, providing coverage for medical and surgical services shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the disability insurance contract. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the disability insurance contract imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the disability insurance contract imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the disability insurance contract.

(4) In meeting the requirements of this section, disability insurance contracts may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(5) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(6) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 1.]

Effective date—2007 c 8: "This act takes effect January 1, 2008." [2007 c 8 § 8.]

Chapter 48.21 RCW

GROUP AND BLANKET DISABILITY INSURANCE

Sections

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Policy dividends are payable to real party in interest: RCW 48.18.340.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.21.010 "Group disability insurance" defined.

Group disability insurance is that form of disability insurance, including stop loss insurance as defined in RCW 48.11.030, provided by a master policy issued to an employer, to a trustee appointed by an employer or employers, or to an association of employers formed for purposes other than obtaining such insurance, covering, with or without their dependents, the employees, or specified categories of the employees, of such employers or their subsidiaries or affiliates, or issued to a labor union, or to an association of employees formed for purposes other than obtaining such insurance, covering, with or without their dependents, the members, or specified categories of the members, of the labor union or association, or issued pursuant to RCW 48.21.030. Group disability insurance shall also include such other

groups as qualify for group life insurance under the provisions of this code. [1992 c 226 § 2; 1949 c 190 § 27; 1947 c 79 § .21.01; Rem. Supp. 1949 § 45.21.01.]

Application—1992 c 226: See note following RCW 48.11.030.

48.21.015 "Group stop loss insurance" defined for the purpose of exemption—Scope of application. Group stop loss insurance is exempt from all sections of this chapter and chapter 48.32A RCW except for RCW 48.21.010 and this section. For the purpose of this exemption, group stop loss is further defined as follows:

(1) The policy must be issued to and insure the employer, the trustee or other sponsor of the plan, or the plan itself, but not the employees, members, or participants;

(2) Payment by the insurer must be made to the employer, the trustee, or other sponsor of the plan or the plan itself, but not to the employees, members, participants, or health care providers;

(3) The policy must contain a provision that establishes an aggregate attaching point or retention that is at the minimum one hundred twenty percent of the expected claims; and

(4) The policy may provide for an individual attaching point or retention that is not less than five percent of the expected claims or one hundred thousand dollars, whichever is less. [2000 c 80 § 8; 1992 c 226 § 3.]

Application—1992 c 226: See note following RCW 48.11.030.

48.21.020 "Employees," "employer" defined. The term "employees" as used in this chapter shall be deemed to include as employees of a single employer, the compensated officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer" as used in this chapter shall be deemed to include any municipal corporation or governmental unit, agency or department thereof as well as private individuals, firms, corporations and other persons. [1947 c 79 § .21.02; Rem. Supp. 1947 § 45.21.02.]

48.21.030 Health care groups. A policy of group disability insurance may be issued to a corporation, as policyholder, existing primarily for the purpose of assisting individuals who are its subscribers in securing medical, hospital, dental, and other health care services for themselves and their dependents, covering all and not less than five hundred such subscribers and dependents, with respect only to medical, hospital, dental, and other health care services. [1947 c 79 § .21.03; Rem. Supp. 1947 § 45.21.03.]

48.21.040 "Blanket disability insurance" defined. (1) Any policy or contract of disability insurance which conforms with the description and complies with the requirements contained in one of the following six paragraphs shall be deemed a blanket disability insurance policy:

(a) A policy issued to any common carrier of passengers, which carrier shall be deemed the policyholder, covering a group defined as all persons who may become such passengers, and whereby such passengers shall be insured against

loss or damage resulting from death or bodily injury either while, or as a result of, being such passengers.

(b) A policy issued in the name of any volunteer fire department, first aid or ambulance squad or volunteer police organization, which shall be deemed the policyholder, and covering all the members of any such organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations.

(c) A policy issued in the name of any established organization whether incorporated or not, having community recognition and operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, and covering all volunteer workers who serve without pecuniary compensation and the members of the organization, against loss from accidents occurring while engaged in the actual performance of duties on behalf of such organization or in the activities thereof.

(d) A policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment, insuring such employees against death or bodily injury resulting while, or from, being exposed to such exceptional hazards.

(e) A policy covering students or employees issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.

(f) A policy or contract issued to any other substantially similar group, which, in the commissioner's discretion, may be subject to the insurance of a blanket disability policy or contract.

(2) Nothing contained in this section shall be deemed to affect the liability of policyholders for the death of, or injury to, any such members of such group.

(3) Individual applications shall not be required from individuals covered under a blanket disability insurance contract. [1959 c 225 § 7; 1947 c 79 § .21.04; Rem. Supp. 1947 § 45.21.04.]

48.21.045 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers—Definitions. (1)(a) An insurer offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. An insurer offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144,

48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall

apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005. [2008 c 143 § 6; 2007 c 260 § 7; 2004 c 244 § 1; 1995 c 265 § 14; 1990 c 187 § 2.]

Application—2004 c 244: "Sections 1 through 15 of this act apply to all small group health benefit plans issued or renewed on or after June 10, 2004." [2004 c 244 § 17.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—1990 c 187: "The legislature finds that the rising cost of comprehensive group health coverage is exceeding the affordability of many small businesses and their employees. The legislature further finds that certain public policies have an adverse impact on the cost of such coverage. It is therefore the intent of the legislature to reduce costs by authorizing the development of basic hospital and medical coverage for small groups." [1990 c 187 § 1.]

Severability—1990 c 187: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 187 § 6.]

48.21.047 Requirements for plans offered to small employers—Definitions. (1) An insurer may not offer any health benefit plan to any small employer without complying with RCW 48.21.045(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.21.045(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2005 c 223 § 11; 1995 c 265 § 22.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.21.050 Standard provisions required. Every policy of group or blanket disability insurance shall contain in substance the provisions as set forth in RCW 48.21.060 to 48.21.090, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be permitted by the standard provisions required for individual disability

insurance policies. [1947 c 79 § .21.05; Rem. Supp. 1947 § 45.21.05.]

48.21.060 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued; that all statements made by the policyholder or by the individuals insured shall in the absence of fraud be deemed representations and not warranties, and that no statement made by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to his beneficiary, if any. [1947 c 79 § .21.06; Rem. Supp. 1947 § 45.21.06.]

48.21.070 Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder, or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof with such period of grace as may be specified therein. [1947 c 79 § .21.07; Rem. Supp. 1947 § 45.21.07.]

48.21.075 Payment of premiums by employee in event of suspension of compensation due to labor dispute. Any employee whose compensation includes group disability or blanket disability insurance providing health care services, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the policyholder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the policy provides. During that period of time the policy may not be altered or changed. Nothing in this section shall be deemed to impair the right of the insurer to make normal decreases or increases of the premium rate upon expiration and renewal of the policy, in accordance with the provisions of the policy. Thereafter, if such insurance coverage is no longer available, then the employee shall be given the opportunity to purchase an individual policy at a rate consistent with rates filed by the insurer with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the policyholder in writing, by mail addressed to the address last on record with the policyholder, that the employee may pay the premiums to the policyholder as they become due as provided in this section.

Payment of the premiums must be made when due or the insurance coverage may be terminated by the insurer.

The provisions of any insurance policy contrary to provisions of this section are void and unenforceable after May 29, 1975. [1975 1st ex.s. c 117 § 1.]

Severability—1975 1st ex.s. c 117: "If any provision of this 1975 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 117 § 4.]

(2008 Ed.)

48.21.080 Certificates of coverage. In group disability insurance policies there shall be a provision that the insurer shall issue to the employer, the policyholder, or other person or association in whose name such policy is issued, for delivery to each insured employee or member, a certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits thereunder are payable described by name, relationship, or reference to the insurance records of the policyholder or insurer. If family members are insured, only one certificate need be issued for each family. This section shall not apply to blanket disability insurance policies. [1961 c 194 § 6; 1947 c 79 § .21.08; Rem. Supp. 1947 § 45.21.08.]

48.21.090 Age limitations. There shall be a provision specifying the ages, if any there be, to which the insurance provided therein shall be limited; and the ages, if any there be, for which additional restrictions are placed on benefits, and the additional restrictions placed on the benefits at such ages. [1947 c 79 § .21.09; Rem. Supp. 1947 § 45.21.09.]

48.21.100 Examination and autopsy. There may be a provision that the insurer shall have the right and opportunity to examine the person of the insured employee, member or dependent when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy in case of death where it is not prohibited by law. [1947 c 79 § .21.10; Rem. Supp. 1947 § 45.21.10.]

48.21.110 Payment of benefits. The benefits payable under any policy or contract of group or blanket disability insurance shall be payable to the employee or other insured member of the group or to the beneficiary designated by him, other than the policyholder, employer or the association or any officer thereof as such, subject to provisions of the policy in the event there is no designated beneficiary as to all or any part of any sum payable at the death of the individual insured.

The policy may provide that any hospital, medical, or surgical benefits thereunder may be made payable jointly to the insured employee or member and the person furnishing such hospital, medical, or surgical services. [1955 c 303 § 17; 1947 c 79 § .21.11; Rem. Supp. 1947 § 45.21.11.]

48.21.120 Readjustment of premiums—Dividends. Any contract of group disability insurance may provide for the readjustment of the rate of premium based on the experience thereunder at the end of the first year or of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year. Any refund under any plan for readjustment of the rate of premium based on the experience under group policies heretofore or hereafter issued, and any dividend paid under such policies may be used to reduce the employer's share of the cost of the coverage, except that if the aggregate refunds or dividends under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the employer toward the cost of the coverages, such excess shall be applied by the policyholder for

the sole benefit of insured employees. [1947 c 79 § .21.12; Rem. Supp. 1947 § 45.21.12.]

48.21.125 When injury caused by intoxication or use of narcotics. An insurer may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the insured's being intoxicated or under the influence of a narcotic. [2004 c 112 § 3.]

Finding—Application—2004 c 112: See notes following RCW 48.20.385.

48.21.130 Podiatric medicine and surgery. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any medical or surgical service performed by a holder of a license issued pursuant to chapter 18.22 RCW provided that (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW. [1963 c 87 § 2.]

Application—1963 c 87: Nonapplicability to prior contracts and certain renewals, see note following RCW 48.20.390.

48.21.140 Optometry. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any eye care service rendered by a holder of a license issued pursuant to chapter 18.53 RCW, provided, that (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1965 c 149 § 3.]

Construction—1965 c 149: Nonapplicability to prior contracts and certain renewals, see note following RCW 48.20.410.

48.21.141 Registered nurses or advanced registered nurses. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license for registered nursing practice or advanced registered nursing practice issued pursuant to chapter 18.79 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1994 sp.s. c 9 § 730; 1973 1st ex.s. c 188 § 4.]

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

Severability—1973 1st ex.s. c 188: See note following RCW 48.18.298.

48.21.142 Chiropractic. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, ben-

efits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.25 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1971 ex.s. c 13 § 2.]

48.21.143 Diabetes coverage—Definitions. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health care services, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For group disability insurance contracts and blanket disability insurance contracts that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all group disability insurance contracts and blanket disability insurance contracts providing health care services, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the insurer from restricting patients to seeing only health care providers who have signed participating provider agreements with the insurer or an insuring entity under contract with the insurer.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The insurer need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plan that provides benefits identical to the schedule of services covered by the basic health plan. [2004 c 244 § 10; 1997 c 276 § 3.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—1997 c 276: See note following RCW 41.05.185.

48.21.144 Psychological services. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract, benefits shall not be denied thereunder for any psychological service rendered by a holder of a license issued pursuant to chapter 18.83 RCW: PROVIDED, That (1) the service rendered was within the lawful scope of such person's license, and (2) such contract would have provided the benefits for such service if rendered by a holder of a license issued pursuant to chapter 18.71 RCW. [1971 ex.s. c 197 § 2.]

Application—1971 ex.s. c 197: See note following RCW 48.20.414.

48.21.146 Dentistry. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract as provided for in this chapter, benefits shall not be denied thereunder for any health service performed by a holder of a license issued pursuant to chapter 18.32 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent they do not impair the obligation of any existing contract. [1974 ex.s. c 42 § 2.]

48.21.148 Denturist services. Notwithstanding any provision of any group disability insurance contract or blanket disability insurance contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 22 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

(2008 Ed.)

48.21.150 Dependent child coverage—Continuation for incapacity. Any group disability insurance contract or blanket disability insurance contract, providing health care services, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the insurer, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 32; 1969 ex.s. c 128 § 4.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.21.155 Dependent child coverage—From moment of birth—Congenital anomalies—Notification of birth.

(1) Any group disability insurance contract except blanket disability insurance contract, providing hospital and medical expenses and health care services, renewed, delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for the dependent children of persons in the insured group, shall provide coverage for newborn infant children of persons in the insured group from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1983 1st ex.s. c 32 § 20; 1974 ex.s. c 139 § 2.]

48.21.157 Option to cover dependents under age twenty-five. (Effective January 1, 2009.) Any group disability insurance contract or blanket disability insurance contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 20.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.21.160 Chemical dependency benefits—Legislative declaration. The legislature recognizes that chemical dependency is a disease and, as such, warrants the same

attention from the health care industry as other similarly serious diseases warrant; the legislature further recognizes that health insurance contracts and contracts for health care services include inconsistent provisions providing benefits for the treatment of chemical dependency. In order to assist the many citizens of this state who suffer from the disease of chemical dependency, and who are presently effectively precluded from obtaining adequate coverage for medical assistance under the terms of their health insurance contract or health care service contract, the legislature hereby declares that provisions providing benefits for the treatment of chemical dependency shall be included in new contracts and that this section, RCW 48.21.180, 48.21.190, 48.44.240, 48.46.350, and RCW 48.21.195, 48.44.245, and 48.46.355 are necessary for the protection of the public health and safety. Nothing in this section, RCW 48.21.180, 48.21.190, 48.44.240, 48.46.350, and RCW 48.21.195, 48.44.245, and 48.46.355 shall be construed to relieve any person of any civil or criminal liability for any act or omission that is the result of a chemical dependency or to grant any person with a chemical dependency any special right, privilege, or status under the law against discrimination, chapter 49.60 RCW. [1987 c 458 § 13; 1974 ex.s. c 119 § 1.]

Effective date—1987 c 458 §§ 13-20: "Sections 13 through 20 of this act shall take effect on January 1, 1988." [1987 c 458 § 24.]

Severability—1987 c 458: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 458 § 25.]

48.21.180 Chemical dependency benefits—Contracts issued or renewed after January 1, 1988. Each group disability insurance contract which is delivered or issued for delivery or renewed, on or after January 1, 1988, and which insures for hospital or medical care must contain provisions providing benefits for the treatment of chemical dependency rendered to the insured by a provider which is an "approved treatment program" under RCW 70.96A.020(3). [2003 c 248 § 9; 1990 1st ex.s. c 3 § 7; 1987 c 458 § 14; 1974 ex.s. c 119 § 3.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.21.190 Chemical dependency benefits—RCW 48.21.160 through 48.21.190, 48.44.240 inapplicable, when. RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended shall not apply to the renewal of a contract in force prior to the pertinent date provided for such contract under RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended where there exists a right of renewal on the part of the insured or subscriber without any change in any provision of the contract: PROVIDED FURTHER, That RCW 48.21.160 through 48.21.190 and 48.44.240 as now or hereafter amended shall not apply to contracts which provide only accident coverage, nor to any contract written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged (commonly referred to as Medicare, Parts A and B), and amendments thereto. [1975 1st ex.s. c 266 § 10; 1974 ex.s. c 119 § 5.]

[Title 48 RCW—page 160]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.21.195 "Chemical dependency" defined. For the purposes of RCW 48.21.160 and 48.21.180 "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 15.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.21.197 Chemical dependency benefits—Rules. By September 1, 1987, the insurance commissioner shall adopt rules governing benefits for treatment of chemical dependency under medical plans issued under chapters 48.21, 48.44, and 48.46 RCW. These rules shall recognize that many persons are dependent on both alcohol and drugs; they shall prohibit the stacking of benefits and shall require that benefits for chemical dependency be equivalent to benefits previously required for alcoholism. [1987 c 458 § 21.]

Severability—1987 c 458: See note following RCW 48.21.160.

48.21.200 Individual or group disability, health care service contract, health maintenance agreement—Reduction of benefits on basis of other existing coverages. (1) No individual or group disability insurance policy, health care service contract, or health maintenance agreement providing hospital, medical or surgical expense benefits and which contains a provision for the reduction of benefits otherwise payable or available thereunder on the basis of other existing coverages, shall provide that such reduction will operate to reduce total benefits payable below an amount equal to one hundred percent of total allowable expenses.

(2) The commissioner shall by rule establish guidelines for the application of this section, including:

(a) The procedures by which persons covered under such policies, contracts, and agreements are to be made aware of the existence of such a provision;

(b) The benefits which may be subject to such a provision;

(c) The effect of such a provision on the benefits provided;

(d) Establishment of the order of benefit determination;

(e) Exceptions necessary to preserve policy, contract, or agreement requirements for use of particular health care facilities or providers; and

(f) Reasonable claim administration procedures to expedite claim payments and prevent duplication of payments or benefits under such a provision. [2007 c 80 § 3; 1993 c 492 § 282. Prior: 1983 c 202 § 16; 1983 c 106 § 24; 1975 1st ex.s. c 266 § 20.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

(2008 Ed.)

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.21.220 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded. (1) Every insurer entering into or renewing group or blanket disability insurance policies governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapter 70.126 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed by the department of social and health services;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1988 c 245 § 31; 1984 c 22 § 1; 1983 c 249 § 1.]

(2008 Ed.)

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: "This act shall take effect July 1, 1984." [1984 c 22 § 8.]

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

48.21.225 Mammograms—Insurance coverage. Each group disability insurance policy issued or renewed after January 1, 1990, that provides coverage for hospital or medical expenses shall provide coverage for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 731; 1989 c 338 § 2.]

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

48.21.227 Prostate cancer screening. (1) Each group disability insurance policy issued or renewed after December 31, 2006, that provides coverage for hospital or medical expenses shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of an insurer to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [2006 c 367 § 3.]

48.21.230 Reconstructive breast surgery. (1) Each group disability insurance contract issued or renewed after July 24, 1983, which insures for hospital or medical care shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Each group disability insurance contract issued or renewed after January 1, 1986, which insures for hospital or medical care shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 6; 1983 c 113 § 2.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.21.235 Mastectomy, lumpectomy. No person engaged in the business of insurance under this chapter may refuse to issue any contract of insurance or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 2.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.21.241 Mental health services—Group health plans—Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all group health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a

lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all group health benefit plans delivered, issued for delivery, or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 2; 2006 c 74 § 1; 2005 c 6 § 3.]

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2006 c 74: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 15, 2006]." [2006 c 74 § 4.]

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

48.21.242 Mental health treatment—Waiver of preauthorization for persons involuntarily committed. An insurer providing group disability insurance coverage for health care in this state shall waive a preauthorization requirement from the insurer before an insured or the insured's covered dependents receive mental health care and treatment rendered by a state hospital if the insured or any of the insured's covered dependents are involuntarily commit-

ted to a state hospital as defined in RCW 72.23.010. [1993 c 272 § 3.]

Savings—Severability—1993 c 272: See notes following RCW 43.20B.347.

48.21.244 Benefits for prenatal diagnosis of congenital disorders—Contracts entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group disability contract entered into or renewed that covers hospital, medical, or surgical expenses on a group basis, and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the disability contractor in accord with standards set in rule by the board of health. Every group disability contractor shall communicate the availability of such coverage to all group disability contract holders and to all groups with whom they are negotiating. [1988 c 276 § 6.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.21.250 Continuation option to be offered. Every insurer that issues policies providing group coverage for hospital or medical expense shall offer the policyholder an option to include a policy provision granting a person who becomes ineligible for coverage under the group policy, the right to continue the group benefits for a period of time and at a rate agreed upon. The policy provision shall provide that when such coverage terminates, the covered person may convert to a policy as provided in RCW 48.21.260. [1984 c 190 § 2.]

Legislative intent—1984 c 190: "The legislature recognizes that when people covered by a group health insurance policy lose their group insurance benefits because they are no longer eligible, they need time to obtain a suitable form of replacement coverage or time to complete a reasonable course of medical treatment for a health condition that existed when the group benefits ended.

Spouses and dependents can lose their group insurance and may not have any other health insurance when one spouse covered under a group policy dies, obtains a divorce, or becomes unemployed. Often the cost of an individual policy prevents these persons from obtaining any other health insurance.

The intent of this act is to require insurers, health care service contractors, and health maintenance organizations to:

(1) Offer to the contract holder the option to continue health and medical benefits for employees, members, spouses, or dependents whose eligibility for coverage under a group policy, contract, or agreement is terminated; and

(2) Provide a conversion policy, contract, or agreement to employees, members, spouses, or dependents whose eligibility for coverage under a group policy, contract, or agreement is terminated." [1984 c 190 § 1.]

Application—1984 c 190 §§ 2, 5, and 8: "Sections 2, 5, and 8 of this act shall apply to any policy, contract, or agreement issued, renewed, or amended on or after January 1, 1985." [1984 c 190 § 12.]

Severability—1984 c 190: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 190 § 13.]

48.21.260 Conversion policy to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group disability insurance policy issued, renewed, or amended on or after January 1, 1985, that pro-

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vides benefits for hospital or medical expenses shall contain a provision granting a person covered by the group policy the right to obtain a conversion policy from the insurer upon termination of the person's eligibility for coverage under the group policy.

(2) An insurer need not offer a conversion policy to:

(a) A person whose coverage under the group policy ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion policy, a person must submit a written application and the first premium payment for the conversion policy not later than thirty-one days after the date the person's group coverage terminates. The conversion policy shall become effective, without lapse of coverage, immediately following termination of coverage under the group policy.

(4) If an insurer or group policyholder does not renew, cancels, or otherwise terminates the group policy, the insurer shall offer a conversion policy to any person who was covered under the terminated policy unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group policy.

(5) The insurer shall determine the premium for the conversion policy in accordance with the insurer's table of premium rates applicable to the age and class of risk of each person to be covered under the policy and the type and amount of benefits provided. [1984 c 190 § 3.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.21.270 Conversion policy—Restrictions and requirements. (1) An insurer shall not require proof of insurability as a condition for issuance of the conversion policy.

(2) A conversion policy may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group policy.

(3) An insurer must offer at least three policy benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible and a lifetime benefit maximum of two hundred fifty thousand dollars per person;

(b) A comprehensive medical plan with a five hundred dollar deductible and a lifetime benefit maximum of five hundred thousand dollars per person; and

(c) A basic medical plan with a one thousand dollar deductible and a lifetime maximum of seventy-five thousand dollars per person.

(4) The insurance commissioner may revise the deductibles and lifetime benefit amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion policies.

(6) The commissioner shall adopt rules to establish specific standards for conversion policy provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions; and
- (d) Definitions of terms. [1984 c 190 § 4.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.21.280 Coverage for adopted children. (1) Any group disability insurance contract, except a blanket disability insurance contract, providing hospital and medical expenses and health care services, delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the insured, shall cover adoptive children placed with the insured on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the insurer. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 3.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.21.290 Cancellation of rider. Upon application by an insured, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the insured during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the insured from that condition, such agreement not to be unreasonably withheld. The option of the insured to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 2.]

48.21.300 Phenylketonuria. (1) The legislature finds that:

- (a) Phenylketonuria is a rare inherited genetic disorder.
- (b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.
- (c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any group disability insurance contract delivered or issued for delivery or renewed in this state on or after September 1, 1988, that insures for hospital or medical expenses shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 2.]

48.21.310 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group policy for comprehensive health insurance which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall prohibit an insurer from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the insurer. Benefits shall be payable for services for the maintenance of an insured in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive health insurance, including the benefits required by this section, together with the insurer, retain authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing insurance and the insurer. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available or may limit the number of services delivered as agreed by the employer purchasing insurance and the insurer. [1989 c 345 § 2.]

48.21.320 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a group disability policy entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Insurers offering medical coverage only may limit benefits in such coverages to medical services related to treat-

ment of temporomandibular joint disorders. Insurers offering dental coverage only may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No insurer offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature, and no insurer offering dental coverage only may define all temporomandibular joint disorders as purely medical in nature.

(b) Insurers offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) An insurer need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 2.]

Legislative finding—1989 c 331: "The legislature finds that:

(1) Temporomandibular joint disorders are conditions for which treatment often is not covered in medical and dental group insurance contracts;

(2) Individuals with temporomandibular joint disorders experience substantial pain and financial hardship;

(3) Public awareness is needed concerning temporomandibular joint disorders and would be promoted by a mandated offering of temporomandibular joint disorders coverage to group purchasers; and

(4) A mandated offering of temporomandibular joint disorders coverage shall not prescribe minimum initial benefits so that the insurers and the purchasers are allowed broad flexibility in benefit design and application." [1989 c 331 § 1.]

Effective date—1989 c 331: "This act shall take effect January 1, 1990, but the insurance commissioner may immediately take such steps as are necessary to ensure that this act is fully implemented on its effective date." [1989 c 331 § 6.]

48.21.325 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Group disability insurance companies who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 3.]

Findings—Effective date—1993 c 253: See notes following RCW 48.20.525.

48.21.330 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers,

in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, an insurer providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The insurers shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the insurer the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 311; 1991 c 87 § 8.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—1991 c 87: See note following RCW 18.64.350.

48.21.370 Fixed payment insurance—Standard disclosure form. The commissioner shall adopt rules setting forth the content of a standard disclosure form to be delivered to all applicants for group illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance. The standard disclosure shall provide information regarding the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions under the policy, as well as additional information to enhance consumer understanding. The disclosure shall specifically disclose that the coverage is not comprehensive in nature and will not cover the cost of most hospital and other medical services. Such disclosure form must be filed for approval with the commissioner prior to use. The standard disclosure form must be provided to the master policyholders at the time of solicitation and completion of the application and to all enrollees at the time of enrollment. All advertising and marketing materials other than the standard disclosure form must be filed with the commissioner at least thirty days prior to use. [2007 c 296 § 4.]

48.21.375 Fixed payment insurance—Benefit restrictions. Illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance policies are not considered to provide coverage for hospital or medical expenses or care under this chapter, if the benefits provided are a fixed dollar amount that is paid regardless of the amount charged. The benefits may not be related to, or be a percentage of, the amount charged by the provider of service and must be offered as an independent and noncoordinated benefit with any other health plan as defined in RCW 48.43.005(19). [2007 c 296 § 5.]

Chapter 48.21A RCW

DISABILITY INSURANCE—EXTENDED HEALTH

Sections

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 48.21A.020 Definitions.
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 48.21A.080 Remedies.
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Refusal to renew or cancellation of disability insurance: RCW 48.18.298, 48.18.299.

48.21A.010 Declaration of purpose. It is the purpose of this chapter to provide a means of more adequately meeting the needs of persons who are sixty-five years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended. [1965 ex.s. c 70 § 27.]

48.21A.020 Definitions. Wherever used in this chapter, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association of insurers formed for the purpose of enabling cooperative action to provide disability insurance in accordance with this chapter in this or any other state having legislation enabling the issuance of insurance of the type provided in this chapter.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this chapter. [1965 ex.s. c 70 § 28.]

48.21A.030 Insurers may join—Policyholder—Reduced benefit provision—Master group policy—Offering—Cancellation. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is sixty-five years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such

policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than one hundred percent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons sixty-five years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurances described in this section shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Washington to all persons sixty-five and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled. [1965 ex.s. c 70 § 29.]

48.21A.040 Agents, brokers, and solicitors. (*Effective until July 1, 2009.*) Notwithstanding the provisions of *RCW 48.17.200, any person licensed to transact disability insurance as an agent, broker or solicitor may transact extended health insurance and may be paid a commission thereon. [1965 ex.s. c 70 § 30.]

*Reviser's note: RCW 48.17.200 was repealed by 2007 c 117 § 39, effective July 1, 2009.

48.21A.040 Insurance producers. (*Effective July 1, 2009.*) Any person licensed to transact disability insurance as an insurance producer may transact extended health insurance and may be paid a commission thereon. [2008 c 217 § 25; 1965 ex.s. c 70 § 30.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.21A.050 Powers and duties of associations. Any association formed for the purposes of this chapter may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of RCW 48.03.010 through 48.03.070, inclusive, either separately or concurrently with examination of any of its member insurers. [1983 c 3 § 151; 1965 ex.s. c 70 § 31.]

48.21A.060 Commissioner's powers—Forms—Rates—Standard provisions—Withdrawal of approval—Federal, state benefits—Annual reports. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto

shall be filed with the commissioner. No such policy, contract, or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or thirty days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms of such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumption excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this chapter, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than ninety days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Washington, the extended health insurance benefits provided by policies issued under this chapter shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this chapter and the calendar year experience applicable to such insurance offered under this chapter, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report. [1965 ex.s. c 70 § 32.]

48.21A.070 Documents to be filed—Deceptive name or advertising. The articles of association of any association formed in accordance with this chapter, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of

insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this chapter shall not be such as to mislead or deceive the public. [1965 ex.s. c 70 § 33.]

48.21A.080 Remedies. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance. [1965 ex.s. c 70 § 34.]

48.21A.090 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded. (1) Every insurer entering into or renewing extended health insurance governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapters 70.126 and 70.127 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed under chapter 70.127 RCW;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department of health and human services. [1989 1st ex.s. c 9 § 220; 1988 c 245 § 32; 1984 c 22 § 2; 1983 c 249 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

Chapter 48.22 RCW CASUALTY INSURANCE

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Injured public assistance recipient, department has lien, payment to recipient does not discharge lien: RCW 74.09.180, 43.20B.040, and 43.20B.050.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

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

(1) "Automobile" means a passenger car as defined in RCW 46.04.382 registered or principally garaged in this state other than:

(a) A farm-type tractor or other self-propelled equipment designed for use principally off public roads;

(b) A vehicle operated on rails or crawler-treads;

(c) A vehicle located for use as a residence;

(d) A motor home as defined in RCW 46.04.305; or

(e) A moped as defined in RCW 46.04.304.

(2) "Bodily injury" means bodily injury, sickness, or disease, including death at any time resulting from the injury, sickness, or disease.

(3) "Income continuation benefits" means payments for the insured's loss of income from work, because of bodily injury sustained by the insured in an automobile accident, less income earned during the benefit payment period. The combined weekly payment an insured may receive under personal injury protection coverage, worker's compensation, disability insurance, or other income continuation benefits may not exceed eighty-five percent of the insured's weekly income from work. The benefit payment period begins fourteen days after the date of the automobile accident and ends at the earliest of the following:

(a) The date on which the insured is reasonably able to perform the duties of his or her usual occupation;

(b) Fifty-four weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(4) "Insured automobile" means an automobile described on the declarations page of the policy.

(5) "Insured" means:

(a) The named insured or a person who is a resident of the named insured's household and is either related to the named insured by blood, marriage, or adoption, or is the named insured's ward, foster child, or stepchild; or

(b) A person who sustains bodily injury caused by accident while: (i) Occupying or using the insured automobile with the permission of the named insured; or (ii) a pedestrian accidentally struck by the insured automobile.

(6) "Loss of services benefits" means reimbursement for payment to others, not members of the insured's household, for expenses reasonably incurred for services in lieu of those the insured would usually have performed for his or her household without compensation, provided the services are actually rendered. The maximum benefit is forty dollars per day. Reimbursement for loss of services ends the earliest of the following:

(a) The date on which the insured person is reasonably able to perform those services;

(b) Fifty-two weeks from the date of the automobile accident; or

(c) The date of the insured's death.

(7) "Medical and hospital benefits" means payments for all reasonable and necessary expenses incurred by or on behalf of the insured for injuries sustained as a result of an automobile accident for health care services provided by persons licensed under Title 18 RCW, including pharmaceuticals, prosthetic devices and eye glasses, and necessary ambulance, hospital, and professional nursing service. Medical and hospital benefits are payable for expenses incurred within three years from the date of the automobile accident.

(8) "Automobile liability insurance policy" means a policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage suffered by

any person and arising out of the ownership, maintenance, or use of an insured automobile. An automobile liability policy does not include:

(a) Vendors single interest or collateral protection coverage;

(b) General liability insurance; or

(c) Excess liability insurance, commonly known as an umbrella policy, where coverage applies only as excess to an underlying automobile policy.

(9) "Named insured" means the individual named in the declarations of the policy and includes his or her spouse if a resident of the same household.

(10) "Occupying" means in or upon or entering into or alighting from.

(11) "Pedestrian" means a natural person not occupying a motor vehicle as defined in RCW 46.04.320.

(12) "Personal injury protection" means the benefits described in this section and RCW 48.22.085 through 48.22.100. Payments made under personal injury protection coverage are limited to the actual amount of loss or expense incurred. [2003 c 115 § 1; 1993 c 242 § 1.]

Severability—1993 c 242: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 242 § 7.]

Effective date—1993 c 242: "Sections 1 through 5 of this act shall take effect July 1, 1994." [1993 c 242 § 8.]

48.22.020 Assigned risk plans. The commissioner shall after consultation with the insurers licensed to write motor vehicle liability insurance in this state, approve a reasonable plan or plans for the equitable apportionment among such insurers of applicants for such insurance who are in good faith entitled to but are unable to procure insurance through ordinary methods and, when such plan has been approved, all such insurers shall subscribe thereto and shall participate therein. Any applicant for such insurance, any person insured under such plan and any insurer affected may appeal to the commissioner from any ruling or decision of the manager or committee designated to operate such plan. [1947 c 79 § .22.02; Rem. Supp. 1947 § 45.22.02.]

Rate modifications for assigned risks: RCW 48.19.400.

48.22.030 Underinsured, hit-and-run, phantom vehicle coverage to be provided—Purpose—Definitions—Exceptions—Conditions—Deductibles—Information on motorcycle or motor-driven cycle coverage—Intended victims. (1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehi-

cle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy. When a named insured or spouse chooses a property damage coverage that is less than the insured's third party liability coverage for property damage, a written rejection is not required.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death,

or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

(10) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide an opportunity for named insureds, who have purchased liability coverage for a motorcycle or motor-driven cycle, to reject underinsured coverage for that motorcycle or motor-driven cycle in writing.

(11) If the covered person seeking underinsured motorist coverage under this section was the intended victim of the tortfeasor, the incident must be reported to the appropriate law enforcement agency and the covered person must cooperate with any related law enforcement investigation.

(12) The purpose of this section is to protect innocent victims of motorists of underinsured motor vehicles. Covered persons are entitled to coverage without regard to whether an incident was intentionally caused. However, a person is not entitled to coverage if the insurer can demonstrate that the covered person intended to cause the event for which a claim is made under the coverage described in this section. As used in this section, and in the section of policies providing the underinsured motorist coverage described in this section, "accident" means an occurrence that is unexpected and unintended from the standpoint of the covered person.

(13) "Underinsured coverage," for the purposes of this section, means coverage for "underinsured motor vehicles," as defined in subsection (1) of this section. [2007 c 80 § 14. Prior: 2006 c 187 § 1; 2006 c 110 § 1; 2006 c 25 § 17; 2004 c 90 § 1; 1985 c 328 § 1; 1983 c 182 § 1; 1981 c 150 § 1; 1980 c 117 § 1; 1967 c 150 § 27.]

Severability—1983 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 182 § 3.]

Effective date—1981 c 150: "This act shall take effect on September 1, 1981." [1981 c 150 § 3.]

Effective date—1980 c 117: "This act shall take effect on September 1, 1980." [1980 c 117 § 8.]

48.22.040 Underinsured motor vehicle coverage where liability insurer is insolvent—Extent of coverage—Rights of insurer upon making payment. (1) The term "underinsured motor vehicles" with reference to coverage offered under any insurance policy regulated under this chapter shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(2) An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's underinsured motorist coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within three years after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.

(3) In the event of payment to an insured under the coverage required by this chapter and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such insured against any person or organization legally responsible for the bodily injury, death, or property damage for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer. Whenever an insurer shall make payment under the coverage required by this section and which payment is occasioned by an insolvency, such insurer's right of recovery or reimbursement shall not include any rights against the insured of said insolvent insurer for any amounts which would have been paid by the insolvent insurer. Such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had, if the insured of the insolvent insurer had personally made the payment. [1983 c 182 § 2; 1980 c 117 § 2; 1967 ex.s. c 95 § 3.]

Severability—1983 c 182: See note following RCW 48.22.030.

Effective date—1980 c 117: See note following RCW 48.22.030.

48.22.050 Market assistance plans. The commissioner shall by regulation require insurers authorized to write casualty insurance in this state to form a market assistance plan to assist persons and other entities unable to purchase casualty insurance in an adequate amount from either the admitted market or nonadmitted market.

For the purpose of this section, a market assistance plan means a voluntary mechanism by insurers writing casualty insurance in this state in either the admitted or nonadmitted market to provide casualty insurance for a class of insurance designated in writing to the plan by the commissioner.

The bylaws and method of operation of any market assistance plan shall be approved by the commissioner prior to its operation.

A market assistance plan shall have a minimum of twenty-five insurers willing to insure risks within the class designated by the commissioner. If twenty-five insurers do not voluntarily agree to participate, the commissioner may require casualty insurers to participate in a market assistance plan as a condition of continuing to do business in this state. The commissioner shall make such a requirement to fulfill the quota of at least twenty-five insurers. The commissioner shall make his or her designation on the basis of the insurer's premium volume of casualty insurance in this state. [1986 c 305 § 906.]

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

48.22.060 Debt and financing coverage. Every insurer that writes collision and comprehensive coverage for loss or damage to "private passenger automobiles" or "motor homes," as those terms are defined in RCW 48.18.297 and 46.04.305, respectively, shall provide, upon the insured's request, coverage that will pay, in the event of total loss, an amount, in excess of the actual cash value of the vehicle, sufficient to satisfy any outstanding indebtedness secured by and incurred in conjunction with the financing of the purchase of a new private passenger automobile or motor home.

Nothing in this section prohibits an insurer from denying or excluding such coverage where the insured or someone acting on the insured's behalf acts in a fraudulent manner to obtain or file a claim under such coverage. [1988 c 248 § 16; 1987 c 240 § 1.]

Effective date—1987 c 240: "The effective date of this act is January 1, 1988." [1987 c 240 § 2.]

48.22.070 Longshoreman's and harbor worker's compensation coverage—Rules—Plan creation. (1) The commissioner shall adopt rules establishing a reasonable plan to insure that workers' compensation coverage as required by the United States longshore and harbor workers' compensation act, 33 U.S.C. Secs. 901 through 950, and maritime employer's liability coverage incidental to the workers' compensation coverage is available to those unable to purchase it through the normal insurance market. This plan shall require the participation of all authorized insurers writing primary or excess United States longshore and harbor workers' compensation insurance in the state of Washington and the Washington state industrial insurance fund as defined in RCW 51.08.175 which is authorized to participate in the plan and to make payments in support of the plan in accordance with this section. Any underwriting losses or surpluses incurred by the plan shall be determined by the governing committee of the plan and shall be shared by plan participants in accordance with the following ratios: The state industrial insurance fund, fifty percent; and authorized insurers writing primary or excess United States longshore and harbor workers' compensation insurance, fifty percent.

(2) The Washington state industrial insurance fund may obtain or provide reinsurance coverage for the plan created under subsection (1) of this section the terms of which shall be negotiated between the state fund and the plan. This coverage shall not be obtained or provided if the commissioner determines that the premium to be charged would result in unaffordable rates for coverage provided by the plan. In considering whether excess of loss coverage premiums would result in unaffordable rates for workers' compensation coverage provided by the plan, the commissioner shall compare the resulting plan rates to those provided under any similar pool or plan of other states.

(3) An applicant for plan insurance, a person insured under the plan, or an insurer, affected by a ruling or decision of the manager or committee designated to operate the plan may appeal to the commissioner for resolution of a dispute. In adopting rules under this section, the commissioner shall require that the plan use generally accepted actuarial principles for rate making. [1997 c 110 § 1; 1993 c 177 § 1; 1992 c 209 § 2.]

(2008 Ed.)

Effective date—1997 c 110: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 110 § 3.]

Effective date—1993 c 177: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 177 § 4.]

Finding—Declaration—1992 c 209: "The legislature finds and declares that the continued existence of a strong and healthy maritime industry in this state is threatened by the unavailability and excessive cost of workers' compensation coverage required by the United States longshoreman's and harbor worker's compensation act. The legislature, therefore, acting under its authority to protect industry and employment in this state hereby establishes a commission to devise and implement both a near and long-term solution to this problem, for the purpose of maintaining employment for Washington workers and a vigorous maritime industry." [1992 c 209 § 1.]

48.22.080 Health care liability risk management training program. Effective July 1, 1994, a casualty insurer's issuance of a new medical malpractice policy or renewal of an existing medical malpractice policy to a physician or other independent health care practitioner shall be conditioned upon that practitioner's participation in, and completion of, an insurer-designed health care liability risk management training program once every three years. Completion of said training program during 1994 shall satisfy the first three-year training requirement. The risk management training shall provide information related to avoiding adverse health outcomes resulting from substandard practice and minimizing damages associated with the adverse health outcomes that do occur. For purposes of this section, "independent health care practitioners" means those health care practitioner licensing classifications designated by the department of health in rule pursuant to *RCW 18.130.330. [1994 c 102 § 2; 1993 c 492 § 413.]

***Reviser's note:** RCW 18.130.330 was repealed by 1995 c 265 § 27, effective July 1, 1995.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.22.085 Automobile liability insurance policy—Optional coverage for personal injury protection—Rejection by insured. (1) No new automobile liability insurance policy or renewal of such an existing policy may be issued unless personal injury protection coverage is offered as an optional coverage.

(2) A named insured may reject, in writing, personal injury protection coverage and the requirements of subsection (1) of this section shall not apply. If a named insured rejects personal injury protection coverage:

(a) That rejection is valid and binding as to all levels of coverage and on all persons who might have otherwise been insured under such coverage; and

(b) The insurer is not required to include personal injury protection coverage in any supplemental, renewal, or replacement policy unless a named insured subsequently requests such coverage in writing. [2003 c 115 § 2; 1993 c 242 § 2.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.090 Personal injury protection coverage—Exceptions. An insurer is not required to provide personal injury protection coverage to or on behalf of:

(1) A person who intentionally causes injury to himself or herself;

(2) A person who is injured while participating in a pre-arranged or organized racing or speed contest or in practice or preparation for such a contest;

(3) A person whose bodily injury is due to war, whether or not declared, or to an act or condition incident to such circumstances;

(4) A person whose bodily injury results from the radioactive, toxic, explosive, or other hazardous properties of nuclear material;

(5) The named insured or a relative while occupying a motor vehicle owned by the named insured or furnished for the named insured's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made;

(6) A relative while occupying a motor vehicle owned by the relative or furnished for the relative's regular use, if such motor vehicle is not described on the declaration page of the policy under which a claim is made; or

(7) An insured whose bodily injury results or arises from the insured's use of an automobile in the commission of a felony. [2003 c 115 § 3; 1993 c 242 § 3.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.095 Automobile insurance policies—Minimum personal injury protection coverage. Insurers providing automobile insurance policies must offer minimum personal injury protection coverage for each insured with benefit limits as follows:

(1) Medical and hospital benefits of ten thousand dollars;

(2) A funeral expense benefit of two thousand dollars;

(3) Income continuation benefits of ten thousand dollars, subject to a limit of two hundred dollars per week; and

(4) Loss of services benefits of five thousand dollars, subject to a limit of two hundred dollars per week. [2003 c 115 § 4; 1993 c 242 § 4.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.100 Automobile insurance policies—Personal injury protection coverage—Request by named insured—Benefit limits. If requested by a named insured, an insurer providing automobile liability insurance policies must offer personal injury protection coverage for each insured with benefit limits as follows:

(1) Medical and hospital benefits of thirty-five thousand dollars;

(2) A funeral expense benefit of two thousand dollars;

(3) Income continuation benefits of thirty-five thousand dollars, subject to a limit of seven hundred dollars per week; and

(4) Loss of services benefits of fourteen thousand six hundred dollars. [2003 c 115 § 5; 1993 c 242 § 5.]

Severability—Effective date—1993 c 242: See notes following RCW 48.22.005.

48.22.105 Rule making. The commissioner may adopt such rules as are necessary to implement RCW 48.22.005 and 48.22.085 through 48.22.100. [1993 c 242 § 9.]

Severability—1993 c 242: See note following RCW 48.22.005.

48.22.110 Vendor single-interest or collateral protection coverage—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 48.22.115 through 48.22.135.

(1) "Borrower" means a person who receives a loan or enters into a retail installment contract under chapter 63.14 RCW to purchase a motor vehicle or vessel in which the secured party holds an interest.

(2) "Motor vehicle" means a motor vehicle in this state subject to registration under chapter 46.16 RCW, except motor vehicles governed by RCW 46.16.020 or registered with the Washington utilities and transportation commission as common or contract carriers.

(3) "Secured party" means a person, corporation, association, partnership, or venture that possesses a bona fide security interest in a motor vehicle or vessel.

(4) "Vendor single-interest" or "collateral protection coverage" means insurance coverage insuring primarily or solely the interest of a secured party but which may include the interest of the borrower in a motor vehicle or vessel serving as collateral and obtained by the secured party or its agent after the borrower has failed to obtain or maintain insurance coverage required by the financing agreement for the motor vehicle or vessel. Vendor single-interest or collateral protection coverage does not include insurance coverage purchased by a secured party for which the borrower is not charged.

(5) "Vessel" means a vessel as defined in RCW 88.02.010 and includes personal watercraft as defined in RCW 79A.60.010. [2003 c 248 § 10; 1994 c 186 § 1.]

Effective date—1994 c 186 §§ 1-5: "Sections 1 through 5 of this act take effect January 1, 1995." [1994 c 186 § 8.]

48.22.115 Vendor single-interest or collateral protection coverage—Warning. In a contract or loan agreement, or on a separate document accompanying the contract or loan agreement and signed by the borrower, that provides financing for a motor vehicle or vessel and authorizes a secured party to purchase vendor single interest or collateral protection coverage, the following or substantially similar warning must be set forth in ten-point print:

WARNING

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR LOAN AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE

THAT YOU HAVE OBTAINED PROPER COVERAGE ELSEWHERE.

YOU ARE RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE. IF THE COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN AND MAY NOT SATISFY WASHINGTON'S MANDATORY LIABILITY INSURANCE LAWS.

[1994 c 186 § 2.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.120 Vendor single-interest or collateral protection coverage—Final notice and warning—No requirement to purchase—Effective date of coverage. (1) A secured party shall not impose charges, that may include but are not limited to interest, finance, and premium charges, on a borrower for vendor single interest or collateral protection coverage for the motor vehicle or vessel as provided in subsection (2) of this section until the following or a substantially similar warning printed in ten-point type is sent to the borrower:

FINAL NOTICE AND WARNING

UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY OUR LOAN AGREEMENT WITHIN FIVE DAYS AFTER THE POSTMARK ON THIS LETTER, WE WILL PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR ANY CLAIM MADE AGAINST YOU. YOU MAY LATER CANCEL THIS COVERAGE BY PROVIDING EVIDENCE THAT YOU HAVE OBTAINED PROPER COVERAGE ELSEWHERE OR HAVE PAID OFF THE LOAN ON THE COLLATERAL IN ITS ENTIRETY.

YOU ARE RESPONSIBLE FOR THE COST OF THE INSURANCE PURCHASED BY US. THE COST OF THIS INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE. IF THE COST IS ADDED TO THE LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING

LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE YOUR COVERAGE LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE WE PURCHASE WILL COST YOU A TOTAL OF APPROXIMATELY \$ (PLUS INTEREST) AND MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN ON YOUR OWN.

The final notice and warning shall identify whether the coverage to be purchased is vendor single interest or collateral protection coverage and disclose the extent of the borrower's coverage, if any, including a statement of whether the coverage satisfies Washington's mandatory liability insurance laws.

(2) If reasonable efforts to provide the borrower with the notice required under subsection (1) of this section fail to produce evidence of the required insurance, the secured party may proceed to impose charges for vendor single interest or collateral protection coverage no sooner than eight days after giving notice as required under this chapter. Reasonable efforts to provide notice under this section means:

(a) Within thirty days before the secured party is required to send the final notice and warning in compliance with subsection (1) of this section, the secured party shall mail a notice by first-class mail to the borrower's last known address as contained in the secured party's records. The notice shall state that the secured party intends to charge the borrower for vendor single interest or collateral protection coverage on the collateral if the borrower fails to provide evidence of proper insurance to the lender; and

(b) The secured party shall send the final notice and warning notice in compliance with subsection (1) of this section by certified mail to the borrower's last known address as contained in the secured party's records at least eight days before the insurance is charged to the borrower by the insurer.

(3) The secured party is responsible for complying with subsection (2)(a) and (b) of this section. However, a secured party may seek the services of other entities to fulfill the requirements of subsection (2)(a) and (b) of this section.

(4) Nothing contained in this chapter, or a secured party's compliance with or failure to comply with this chapter, shall be construed to require the secured party to purchase vendor single interest or collateral protection coverage, and the secured party shall not be liable to the borrower or any third party as a result of its failure to purchase vendor single interest or collateral protection coverage.

(5) Substantial compliance by a secured party with RCW 48.22.110 through 48.22.130 constitutes a complete defense to any claim arising under the laws of this state challenging the secured party's placement of vendor single interest or collateral protection coverage.

(6) The effective date of vendor single interest or collateral protection coverage placed under this chapter shall be either the date that the borrower's prior coverage lapsed or the date that the borrower failed to provide proof of coverage on the vehicle or vessel as required under the contract or loan agreement. Premiums for vendor single interest or collateral

protection coverage placed under this chapter shall be calculated on a basis that does not exceed the outstanding credit balance as of the effective date of the coverage even though the coverage may limit liability to the outstanding balance, actual cash value, or cost of repair.

(7) If the secured party has purchased the contract or loan agreement relating to the motor vehicle or vessel from the seller of the motor vehicle or vessel under an agreement that the seller must repurchase the contract or loan agreement in the event of a default by the borrower, the secured party shall send a copy of the notice provided under subsection (2)(a) of this section by first-class mail to the seller at the seller's last known address on file with the secured party when such notice is sent to the borrower under subsection (2)(a) of this section. [1994 c 186 § 3.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.125 Vendor single-interest or collateral protection coverage—Cancellation when borrower has obtained insurance—Interest rate for financing. (1) The secured party shall cancel vendor single interest or collateral protection coverage charged to the borrower effective the date of receipt of proper evidence from the borrower that the borrower has obtained insurance to protect the secured party's interest. Proper evidence includes an insurance binder that is no older than ninety days from the date of issuance and that contains physical damage coverage as provided in the borrower's loan agreement with respect to the motor vehicle or vessel.

(2) If the underlying loan or extension of credit for the underlying loan is satisfied, the secured party may not require the borrower to maintain vendor single interest or collateral protection coverage that has been purchased.

(3) The interest rate for financing the cost of vendor single interest or collateral protection coverage may not exceed the interest rate applied to the underlying loan obligation. [1994 c 186 § 4.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.130 Vendor single-interest or collateral protection coverage—Canceled or discontinued—Premium refund. If vendor single interest or collateral protection coverage is canceled or discontinued under RCW 48.22.125 (1) or (2), the amount of unearned premium must be refunded to the borrower. At the option of the secured party, this refund may take the form of a credit against the borrower's obligation to the secured party. If the refund is taken as a credit against the borrower's obligation to the secured party, the secured party shall provide the borrower with an itemized statement that indicates the amount of the credit and where the credit has been applied. [1994 c 186 § 5.]

Effective date—1994 c 186 §§ 1-5: See note following RCW 48.22.110.

48.22.135 Vendor single-interest or collateral protection coverage—Application. The failure of a secured party prior to January 1, 1995, to provide notice as contemplated in this chapter, or otherwise to administer a vendor single interest or collateral protection coverage program in a manner

similar to that required under this chapter, shall not be admissible in any court or arbitration proceeding or otherwise used to prove that a secured party's actions with respect to vendor single interest or collateral protection coverage or similar coverage were unlawful or otherwise improper. A secured party shall not be liable to the borrower or any other party for placing vendor single interest or collateral protection coverage in accordance with the terms of an otherwise legal loan or other written agreement with the borrower entered prior to January 1, 1995. The provisions of this section shall be applicable with respect to actions pending or commenced on or after June 9, 1994. [1994 c 186 § 7.]

48.22.140 Driver's license suspension for nonpayment of child support—Exclusion of unlicensed driver from insurance coverage not applicable—Notation in driving record. In the event that the department of licensing suspends a driver's license solely for the nonpayment of child support as provided in chapter 74.20A RCW or for noncompliance with a residential or visitation order as provided in *chapter 26.09 RCW, any provision in the driver's motor vehicle liability insurance policy excluding insurance coverage for an unlicensed driver shall not apply to the driver for ninety days from the date of suspension. When a driver's license is suspended under chapter 74.20A RCW, the driving record for the suspended driver shall include a notation that explains the reason for the suspension. [1997 c 58 § 808.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Chapter 48.23 RCW

LIFE INSURANCE AND ANNUITIES

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48.23.010 Scope of chapter. This chapter applies to contracts of life insurance and annuities other than group life insurance, group annuities, and, except for RCW 48.23.260, 48.23.270, and 48.23.340, other than industrial life insurance. However, Title 48 RCW does not apply to charitable gift annuities issued by a board of a state university, regional university, or a state college, nor to the issuance thereof. [2005 c 223 § 12; 1979 c 130 § 2; 1947 c 79 § .23.01; Rem. Supp. 1947 § 45.23.01.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.23.020 Standard provisions required—Life insurance. (1) No policy of life insurance other than industrial, group and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this state unless it contains in substance all of the provisions required by RCW 48.23.030 to 48.23.130, inclusive. This provision shall not apply to annuity contracts.

(2) Any of such provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein. [1947 c 79 § .23.02; Rem. Supp. 1947 § 45.23.02.]

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48.23.030 Grace period. There shall be a provision that the insured is entitled to a grace period of one month, but not less than thirty days, within which the payment of any premium after the first may be made, subject at the option of the insurer to an interest charge not in excess of six percent per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force, but in case the policy becomes a claim during the grace period before the overdue premium is paid, or the deferred premiums of the current policy year, if any, are paid, the amount of such premium or premiums with interest thereon may be deducted in any settlement under the policy. [1947 c 79 § .23.03; Rem. Supp. 1947 § 45.23.03.]

48.23.040 Entire contract—Representations. In all such policies other than those containing a clause making the policy incontestable from date of issue, there shall be a provision that the policy and the application therefor, if a copy thereof has been endorsed upon or attached to the policy at issue and made a part thereof, shall constitute the entire contract between the parties, and that all statements made by the applicant or by the insured, shall, in the absence of fraud, be deemed representations and not warranties. [1947 c 79 § .23.04; Rem. Supp. 1947 § 45.23.04.]

48.23.050 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue, except for nonpayment of premiums and except, at the option of the insurer, as to provisions relative to benefits in event of total and permanent disability and as to provisions which grant additional insurance specifically against accidental death. [1947 c 79 § .23.05; Rem. Supp. 1947 § 45.23.05.]

48.23.060 Misstatement of age. There shall be a provision that if it is found that the age of the insured (or the age of any other individual considered in determining the premium) has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age or ages, according to the insurer's rate at date of issue. [1947 c 79 § .23.06; Rem. Supp. 1947 § 45.23.06.]

48.23.070 Participation in surplus. (1) In all policies which provide for participation in the insurer's surplus, there shall be a provision that the policy shall so participate annually in the insurer's divisible surplus as apportioned by the insurer, beginning not later than the end of the third policy year. Any policy containing provision for annual participation beginning at the end of the first policy year, may also provide that each dividend shall be paid subject to the payment of the premiums for the next ensuing year. The insured under any annual dividend policy shall have the right each year to have the current dividend arising from such participation either paid in cash, or applied in accordance with such other dividend option as may be specified in the policy and elected by the insured. The policy shall further provide which of the options shall be effective if the insured shall fail to notify the insurer in writing of his election within the period of grace allowed for the payment of premium.

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(2) This section shall not apply to paid-up nonforfeiture benefits nor paid-up policies issued on default in payment of premiums. [1947 c 79 § .23.07; Rem. Supp. 1947 § 45.23.07.]

48.23.075 Participation in surplus—Requirements for forms. (1) Life insurance and annuity policy forms of the following types shall be defined and designated as participating forms of insurance only if they contain a provision for participation in the insurer's surplus, and shall be defined and designated as nonparticipating forms if they do not contain a provision for participation in the insurer's surplus:

(a) Forms which provide that the premium or consideration at the time of issue and subsequent premiums or considerations will be established by the insurer based on current, or then current, projected assumptions for such factors as interest, mortality, persistency, expense, or other factors, subject to a maximum guaranteed premium or premiums set forth in the policy; and

(b) Forms (except those for variable life insurance and variable annuity plans which are subject to chapter 48.18A RCW) which provide that their premiums or considerations are credited to an account to which interest is credited, and from which the cost of any life insurance or annuity benefits or other benefits or specified expenses are deducted.

(2) The commissioner may by regulation further clarify the definitions and requirements contained in subsection (1) of this section, and may classify any other types of forms as participating or nonparticipating, consistent therewith. [1982 c 181 § 19.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.080 Policy loan. (1) There shall be a provision that after three full years' premiums have been paid thereon, the insurer at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a rate of interest provided in this chapter as now or hereafter amended, a sum to be determined as follows:

(a) If such policy is issued prior to the operative date of *RCW 48.23.350, the sum, including any interest paid in advance but not beyond the end of the current policy year, shall be equal to or at the option of the owner of the policy less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, less a sum not more than two and one-half percent of the amount insured by the policy and of any dividend additions thereto. The policy may contain a provision by which the insurer reserves the right to defer the making of the loan, except when made to pay premiums, for a period not exceeding six months after the date of application therefor.

(b) If such policy is issued on or after such operative date, the sum, including any interest to the end of the current policy year shall not exceed the cash surrender value at the end of the current policy year, as required by *RCW 48.23.350.

(c)(i) The policy shall contain (A) a provision that policy loans shall bear interest at a specified rate not exceeding six percent per annum, or (B) a provision that policy loans shall

bear interest at a variable of not less than four nor more than eight percent per annum.

(ii) The variable rate shall not be changed more frequently than once per year and no change may exceed one percent per annum except reductions. The insurer shall give at least thirty days' notice to the policy owner or the owner's designee of any changes in the interest rate.

(iii) The provisions of (c)(i) and (c)(ii) of this subsection shall apply only in policies in existence prior to August 1, 1981.

(2) Such policy shall further provide that the insurer may deduct from such loan value any existing indebtedness on the policy (unless such indebtedness has already been deducted in determining the cash surrender value) and any unpaid balance of the premium for the current policy year; and that if the loan is made or repaid on a date other than the anniversary of the policy, the insurer shall be entitled to interest for the portion of the current policy year at the rate of interest specified in the policy.

(3) Such policy may further provide that if the interest on the loan is not paid when due, it shall be added to the existing indebtedness and shall bear interest at the same rate; and that if and when the total indebtedness on the policy, including interest due or accruing, equals or exceeds the amount of the loan value thereof which would otherwise exist at such time, the policy shall terminate in full settlement of such indebtedness and become void; except, that it shall be stipulated in the policy that no such termination shall be effective prior to the expiration of at least thirty days after notice of the pendency of the termination was mailed by the insurer to the insured and the assignee, if any, at their respective addresses last of record with the insurer.

(4) The insurer shall provide in any policy issued on or after the operative date of *RCW 48.23.350 that the making of any loan, other than a loan to pay premiums, may be deferred for not exceeding six months after the application for the loan has been received by it. [1981 c 247 § 3; 1977 ex.s. c 250 § 1; 1947 c 79 § .23.08; Rem. Supp. 1947 § 45.23.08.]

***Reviser's note:** RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36; later enactment, see chapter 48.76 RCW.

Purpose—Effective date—1981 c 247: See notes following RCW 48.23.085.

Construction—1977 ex.s. c 250: "This 1977 amendatory act shall not impair the terms and conditions of any policy of life insurance in force prior to the effective date of this 1977 amendatory act." [1977 ex.s. c 250 § 2.]

48.23.085 Policy loan interest rates. (1) As used in this section, "published monthly average" means:

(a) The "Moody's Corporate Bond Yield Average - Monthly Average Corporates" as published by Moody's Investors Service, Incorporated or any successor thereto; or

(b) If the "Moody's Corporate Bond Yield Average - Monthly Average Corporates" is no longer published, a substantially similar average, established by rule issued by the commissioner.

(2) Policies issued on or after August 1, 1981, shall provide for policy loan interest rates by containing:

(a) A provision permitting a maximum interest rate of not more than eight percent per annum; or

(b) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law.

(3) The rate of interest charged on a policy loan made under (2)(b) of this section shall not exceed the higher of the following:

(a) The published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(b) The rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

(4) If the maximum rate of interest is determined pursuant to (2)(b) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(5) The maximum rate for each policy shall be determined at regular intervals at least once every twelve months, but not more frequently than once in any three-month period. At the intervals specified in the policy:

(a) The rate being charged may be increased whenever such increase as determined under subsection (3) of this section would increase that rate by one-half of one percent or more per annum; and

(b) The rate being charged shall be reduced whenever such reduction as determined under subsection (3) of this section would decrease that rate by one-half of one percent or more per annum.

(6) The life insurer shall:

(a) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(b) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in (c) of this subsection;

(c) Send to policyholders with loans reasonable advance notice of any increase in the rate; and

(d) Include in the notices required in this subsection the substance of the pertinent provisions of subsections (2) and (4) of this section.

(7) The substance of the pertinent provisions of subsections (2) and (4) of this section shall be set forth in the policies to which they apply.

(8) The loan value of the policy shall be determined in accordance with RCW 48.23.080, but no policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(9) For purposes of this section:

(a) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy;

(b) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due;

(c) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer; and

(d) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(10) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates. [1981 c 247 § 2.]

Purpose—1981 c 247: "The purpose of this act is to permit and set guidelines for life insurers to include in life insurance policies issued after the effective date of this act a provision for periodic adjustment of policy loan interest rates." [1981 c 247 § 1.]

Effective date—1981 c 247: "This act shall take effect August 1, 1981, and shall not apply to any insurance contract before that date." [1981 c 247 § 5.]

48.23.090 Table of values and options. There shall be a table showing in figures the loan value, if any, and any options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy, or for its life if maturity or expiry occurs in less than twenty years. [1947 c 79 § .23.09; Rem. Supp. 1947 § 45.23.09.]

48.23.100 Nonforfeiture options. There shall be a provision specifying the option to which the policyholder is automatically entitled in the absence of the election of other nonforfeiture options upon default in premium payment after nonforfeiture values become available. [1947 c 79 § .23.10; Rem. Supp. 1947 § 45.23.10.]

48.23.110 Table of installments. If the policy provides for payment of its proceeds in installments or as an annuity, a table showing the amount and period of such installments or annuity shall be included in the policy. Except, that if in the judgment of the commissioner it is not practical to include certain tables in the policy, the requirements of this section may be met as to such policy by the insurer filing such tables with the commissioner. [1947 c 79 § .23.11; Rem. Supp. 1947 § 45.23.11.]

48.23.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within three years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value, or the period of any extended insurance provided by the policy has expired, upon evidence of insurability satisfactory to the insurer and the payment of all overdue premiums, and payment (or, within the limits permitted by the then cash values of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to premiums at a rate not exceeding six percent per annum compounded annually. [1981 c 247 § 4; 1947 c 79 § .23.12; Rem. Supp. 1947 § 45.23.12.]

Purpose—Effective date—1981 c 247: See notes following RCW 48.23.085.

48.23.130 Settlement on proof of death. There shall be a provision that when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of

due proof of death and surrender of the policy. [1947 c 79 § .23.13; Rem. Supp. 1947 § 45.23.13.]

48.23.140 Standard provisions—Annuities, pure endowment contracts. No annuity or pure endowment contract, other than reversionary annuities, or survivorship annuities, or group annuities, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23.150 to 48.23.210 inclusive. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

This section shall not apply to contracts for deferred annuities included in, or upon the lives of beneficiaries under, life insurance policies. [1947 c 79 § .23.14; Rem. Supp. 1947 § 45.23.14.]

48.23.150 Grace period—Annuities, pure endowments. In such contracts, there shall be a provision that there shall be a period of grace of one month, but not less than thirty days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer, to an interest charge thereon at a rate to be specified in the contract but not exceeding six percent per annum for the number of days of grace elapsing before such payment, during which period of grace, the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer of the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement. [1947 c 79 § .23.15; Rem. Supp. 1947 § 45.23.15.]

48.23.160 Incontestability—Annuities, pure endowments. If any statements, other than those relating to age, sex, and identity, are required as a condition to issuing such an annuity or pure endowment contract, and subject to RCW 48.23.180, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of two years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer, such contract may also except any provisions relative to benefits in the event of total and permanent disability and any provisions which grant insurance specifically against death by accident. [1947 c 79 § .23.16; Rem. Supp. 1947 § 45.23.16.]

48.23.170 Entire contract—Annuities, pure endowments. In such contracts there shall be a provision that the contract shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties. [1947 c 79 § .23.17; Rem. Supp. 1947 § 45.23.17.]

48.23.180 Misstatement of age or sex—Annuities, pure endowments. In such contracts there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or if any of them has been misstated, the amount payable or benefit accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex; and that if the insurer shall make or has made any underpayment or underpayments or any overpayment or overpayments on account of any such misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six percent per annum, shall, in the case of underpayment, be paid the insured or, in the case of overpayment, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract. [1982 c 181 § 12; 1947 c 79 § .23.18; Rem. Supp. 1947 § 45.23.18.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.23.190 Dividends—Annuities, pure endowments. If such contract is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract. [1947 c 79 § .23.19; Rem. Supp. 1947 § 45.23.19.]

48.23.200 Nonforfeiture benefits—Annuities, pure endowments. Such contracts issued after the operative date of RCW 48.23.360 and individual deferred annuities issued before the operative date of RCW 48.23.420 through 48.23.520 shall contain:

(1) A provision that in the event of default in any stipulated payment, the insurer will grant a paid-up nonforfeiture benefit on a plan stipulated in the contract, effective as of such date, of such value as is hereinafter specified.

(2) A statement of the mortality table and interest rate used in calculating the paid-up nonforfeiture benefit available under the contract.

(3) An explanation of the manner in which the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the contract or any indebtedness to the insurer on the contract. [1982 1st ex.s. c 9 § 34; 1979 c 157 § 3; 1947 c 79 § .23.20; Rem. Supp. 1947 § 45.23.20.]

48.23.210 Reinstatement—Annuities, pure endowments. In such contracts there shall be a provision that the contract may be reinstated at any time within one year from the date of default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated, with interest thereon at a rate to be specified in the contract but not exceeding six percent per annum payable annually, and in cases where applicable, the insurer may also include a requirement of evidence of insurability satisfactory to the insurer. [1947 c 79 § .23.21; Rem. Supp. 1947 § 45.23.21.]

48.23.220 Standard provisions—Reversionary annuities. No contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in RCW 48.23.200

and 48.23.240. Any of such provisions not applicable to single premium annuities shall not, to that extent, be incorporated therein.

This section shall not apply to group annuities or to annuities included in life insurance policies. [1947 c 79 § .23.22; Rem. Supp. 1947 § 45.23.22.]

48.23.230 Sections applicable. Any such reversionary annuity contract shall contain the provisions specified in RCW 48.23.150 to 48.23.190, inclusive, except that under RCW 48.23.150 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for a deduction of such payments from an amount payable upon a settlement under the contract. [1947 c 79 § .23.23; Rem. Supp. 1947 § 45.23.23.]

48.23.240 Reinstatement—Reversionary annuities. In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six percent per annum compounded annually. [1947 c 79 § .23.24; Rem. Supp. 1947 § 45.23.24.]

48.23.250 Supplemental benefits. The commissioner may make reasonable rules and regulations concerning the conditions in provisions granting additional benefits in event of the insured's accidental death, or in event the insured becomes totally and permanently disabled, which are a part of or supplemental to life insurance contracts. [1947 c 79 § .23.25; Rem. Supp. 1947 § 45.23.25.]

48.23.260 Limitation of liability. (1) The insurer may in any life insurance policy or annuity or pure endowment contract limit its liability to a determinable amount not less than the full reserve of the policy and of dividend additions thereto in event only of death occurring:

(a) As a result of war, or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a member of any such military, naval or air forces of any country at war, declared or undeclared.

(b) As a result of suicide of the insured, whether sane or insane, within two years from date of issue of the policy.

(c) As a result of aviation under conditions specified in the policy.

(2) An insurer may specify conditions pertaining to the items of subsection (1) of this section which in the commissioner's opinion are more favorable to the policyholder. [1947 c 79 § .23.26; Rem. Supp. 1947 § 45.23.26.]

48.23.270 Incontestability after reinstatement. The reinstatement of any policy of life insurance or contract of (2008 Ed.)

annuity hereafter delivered or issued for delivery in this state may be contestable on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement as the policy provides with respect to contestability after original issuance. [1947 c 79 § .23.27; Rem. Supp. 1947 § 45.23.27.]

48.23.290 Premium deposits. (1) A life insurer may, under such policy provisions or agreements as have been approved by the commissioner consistent with this section, contract for and accept premium deposits in addition to the regular premiums specified in the policy, for the purpose of paying future premiums, or to facilitate conversion of the policy, or to increase the benefits thereof.

(2) The unused accumulation from such deposits shall be held and accounted for as a premium deposit fund, and the policy or agreement shall provide for the manner of application of the premium deposit fund to the payment of premiums otherwise in default and for the disposition of the fund if it is not sufficient to pay the next premium.

(3) Such fund shall:

(a) Be available upon surrender of the policy, in addition to the cash surrender value; and

(b) be payable upon the insured's death or upon maturity of the policy; and

(c) be paid to the insured whenever the cash surrender value together with the premium deposit fund equals or exceeds the amount of insurance provided by the policy, unless the amount of the deposit does not exceed that which may be required to facilitate conversion of the policy to another plan in accordance with its terms.

(4) No part of the premium deposit fund shall be paid to the insured during the continuance of the policy except at such times and in such amounts as is specified in the policy or in the deposit agreement. [1947 c 79 § .23.29; Rem. Supp. 1947 § 45.23.29.]

48.23.300 Policy settlements—Interest. Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries, and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder. Upon maturity of a policy in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries. The insurer shall not be required to segregate funds so held but may hold them as part of its general assets.

An insurer shall pay interest on death benefits payable under the terms of a life insurance policy insuring the life of any person who was a resident of this state at the time of death. Such interest shall accrue commencing on the date of death at the rate then paid by the insurer on other withdrawable policy proceeds left with the company, but not less than eight percent. Benefits payable that have not been tendered to the beneficiary within ninety days of the receipt of proof of death shall accrue interest, commencing on the ninety-first day, at the aforementioned rate plus three percent. This sec-

tion applies to death of insureds that occur on or after September 1, 1985. [1985 c 264 § 23; 1983 1st ex.s. c 32 § 21; 1947 c 79 § .23.30; Rem. Supp. 1947 § 45.23.30.]

48.23.310 Deduction of indebtedness. In determining the amount due under any life insurance policy heretofore or hereafter issued, deduction may be made of

(1) any unpaid premiums or installments thereof for the current policy year due under the terms of the policy, and of

(2) the amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid, such principal increased by unpaid interest and compounded as provided in this chapter. [1947 c 79 § .23.31; Rem. Supp. 1947 § 45.23.31.]

48.23.320 Miscellaneous proceeds. Upon the death of the insured and except as is otherwise expressly provided by the policy or premium deposit agreement, a life insurer may pay to the surviving spouse, children, beneficiary, or other person other than the insured's estate, appearing to the insurer to be equitably entitled thereto, sums held by it and comprising:

(1) Premiums paid in advance, and which premiums did not fall due prior to such death, or funds held on deposit for the payment of future premiums.

(2) Dividends theretofore declared on the policy and held by the insurer under the insured's option.

(3) Dividends becoming payable on or after the death of the insured. [1947 c 79 § .23.32; Rem. Supp. 1947 § 45.23.32.]

48.23.330 Trafficking in dividend rights. No life insurer nor any of its representatives, agents, or affiliates, shall buy, take by assignment other than in connection with policy loans, or otherwise deal or traffic in any rights to dividends existing under participating life insurance policies issued by the insurer. [1947 c 79 § .23.33; Rem. Supp. 1947 § 45.23.33.]

48.23.340 Prohibited policy plans. No life insurer shall hereafter issue for delivery or deliver in this state any life insurance policy:

(1) Issued under any plan for the segregation of policyholders into mathematical groups and providing benefits for a surviving policyholder of a group arising out of the death of another policyholder of such group, or under any other similar plan.

(2) Providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise. [1947 c 79 § .23.34; Rem. Supp. 1947 § 45.23.34.]

48.23.345 Juvenile life insurance—Speculative or fraudulent purposes. Life insurers shall develop and implement underwriting standards and procedures designed to detect and prevent the purchase of juvenile life insurance for speculative or fraudulent purposes. These standards and procedures shall be made available for review by the commissioner.

Life insurers shall maintain records of underwriting rejections of applications for life insurance on juvenile lives for a period of ten years. [2001 c 197 § 1.]

Effective date—2001 c 197: "This act takes effect August 1, 2001." [2001 c 197 § 2.]

48.23.360 Calculation of nonforfeiture benefits under annuities. (1) Nonforfeiture benefits: Any paid-up nonforfeiture benefit available under any annuity or pure endowment contract pursuant to RCW 48.23.200, in the event of default in a consideration due on any contract anniversary shall be such that its present value as of such anniversary shall be not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits (excluding any total disability benefits attached to such contracts) which would have been provided for by the contract including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the net consideration defined in subsection (2) of this section corresponding to considerations which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the contract, including interest due or accrued. In determining the benefits referred to in this section and in calculating the net consideration referred to in such subsection (2), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional dates, the annuity payments shall be deemed to commence at the latest date permitted by the contract for the commencement of such payments and the considerations shall be deemed to be payable until such date, which, however, shall not be later than the contract anniversary nearest the annuitant's seventieth birthday.

(2) Net considerations: The net considerations for any annuity or pure endowment contract referred to in subsection (1) of this section shall be calculated on an annual basis, shall be such that the present value thereof at date of issue of the annuity shall equal the then present value of the future benefits thereunder (excluding any total disability benefits attached to such contracts) and shall be not less than the following percentages of the respective considerations specified in the contracts for the respective contract years:

First year fifty percent
Second and subsequent years ninety percent

PROVIDED, That in the case of participating annuity contracts the percentages hereinbefore specified may be decreased by five.

(3) Basis of calculation: All net considerations and present values for such contracts referred to in this section shall be calculated on the basis of the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner, and the rate of interest, not exceeding three and one-half percent per annum, specified in the contract for calculating cash surrender values, if any, and paid-up nonforfeiture benefits; except that with respect to annuity and pure endowment contracts issued on or after the operative date of *RCW 48.12.150(3)(b)(ii) for such contracts, such rate of interest may be as high as four percent per annum: PROVIDED, That if such rate of interest exceeds three and one-half percent per

annum, all net considerations and present values for such contracts referred to in this section shall be calculated on the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner.

(4) Calculations on default: Any cash surrender value and any paid-up nonforfeiture benefit, available under any such contract in the event of default in the payment of any consideration due at any time other than on the contract anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional considerations beyond the last preceding contract anniversary. All values herein referred to may be calculated upon the assumption that any death benefit is payable at the end of the contract year of death.

(5) Deferment of payment: If an insurer provides for the payment of a cash surrender value, it shall reserve the right to defer the payment of such value for a period of six months after demand therefor with surrender of the contract.

(6) Lump sum in lieu: Notwithstanding the requirements of this section, any deferred annuity contract may provide that if the annuity allowed under any paid-up nonforfeiture benefit would be less than one hundred twenty dollars annually, the insurer may at its option grant a cash surrender value in lieu of such paid-up nonforfeiture benefit of such amount as may be required by subsection (3) of this section.

(7) Operative date: If no election is made by an insurer for an operative date prior to July 1, 1948, such date shall be the operative date for this section. [1973 1st ex.s. c 162 § 6; 1951 c 190 § 1; 1947 c 79 § .23.36; Rem. Supp. 1947 § 45.23.36.]

*Reviser's note: RCW 48.12.150 was repealed by 1982 1st ex.s. c 9 § 36; later enactment, see chapter 48.74 RCW.

48.23.370 Duties of insurer issuing both participating and nonparticipating policies—Rules. (1) A life insurer issuing both participating and nonparticipating policies shall maintain records which segregate the participating from the nonparticipating business and clearly show the profits and losses upon each such category of business.

(2) For the purposes of such accounting the insurer shall make a reasonable allocation as between the respective such categories of the expenses of such general operations or functions as are jointly shared. Any allocation of expense as between the respective categories shall be made upon a reasonable basis, to the end that each category shall bear a just portion of joint expense involved in the administration of the business of such category.

(3) No policy hereafter delivered or issued for delivery in this state shall provide for, and no life insurer or representative shall hereafter knowingly offer or promise payment, credit or distribution of participating "dividends," "earnings," "profits," or "savings," by whatever name called, to participating policies out of such profits, earnings or savings on nonparticipating policies.

(4) The commissioner may promulgate rules for the purpose of assuring the equitable treatment of all policyholders so that one group of policyholders shall not support or be supported by another group of policyholders. [1982 c 181 § 13; 1965 ex.s. c 70 § 22.]

Severability—1982 c 181: See note following RCW 48.03.010.

(2008 Ed.)

48.23.380 Return of policy and refund of premium—Grace period—Notice—Effect. (Effective until July 1, 2009.) Every individual life insurance policy issued after September 1, 1977, shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the premium paid refunded if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policy owner pursuant to such notice, returns the policy to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued.

This section shall not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in a policy. [1983 1st ex.s. c 32 § 10; 1977 c 60 § 1.]

48.23.380 Return of policy and refund of premium—Grace period—Notice—Effect. (Effective July 1, 2009.)

(1) Every individual life insurance policy issued after September 1, 1977, shall have printed on its face or attached thereto a notice stating in substance that the policy owner shall be permitted to return the policy within ten days after it is received by the policy owner and to have the premium paid refunded if, after examination of the policy, the policy owner is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or insurance producer. If a policy owner pursuant to such notice, returns the policy to the insurer at its home or branch office or to the insurance producer through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued.

(2) This section shall not apply to individual life insurance policies issued in connection with a credit transaction or issued under a contractual policy change or conversion privilege provision contained in a policy.

(3) No later than January 1, 2010, or when the insurer has used all of its existing paper individual life insurance policy forms which were in its possession on July 1, 2009, whichever is earlier, the notice required by subsection (1) of this section shall use the term insurance producer in place of agent. [2008 c 217 § 26; 1983 1st ex.s. c 32 § 10; 1977 c 60 § 1.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.23.410 Short title. RCW 48.23.420 through 48.23.520 shall be known as the standard nonforfeiture law for individual deferred annuities. [1982 1st ex.s. c 9 § 21.]

48.23.420 Inapplicability of enumerated sections to certain policies. (Effective until July 1, 2009.) RCW 48.23.420 through 48.23.520 do not apply to any reinsurance; group annuity purchased under a retirement plan or plan of

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deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; premium deposit fund; variable annuity; investment annuity; immediate annuity; any deferred annuity contract after annuity payments have commenced; or reversionary annuity; nor to any contract which is delivered outside this state through an agent or other representative of the company issuing the contract. [1982 1st ex.s. c 9 § 22.]

48.23.420 Inapplicability of enumerated sections to certain policies. (*Effective July 1, 2009.*) RCW 48.23.420 through 48.23.520 do not apply to any reinsurance; group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended; premium deposit fund; variable annuity; investment annuity; immediate annuity; any deferred annuity contract after annuity payments have commenced; or reversionary annuity; nor to any contract which is delivered outside this state through an insurance producer or other representative of the company issuing the contract. [2008 c 217 § 27; 1982 1st ex.s. c 9 § 22.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.23.430 Paid-up annuity and cash surrender provisions required. In the case of contracts issued on or after the operative date of this section as defined in RCW 48.23.520, no contract of annuity, except as stated in RCW 48.23.420, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in RCW 48.23.450, 48.23.460, 48.23.480, and 48.23.500. The company may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash

surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before such period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment is relieved of any further obligation under such contract. [2004 c 91 § 1; 1982 1st ex.s. c 9 § 23.]

Effective date—2004 c 91: "This act takes effect July 1, 2004." [2004 c 91 § 3.]

48.23.440 Minimum nonforfeiture amounts. The minimum values as specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments is equal to an accumulation up to such time at rates of interest as indicated in subsection (2) of this section of the net considerations, as defined in this subsection, paid prior to such time, decreased by the sum of the following:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (2) of this section;

(b) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in subsection (2) of this section;

(c) Any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in subsection (2) of this section; and

(d) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year.

(2) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) The five-year constant maturity treasury rate reported by the federal reserve as of a date certain, or averaged over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under (d) of this subsection;

(b) Reduced by one hundred twenty-five basis points;

(c) Where the resulting interest rate is not less than one percent; and

(d) The interest rate shall apply to an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(3) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (2)(b) of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. If a demonstration is not acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(4) The commissioner may adopt rules to implement subsection (3) of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other policies that the commissioner determines justify an adjustment.

(5) Before January 1, 2006, an insurer may issue an annuity policy under this section as in effect on December 31, 2003; or issue an annuity policy under this section as in effect on July 1, 2004. On or after January 1, 2006, an insurer must issue an annuity policy under this section as in effect on or after July 1, 2004. [2004 c 91 § 2; 1982 1st ex.s. c 9 § 24.]

Effective date—2004 c 91: See note following RCW 48.23.430.

48.23.450 Minimum present value of paid-up annuity benefit. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract. [1982 1st ex.s. c 9 § 25.]

48.23.460 Minimum cash surrender benefits—Death benefit. For contracts which provide cash surrender benefits, such cash surrender benefits available before maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any

prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event may any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit. [1982 1st ex.s. c 9 § 26.]

48.23.470 Contracts without cash surrender, death benefits—Minimum present value of paid-up annuity benefits. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event may the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time. [1982 1st ex.s. c 9 § 27.]

48.23.480 Optional maturity dates. For the purpose of determining the benefits calculated under RCW 48.23.460 and 48.23.470, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election is permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later. [1982 1st ex.s. c 9 § 28.]

48.23.490 Statement required in contract without cash surrender or death benefits. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided. [1982 1st ex.s. c 9 § 29.]

48.23.500 Calculation of benefits available other than on contract anniversary. Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance

for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs. [1982 1st ex.s. c 9 § 30.]

48.23.510 Additional benefits. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500, additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, or cash surrender and death benefits that may be required by RCW 48.23.410 through 48.23.520. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, or cash surrender and death benefits. [1982 1st ex.s. c 9 § 31.]

48.23.520 Operative date of RCW 48.23.410 through 48.23.520. After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of RCW 48.23.410 through 48.23.520 after a specified date before the second anniversary of July 10, 1982. After the filing of such notice, then upon such specified date, which shall be the operative date of RCW 48.23.410 through 48.23.520 for such company, RCW 48.23.410 through 48.23.520 shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of RCW 48.23.410 through 48.23.520 for such company shall be the second anniversary of July 10, 1982. [1982 1st ex.s. c 9 § 32.]

Chapter 48.23A RCW

LIFE INSURANCE POLICY ILLUSTRATIONS

Sections

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48.23A.090	Violations—RCW 48.30.010(1).
48.23A.900	Severability—1997 c 313.
48.23A.901	Effective date—Application—1997 c 313.

48.23A.005 Purpose—Standards for life insurance policy illustrations. The purpose of this chapter is to provide standards for life insurance policy illustrations that will protect consumers and foster consumer education by providing illustration formats, prescribing standards to be followed when illustrations are used, and specifying the disclosures that are required in connection with illustrations. The goals of these standards are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveates and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed. [1997 c 313 § 1.]

48.23A.010 Scope of chapter—Exceptions. This chapter applies to all group and individual life insurance policies and certificates except:

- (1) Variable life insurance;
- (2) Individual and group annuity contracts;
- (3) Credit life insurance; or
- (4) Life insurance policies with no illustrated death benefits on any individual exceeding ten thousand dollars. [1997 c 313 § 2.]

48.23A.015 Definitions. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Actuarial standards board" means the board established by the American academy of actuaries to develop and adopt standards of actuarial practice.

(2) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(3) "Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five days.

(4) "Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the actuarial standards board may be relied upon if the standards:

- (a) Are consistent with all provisions of this chapter;
- (b) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
- (c) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any

assumed improvements in experience beyond the illustration date; and

(d) Do not permit assumed expenses to be less than minimum assumed expenses.

(5) "Generic name" means a short title descriptive of the policy being illustrated, such as whole life, term life, or flexible premium adjustable life.

(6) "Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are guaranteed and determined at issue.

(7) "Nonguaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(8) "Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

- (a) The disciplined current scale; or
- (b) The currently payable scale.

(9) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

(a) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

(b) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this chapter, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

(c) "In-force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

(10) "Illustration actuary" means an actuary meeting the requirements of RCW 48.23A.080 who certifies to illustrations based on the standard of practice adopted by the actuarial standards board.

(11) "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting, as defined in this section, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and one hundred percent policy persistency thereafter.

(a) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

- (i) Fully allocated expenses;
- (ii) Marginal expenses; and
- (iii) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the national association of insurance commissioners.

(b) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

(12) "Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(a) Every plan of coverage was selected by the employer or other group representative;

(b) Some portion of the premium is paid by the group or through payroll deduction; and

(c) Group underwriting or simplified underwriting is used.

(13) "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

(14) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

(15) "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies, or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value will include cash surrender values and any other illustrated benefit amounts available at the policy owner's election. [1997 c 313 § 3.]

48.23A.020 Marketing with or without an illustration—Notice to commissioner—Conditions—Availability.

(1) Each insurer marketing policies to which this chapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on January 1, 1998, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after January 1, 1998, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(2) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this chapter is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(4) Potential enrollees of nonterm group life subject to this chapter shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation is not considered an illustration for purposes of this chapter, but all information provided shall be consistent with the illustrated scale. A basic illustration shall

be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any nonterm group life enrollee who requests it. [1997 c 313 § 4.]

48.23A.030 Illustration used in sale—Label—Required basic information—Prohibitions—Use of interest rate. (1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this chapter, be clearly labeled "life insurance illustration," and contain the following basic information:

- (a) Name of insurer;
- (b) Name and business address of producer or insurer's authorized representative, if any;
- (c) Name, age, and sex of proposed insured, except where a composite illustration is permitted under this chapter;
- (d) Underwriting or rating classification upon which the illustration is based;
- (e) Generic name of policy, the company product name, if different, and form number;
- (f) Initial death benefit; and
- (g) Dividend option election or application of nonguaranteed elements, if applicable.

(2) When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

- (a) Represent the policy as anything other than life insurance policy;
- (b) Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- (c) State or imply that the payment or amount of nonguaranteed elements is guaranteed;
- (d) Use an illustration that does not comply with the requirements of this chapter;
- (e) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
- (f) Provide an applicant with an incomplete illustration;
- (g) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;
- (h) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
- (i) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
- (j) Use an illustration that is not "self-supporting."

(3) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale. [1997 c 313 § 5.]

48.23A.040 Basic illustration—Conforming requirements—Brief descriptions—Numeric summaries—Required statements. (*Effective until July 1, 2009.*) (1) A

basic illustration shall conform with the following requirements:

(a) The illustration shall be labeled with the date on which it was prepared.

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (for example, the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").

(c) The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.

(d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

(e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

(f) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

(g) If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

(h) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (for example, "see page one for guaranteed elements").

(i) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(j) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable.

(k) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(l) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

- (i) The benefits and values are not guaranteed;
- (ii) The assumptions on which they are based are subject to change by the insurer; and

(iii) Actual results may be more or less favorable.

(m) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(n) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of

the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(2) A basic illustration shall include the following:

(a) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the internal revenue code;

(c) A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) Identification and a brief definition of column headings and key terms used in the illustration; and

(e) A statement containing in substance the following: "This illustration assumes that the currently illustrated, nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(3)(a) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, ten, and twenty and at age seventy, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years five, ten, twenty, and thirty.

(i) Policy guarantees;

(ii) Insurer's illustrated scale;

(iii) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

(A) Dividends at fifty percent of the dividends contained in the illustrated scale used;

(B) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(C) All nonguaranteed charges, including but not limited to, term insurance charges and mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(b) In addition, if coverage would cease prior to policy maturity or age one hundred, the year in which coverage ceases shall be identified for each of the three bases.

(4) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this chapter.

(a) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either

higher or lower. The agent has told me they are not guaranteed."

(b) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(5)(a) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(i) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(ii) The corresponding guaranteed death benefit, as provided in the policy; and

(iii) The corresponding guaranteed value available upon surrender, as provided in the policy.

(b) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(c) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column. [1997 c 313 § 6.]

48.23A.040 Basic illustration—Conforming requirements—Brief descriptions—Numeric summaries—Required statements. (Effective July 1, 2009.) (1) A basic illustration shall conform with the following requirements:

(a) The illustration shall be labeled with the date on which it was prepared.

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (for example, the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages").

(c) The assumed dates of payment receipt and benefit payout within a policy year shall be clearly identified.

(d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force.

(e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

(f) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

(g) If the illustration shows any nonguaranteed elements, they cannot be based on a scale more favorable to the policy

owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

(h) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (for example, "see page one for guaranteed elements").

(i) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(j) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable.

(k) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(l) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

- (i) The benefits and values are not guaranteed;
- (ii) The assumptions on which they are based are subject to change by the insurer; and
- (iii) Actual results may be more or less favorable.

(m) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(n) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(2) A basic illustration shall include the following:

(a) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the internal revenue code;

(c) A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) Identification and a brief definition of column headings and key terms used in the illustration; and

(e) A statement containing in substance the following: "This illustration assumes that the currently illustrated, nonguaranteed elements will continue unchanged for all years

shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(3)(a) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, ten, and twenty and at age seventy, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years five, ten, twenty, and thirty.

(i) Policy guarantees;

(ii) Insurer's illustrated scale;

(iii) Insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

(A) Dividends at fifty percent of the dividends contained in the illustrated scale used;

(B) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(C) All nonguaranteed charges, including but not limited to, term insurance charges and mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(b) In addition, if coverage would cease prior to policy maturity or age one hundred, the year in which coverage ceases shall be identified for each of the three bases.

(4) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this chapter.

(a) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The insurance producer has told me they are not guaranteed."

(b) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(5)(a) A basic illustration shall include the following for at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity, or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(i) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(ii) The corresponding guaranteed death benefit, as provided in the policy; and

(iii) The corresponding guaranteed value available upon surrender, as provided in the policy.

(b) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(c) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any nonguaranteed elements are shown, they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column. [2008 c 217 § 28; 1997 c 313 § 6.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.23A.050 Supplemental illustration—Conditions for use—Reference to basic illustration. (1) A supplemental illustration may be provided so long as:

(a) It is appended to, accompanied by, or preceded by a basic illustration that complies with this chapter;

(b) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(c) It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

(d) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information. [1997 c 313 § 7.]

48.23A.060 Illustration used or not used during sale—Signed copy of illustration or acknowledgment of no use—Computer screen—Retained copies. (1)(a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this chapter, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this chapter, be labeled "revised illustration," and be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(2)(a) If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy, or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no

later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(b) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3)(a) Where a computer screen illustration is used that cannot be printed out during use, the producer shall certify in writing on a form provided by the insurer that a computer screen illustration was displayed. Such form shall require the producer to provide, as applicable, the generic name of the policy and any riders illustrated, the guaranteed and nonguaranteed interest rates illustrated, the number of policy years illustrated, the initial death benefit, the premium amount illustrated, and the assumed number of years of premiums. On the same form the applicant shall acknowledge that an illustration matching that which was displayed on the computer screen will be provided no later than the time of policy delivery. A copy of this signed form shall be provided to the applicant at the time it is signed.

(b) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner and retained by the insurer.

(c) If a computer screen illustration is used that can be printed during use, a copy of that illustration, signed in accordance with this chapter, shall be submitted to the insurer at the time of policy application. A copy shall also be provided to the applicant.

(d) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection is satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed numeric summary page.

(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued. [1997 c 313 § 8.]

48.23A.070 Policy designated for use of illustrations—Annual report—Required information—In-force illustrations—Notice of adverse changes. (*Effective until July 1, 2009.*) (1) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

(a) For universal life policies, the report shall include the following:

(i) The beginning and end date of the current report period;

(ii) The policy value at the end of the previous report period and at the end of the current report period;

(iii) The total amounts that have been credited or debited to the policy value during the current report period, identifying each type, such as interest, mortality, expense, and riders;

(iv) The current death benefit at the end of the current report period on each life covered by the policy;

(v) The net cash surrender value of the policy as of the end of the current report period;

(vi) The amount of outstanding loans, if any, as of the end of the current report period; and

(vii) For fixed premium policies: If, assuming guaranteed interest, mortality, and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(viii) For flexible premium policies: If, assuming guaranteed interest, mortality, and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(b) For all other policies, where applicable:

(i) Current death benefit;

(ii) Annual contract premium;

(iii) Current cash surrender value;

(iv) Current dividend;

(v) Application of current dividend; and

(vi) Amount of outstanding loan.

(c) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(2) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

(3) Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of RCW 48.23A.030 (1) and (2) and 48.23A.040 (1) and (5). No signature or other acknowledgment of receipt of this illustration shall be required.

(4) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of

that fact and the nature of the change prominently displayed. [1997 c 313 § 9.]

48.23A.070 Policy designated for use of illustrations—Annual report—Required information—In-force illustrations—Notice of adverse changes. (Effective July 1, 2009.)

(1) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

(a) For universal life policies, the report shall include the following:

(i) The beginning and end date of the current report period;

(ii) The policy value at the end of the previous report period and at the end of the current report period;

(iii) The total amounts that have been credited or debited to the policy value during the current report period, identifying each type, such as interest, mortality, expense, and riders;

(iv) The current death benefit at the end of the current report period on each life covered by the policy;

(v) The net cash surrender value of the policy as of the end of the current report period;

(vi) The amount of outstanding loans, if any, as of the end of the current report period; and

(vii) For fixed premium policies: If, assuming guaranteed interest, mortality, and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(viii) For flexible premium policies: If, assuming guaranteed interest, mortality, and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(b) For all other policies, where applicable:

(i) Current death benefit;

(ii) Annual contract premium;

(iii) Current cash surrender value;

(iv) Current dividend;

(v) Application of current dividend; and

(vi) Amount of outstanding loan.

(c) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(2) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling (insurer's phone number), writing to (insurer's name) at (insurer's address) or contacting your insurance producer. If you do not receive a current illustration of your policy within 30 days from your request, you

should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in-force illustration.

(3) Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of RCW 48.23A.030 (1) and (2) and 48.23A.040 (1) and (5). No signature or other acknowledgment of receipt of this illustration shall be required.

(4) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed. [2008 c 217 § 29; 1997 c 313 § 9.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.23A.080 Illustration actuaries—Conditions for appointment—Duties—Certifications—Disclosures to commissioner. (Effective until July 1, 2009.) (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the national association of insurance commissioners model regulation on life insurance illustrations adopted by the actuarial standards board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this chapter.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American academy of actuaries;

(b) Be familiar with the standard of practice regarding life insurance policy illustrations;

(c) Not have been found by the commissioner, following appropriate notice and hearing to have:

(i) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(ii) Been found guilty of fraudulent or dishonest practices;

(iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(iv) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(d) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under (c) of this subsection;

(e) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual cer-

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tification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and

(f) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(i) Fully allocated expenses;

(ii) Marginal expenses; or

(iii) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the national association of insurance commissioners.

(4)(a) The illustration actuary shall file a certification with the board of directors and with the commissioner:

(i) Annually for all policy forms for which illustrations are used; and

(ii) Before a new policy form is illustrated.

(b) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of this chapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(b) That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (3)(f) of this section.

(7) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change. [1997 c 313 § 10.]

48.23A.080 Illustration actuaries—Conditions for appointment—Duties—Certifications—Disclosures to commissioner. (Effective July 1, 2009.) (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the national association of insurance commissioners model regulation on life insurance illustrations adopted by the actuarial standards board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this chapter.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American academy of actuaries;

(b) Be familiar with the standard of practice regarding life insurance policy illustrations;

(c) Not have been found by the commissioner, following appropriate notice and hearing to have:

(i) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(ii) Been found guilty of fraudulent or dishonest practices;

(iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(iv) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(d) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under (c) of this subsection;

(e) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and

(f) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(i) Fully allocated expenses;

(ii) Marginal expenses; or

(iii) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the national association of insurance commissioners.

(4)(a) The illustration actuary shall file a certification with the board of directors and with the commissioner:

(i) Annually for all policy forms for which illustrations are used; and

(ii) Before a new policy form is illustrated.

(b) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of this chapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(b) That the company has provided its insurance producers with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (3)(f) of this section.

(7) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change. [2008 c 217 § 30; 1997 c 313 § 10.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.23A.090 Violations—RCW 48.30.010(1). In addition to any other penalties provided by law, an insurer or producer that violates a requirement of this chapter is guilty of a violation of RCW 48.30.010(1). [1997 c 313 § 11.]

48.23A.900 Severability—1997 c 313. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 313 § 12.]

48.23A.901 Effective date—Application—1997 c 313. This act takes effect January 1, 1998, and applies to policies sold on or after January 1, 1998. [1997 c 313 § 13.]

Chapter 48.24 RCW

GROUP LIFE AND ANNUITIES

Sections

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Policy dividends are payable to real party in interest: RCW 48.18.340.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.24.010 Group requirements. (1) No contract of life insurance shall hereafter be delivered or issued for delivery in this state insuring the lives of more than one individual unless to one of the groups as provided for in this chapter, and unless in compliance with the other provisions of this chapter.

(2) Subsection (1) of this section shall not apply to contracts of life insurance

(a) insuring only individuals related by marriage, by blood, or by legal adoption; or

(b) insuring only individuals having a common interest through ownership of a business enterprise, or of a substantial legal interest or equity therein, and who are actively engaged in the management thereof; or

(c) insuring the lives of employees and retirees under contracts executed with the state health care authority under the provisions of chapter 41.05 RCW. [1988 c 107 § 22; 1973 1st ex.s. c 147 § 11; 1947 c 79 § .24.01; Rem. Supp. 1947 § 45.24.01.]

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

48.24.020 Employee groups. The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee is deemed the policyholder, insuring employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(1) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him or her, or partly from such funds and partly from funds contributed by the insured employees, or from funds contributed entirely by the insured employees. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least two employees at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. [2005 c 222

(2008 Ed.)

§ 1; 1955 c 303 § 29; 1947 c 79 § .24.02; Rem. Supp. 1947 § 45.24.02.]

48.24.025 Payment of premium by employee when compensation suspended due to labor dispute. Any employee whose compensation includes group life insurance, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the policyholder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the policy provides. During that period of time the policy may not be altered or changed. Nothing in this section shall be deemed to impair the right of the insurer to make normal decreases or increases of the premium rate upon expiration and renewal of the policy, in accordance with the provisions of the policy. Thereafter, if such insurance coverage is no longer available, then the employee shall be given the opportunity to purchase an individual policy at a rate consistent with rates filed by the insurer with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the policyholder in writing, by mail addressed to the address last on record with the policyholder, that the employee may pay the premiums to the policyholder as they become due as provided in this section.

Payment of the premiums must be made when due or the insurance coverage may be terminated by the insurer.

The provisions of any insurance policy contrary to provisions of this section are void and unenforceable after May 29, 1975. [1975 1st ex.s. c 117 § 2.]

Severability—1975 1st ex.s. c 117: See note following RCW 48.21.075.

48.24.030 Dependents of employees or members of certain groups. (1) Insurance under any group life insurance policy issued under RCW 48.24.020, 48.24.050, 48.24.060, 48.24.070, or 48.24.090 may be extended to insure the spouse and dependent children, or any class or classes thereof, of each insured employee or member who so elects, in amounts in accordance with a plan that precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member including a spouse shall not be in excess of the amount on the life of the insured employee or member.

Premiums for the insurance on the family members shall be paid by the policyholder, either from the employer's funds, funds contributed to him or her, employee's funds, trustee's funds, or labor union funds.

(2) A spouse insured under this section has the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter. [2006 c 25 § 14. Prior: 2005 c 223 § 13; 2005 c 222 § 2; 1993 c 132 § 1; 1975 1st ex.s. c 266 § 11; 1965 ex.s. c 70 § 23; 1963 c 192 § 1; 1953 c 197 § 10; 1947 c 79 § .24.03; Rem. Supp. 1947 § 45.24.03.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.24.035 Credit union groups. The lives of a group of individuals may be insured under a policy issued to a credit union, which shall be deemed the policyholder, to insure eligible members of such credit union for the benefit of persons other than the credit union or its officials, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of a credit union, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, or all of any class or classes thereof determined by conditions pertaining to their age or membership in the credit union or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the credit union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued for which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance.

(3) The policy must cover at least twenty-five members at the date of issue.

(4) The amount of insurance under the policy shall not exceed the amount of the total shares and deposits of the member.

(5) As used herein, "credit union" means a credit union organized and operating under the federal credit union act of 1934 or chapter 31.12 RCW. [1982 c 181 § 14; 1961 c 194 § 8.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.24.040 Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditors, subject to the provisions of the insurance code relating to credit life insurance and credit accident and health insurance and to the following requirements:

(1) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness, except that nothing in this section shall preclude an insurer from excluding from the classes eligible for insurance classes of debtors determined by age. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

(2) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from

the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

(4) Payment by the debtor insured under any such group life insurance contract of the premium charged the creditor by the insurer for such insurance pertaining to the debtor, shall not be deemed to constitute a charge upon a loan in violation of any usury law. [1967 c 150 § 28; 1961 c 194 § 9; 1955 c 303 § 18; 1947 c 79 § .24.04; Rem. Supp. 1947 § 45.24.04.]

48.24.045 Certain associations as groups. The lives of a group of individuals may be insured under a policy issued to an association which has been in active existence for at least one year, which has a constitution and bylaws, and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance. Under this group life insurance policy, the association shall be deemed the policyholder. The policy may insure association employees, members, or their employees. Beneficiaries under the policy shall be persons other than the association or its officers or trustees. The term "employees" as used in this section may include retired employees. [1979 ex.s. c 44 § 1.]

48.24.050 Labor union groups. The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(1) The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

(2) The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued of which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which the premium is to be derived in part from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(3) The policy must cover at least twenty-five members at date of issue.

(4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. [1955 c 303 § 19; 1947 c 79 § .24.05; Rem. Supp. 1947 § 45.24.05.]

48.24.060 Public employee associations. The lives of a group of public employees may be insured under a policy issued to the departmental head or to a trustee, or issued to an association of public employees formed for purposes other than obtaining insurance and having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five percent of the number of employees eligible for membership in such classes, which department head or trustee or association shall be deemed the policyholder, to insure such employees for the benefit of persons other than the policyholder or any of its officials, subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be all of the employees of the department or members of the association, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the association, or both.

(2) The premium for the policy shall be paid by the policyholder, in whole or in part either from salary deductions authorized by, or charges collected from, the insured employees or members specifically for the insurance, or from the association's own funds, or from both. Any such deductions from salary may be paid by the employer to the association or directly to the insurer. No policy may be placed in force unless and until at least seventy-five percent of the then eligible employees or association members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have authorized their employer to make any required deductions from salary.

(3) The rate of charges to the insured employees or members specifically for the insurance, and the dues of the association if they include the cost of insurance, shall be determined according to each attained age or in not less than four reasonably spaced attained age groups. In no event shall the rate of such dues or charges be level for all members regardless of attained age.

(4) The policy must cover at least twenty-five persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or members or by the association.

As used herein, "public employees" means employees of the United States government, or of any state, or of any political subdivision or instrumentality of any of them. [1989 c 10 § 9. Prior: 1973 1st ex.s. c 163 § 8; 1973 1st ex.s. c 152 § 5; 1963 c 195 § 21; 1955 c 303 § 20; 1953 c 197 § 11; 1947 c 79 § .24.06; Rem. Supp. 1947 § 45.24.06.]

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.24.070 Trustee groups. The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by two or more employers or by two or more employer members of an employers' association, or by one or more labor unions, or by one or more employers and one or more labor unions, or by one or more employers and

one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees or members for the benefit of persons other than the employers or the unions, subject to the following requirements:

(1) If the policy is issued to two or more employer members of an employers' association, such policy may be issued only if (a) the association has been in existence for at least five years and was formed for purposes other than obtaining insurance and (b) the participating employers, meaning such employer members whose employees are to be insured, constitute at date of issue at least fifty percent of the total employers eligible to participate, unless the number of persons covered at date of issue exceeds six hundred, in which event such participating employers must constitute at least twenty-five percent of such total employers in either case omitting from consideration any employer whose employees are already covered for group life insurance.

(2) The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

(3) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or partly or wholly from funds contributed by the insured persons, or any combination thereof. A policy on which all or part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force if the eligible persons elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) The policy must cover at least twenty persons at date of issue.

(5) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. [2007 c 80 § 9; 1973 1st ex.s. c 163 § 9; 1963 c 86 § 1; 1959 c 225 § 9; 1955 c 303 § 21; 1953 c 197 § 12; 1947 c 79 § .24.07; Rem. Supp. 1947 § 45.24.07.]

48.24.080 Agent groups. (Effective until July 1, 2009.) The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal, covering when issued not less than twenty-five agents of such principal, subject to the following requirements:

(1) The agents eligible for insurance under the policy shall be those who are under contract to render personal ser-

vices for such principal for a commission or other fixed or ascertainable compensation.

(2) The policy must insure either all of the agents or all of any class or classes thereof, determined by conditions pertaining to the services to be rendered by such agents, except that if a policy is intended to insure several such classes it may be issued to insure any such class of which seventy-five percent are covered and extended to other classes as seventy-five percent thereof express the desire to be covered.

(3) The premium on the policy shall be paid by the principal or by the principal and the agents jointly. When the premium is paid by the principal and agents jointly and the benefits of the policy are offered to all eligible agents, the policy, when issued, must insure not less than seventy-five percent of such agents.

(4) The amounts of insurance shall be based upon some plan which will preclude individual selection.

(5) The insurance shall be for the benefit of persons other than the principal.

(6) Such policy shall terminate if, subsequent to issue, the number of agents insured falls below twenty-five lives or seventy-five percent of the number eligible and the contribution of the agents, if the premiums are on a renewable term insurance basis, exceed one dollar per month per one thousand dollars of insurance coverage plus any additional premium per one thousand dollars of insurance coverage charged to cover one or more hazardous occupations.

(7) For the purposes of this section "agents" shall be deemed to include agents, subagents, solicitors, and salesmen. [1949 c 190 § 33; Rem. Supp. 1949 § 45.24.08.]

48.24.080 Insurance producer groups. (Effective July 1, 2009.) The lives of a group of individuals may be insured under a policy issued to a principal, or if such principal is a life insurer, by or to such principal, covering when issued not less than twenty-five insurance producers of such principal, subject to the following requirements:

(1) The insurance producers eligible for insurance under the policy shall be those who are under contract to render personal services for such principal for a commission or other fixed or ascertainable compensation.

(2) The policy must insure either all of the insurance producers or all of any class or classes thereof, determined by conditions pertaining to the services to be rendered by such insurance producers, except that if a policy is intended to insure several such classes it may be issued to insure any such class of which seventy-five percent are covered and extended to other classes as seventy-five percent thereof express the desire to be covered.

(3) The premium on the policy shall be paid by the principal or by the principal and the insurance producers jointly. When the premium is paid by the principal and insurance producers jointly and the benefits of the policy are offered to all eligible insurance producers, the policy, when issued, must insure not less than seventy-five percent of such insurance producers.

(4) The amounts of insurance shall be based upon some plan which will preclude individual selection.

(5) The insurance shall be for the benefit of persons other than the principal.

(6) Such policy shall terminate if, subsequent to issue, the number of insurance producers insured falls below twenty-five lives or seventy-five percent of the number eligible and the contribution of the insurance producers, if the premiums are on a renewable term insurance basis, exceed one dollar per month per one thousand dollars of insurance coverage plus any additional premium per one thousand dollars of insurance coverage charged to cover one or more hazardous occupations. [2008 c 217 § 32; 1949 c 190 § 33; Rem. Supp. 1949 § 45.24.08.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.24.090 Washington state patrol. The lives of a group of individuals may be insured under a policy issued to the commanding officer, which commanding officer shall be deemed the policyholder, to insure not less than twenty-five of the members of the Washington state patrol. Such policy shall be for the benefit of beneficiaries as designated by the individuals so insured, and the premium thereon may be paid by such members. Not less than seventy-five percent of all eligible members of such Washington state patrol, or of any unit thereof determined by conditions pertaining to their employment, may be so insured. [1947 c 79 § .24.09; Rem. Supp. 1947 § 45.24.09.]

48.24.095 Financial institutions. The lives of a group of individuals may be insured under a policy issued to a state or federally regulated financial institution, which financial institution shall be deemed the policyholder. The purpose of the policy shall be to insure the depositors or depositor members of the financial institution for the benefit of persons other than the financial institution or its officers. The issuance of the policy shall be subject to the following requirements:

(1) The persons eligible for insurance under the policy shall be the depositors or deposit members of such financial institution, except any as to whom evidence of individual insurability is not satisfactory to the insurer, or any class or classes thereof determined by conditions of age.

(2) The policy must cover at least one hundred persons at the date of issue.

(3) The amount of insurance under the policy shall not exceed the amount of the deposit account of the insured person or five thousand dollars whichever is less.

(4) Financial institutions referred to herein must be authorized to do business in the state of Washington and have their depositors' or members' deposit accounts insured against loss to the amount of at least fifteen thousand dollars by a corporate agency of the federal government. [1967 ex.s. c 95 § 15.]

48.24.100 Standard provisions. No policy of group life insurance shall be delivered or issued for delivery in this state unless it contains in substance the standard provisions as required by RCW 48.24.110 to 48.24.200, inclusive, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder; except that:

(1) Provisions set forth in RCW 48.24.160 to 48.24.200, inclusive, shall not apply to policies issued to a creditor to insure its debtors.

(2) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies. [1947 c 79 § .24.10; Rem. Supp. 1947 § 45.24.10.]

48.24.110 Grace period. There shall be a provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period. [1947 c 79 § .24.11; Rem. Supp. 1947 § 45.24.11.]

48.24.120 Incontestability. There shall be a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by an individual insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of two years during such individual's lifetime nor unless it is contained in a written instrument signed by him. [1947 c 79 § 24.12; Rem. Supp. 1947 § 45.24.12.]

48.24.130 The contract—Representations. There shall be a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued and become a part of the contract; that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary. [1947 c 79 § .24.13; Rem. Supp. 1947 § 45.24.13.]

48.24.140 Insurability. There shall be a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage. [1947 c 79 § .24.14; Rem. Supp. 1947 § 45.24.14.]

48.24.150 Misstatement of age or sex. There shall be a provision specifying an equitable adjustment of premiums or of benefits or of both to be made in the event the age or sex of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used. [1983 1st ex.s. c 32 § 22; 1947 c 79 § .24.15; Rem. Supp. 1947 § 45.24.15.]

48.24.160 Beneficiary—Funeral, last illness expenses. There shall be a provision that any sum becoming due by reason of the death of the individual insured shall be payable to the beneficiary designated by such individual, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the individual insured and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding ten percent of such amount or one thousand dollars, whichever is greater, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the individual insured. [1981 c 333 § 1; 1979 ex.s. c 199 § 9; 1955 c 303 § 23; 1947 c 79 § .24.16; Rem. Supp. 1947 § 45.24.16.]

48.24.170 Certificates. There shall be a provision that the insurer will issue to the policyholder for delivery to each individual insured a certificate setting forth a statement as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, described by name, relationship, or reference to the insurance records of the policyholder or insurer, and the rights and conditions set forth in RCW 48.24.180, 48.24.190 and 48.24.200, following. [1961 c 194 § 10; 1947 c 79 § .24.17; Rem. Supp. 1947 § 45.24.17.]

48.24.180 Conversion on termination of eligibility. There shall be a provision that if the insurance, or any portion of it, on an individual covered under the policy, other than a child insured pursuant to RCW 48.24.030, ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such individual shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, and provided further that,

(1) the individual policy shall, at the option of such individual, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;

(2) the individual policy shall be in an amount not in any event in excess of the amount of life insurance which ceases because of such termination nor less than one thousand dollars unless a smaller amount of coverage was provided for such individual under the group policy: PROVIDED, That any amount of insurance which matures on the date of such termination or has matured prior thereto under the group policy as an endowment payable to the individual insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

(3) the premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such individual then belongs, and to his age attained on the effective date of the individual policy. [1955 c 303 § 24; 1947 c 79 § .24.18; Rem. Supp. 1947 § 45.24.18.]

48.24.190 Conversion on termination of policy.

There shall be a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured individuals, every individual insured thereunder at the date of such termination, other than a child insured pursuant to RCW 48.24.030, whose insurance terminates and who has been so insured for at least five years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by RCW 48.24.180, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of (a) the amount of the individual's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within thirty-one days of such termination and (b) two thousand dollars. [1953 c 197 § 13; 1947 c 79 § .24.19; Rem. Supp. 1947 § 45.24.19.]

48.24.200 Death pending conversion.

There shall be a provision that if a person insured under the group policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with RCW 48.24.180 and 48.24.190, and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made. [1947 c 79 § .24.20; Rem. Supp. 1947 § 45.24.20.]

48.24.210 Limitation of liability.

(1) The insurer may in any group life insurance contract provide that it is not liable, or is liable only in a reduced amount, for losses resulting:

(a) From war or any act of war, declared or undeclared, or of service in the military, naval or air forces or in civilian forces auxiliary thereto, or from any cause while a member of any such military, naval or air forces, of any country at war, declared or undeclared.

(b) From aviation under conditions specified in the policy.

(2) The insurer may in any such contract provide that any amount of insurance in excess of one thousand dollars on an individual life may be reduced to one thousand dollars or to any greater amount upon attainment of any age not less than age sixty-five or upon the anniversary of the policy nearest attainment of such age. [1947 c 79 § .24.21; Rem. Supp. 1947 § 45.24.21.]

48.24.240 Readjustment of premium.

Any group life insurance contract may provide for a readjustment of the premium rate based on experience under that contract, at the end of the first or of any subsequent year of insurance, and which readjustment may be made retroactive for such policy year only. [1947 c 79 § .24.24; Rem. Supp. 1947 § 45.24.24.]

48.24.260 Application of dividends or rate reductions.

Any policy dividends hereafter declared, or reduction

in rate of premiums hereafter made or continued for the first or any subsequent year of insurance, under any policy of group life insurance heretofore or hereafter issued to any policyholder may be applied to reduce the policyholder's part of the cost of such insurance, except that if the aggregate dividends or refunds or credits under such group policy and any other group policy or contract issued to the policyholder exceed the aggregate contributions of the policyholder toward the cost of the coverages, such excess shall be applied by the policyholder for the sole benefit of insured individuals. [1947 c 79 § .24.26; Rem. Supp. 1947 § 45.24.26.]

48.24.270 Payment of proceeds—Interest, when delayed.

(1) An insurer shall pay the proceeds of any benefits under a policy of group life insurance insuring the life of any person who was a resident of this state at the time of death. The proceeds must be paid not more than thirty days after the insurer has received satisfactory proof of death of the insured. If the proceeds are not paid within the thirty-day period, the insurer shall also pay interest on the proceeds from the date of death of the insured to the date when the proceeds are paid.

(2) The interest required under subsection (1) of this section accrues commencing on the date of death at the rate then paid by the insurer on other withdrawable policy proceeds left with the company or eight percent, whichever is greater.

(3) Benefits payable that have not been tendered to the beneficiary within ninety days of the receipt of proof of death accrue interest, commencing on the ninety-first day, at the rate under subsection (2) of this section plus three percent. [2008 c 310 § 1.]

Chapter 48.25 RCW**INDUSTRIAL LIFE INSURANCE**

Sections

48.25.010	Scope of chapter.
48.25.020	Industrial life insurance defined.
48.25.030	Compliance enjoined.
48.25.040	Standard provisions.
48.25.050	Grace period.
48.25.060	Entire contract.
48.25.070	Incontestability.
48.25.080	Misstatement of age.
48.25.090	Dividends.
48.25.100	Nonforfeiture benefits.
48.25.110	Cash surrender value.
48.25.120	Reinstatement.
48.25.130	Settlement.
48.25.140	Authority to alter policy.
48.25.150	Beneficiary.
48.25.160	Facility of payment clause.
48.25.170	Payment of premiums direct.
48.25.180	Conversion—Weekly premium policies.
48.25.190	Conversion—Monthly premium policies.
48.25.200	Title on policy.
48.25.210	Application to term and specified insurance.
48.25.220	Prohibited provisions.
48.25.230	Limitation of liability.

Exemption of proceeds, life insurance: RCW 48.18.410.

Insurable interest, personal insurance, nonprofit organizations: RCW 48.18.030.

Minor may contract for life or disability insurance: RCW 48.18.020.

Payment to person designated in policy or by assignment discharges insurer: RCW 48.18.370.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.25.010 Scope of chapter. The provisions of this chapter apply only to industrial life insurance contracts. [1947 c 79 § .25.01; Rem. Supp. 1947 § 45.25.01.]

48.25.020 Industrial life insurance defined. "Industrial" life insurance is any life insurance provided by an individual insurance contract issued in face amount of less than one thousand dollars, under which premiums are payable monthly or oftener, and bearing the words "industrial policy" printed upon the policy as a part of the descriptive matter. [1947 c 79 § .25.02; Rem. Supp. 1947 § 45.25.02.]

48.25.030 Compliance enjoined. No policy of industrial life insurance shall be delivered or be issued for delivery in this state after January 1, 1948, except in compliance with the provisions of this chapter and with other applicable provisions of this code. [1947 c 79 § .25.03; Rem. Supp. 1947 § 45.25.03.]

48.25.040 Standard provisions. No such policy shall be so issued or delivered unless it contains in substance the provisions as required by this chapter, or provisions which in the opinion of the commissioner are more favorable to the policyholder. [1947 c 79 § .25.04; Rem. Supp. 1947 § 45.25.04.]

48.25.050 Grace period. There shall be a provision that the insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that in policies the premiums for which are payable monthly, the period of grace shall be one month but not less than thirty days; and that during the period of grace the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any overdue and unpaid premiums may be deducted from any settlement under the policy. [1947 c 79 § .25.05; Rem. Supp. 1947 § 45.25.05.]

48.25.060 Entire contract. There shall be a provision that the policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, a provision that the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in such application shall, in the absence of fraud, be deemed to be representations and not warranties. [1947 c 79 § .25.06; Rem. Supp. 1947 § 45.25.06.]

48.25.070 Incontestability. There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of two years from its date of issue except for nonpayment of premiums, and except, at the option of the insurer, as to supplemental provisions providing benefits for total and permanent disability or specifically for accidental death. [1947 c 79 § .25.07; Rem. Supp. 1947 § 45.25.07.]

48.25.080 Misstatement of age. There shall be a provision that if it is found that the age of the individual insured, or

the age of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages. [1947 c 79 § .25.08; Rem. Supp. 1947 § 45.25.08.]

48.25.090 Dividends. If a participating policy, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy, and that dividends arising from such apportionment shall be credited annually beginning not later than the fifth contract year. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy. [1947 c 79 § .25.09; Rem. Supp. 1947 § 45.25.09.]

48.25.100 Nonforfeiture benefits. There shall be a provision for nonforfeiture benefits as required by chapter 48.76 RCW. [1983 c 3 § 152; 1947 c 79 § .25.10; Rem. Supp. 1947 § 45.25.10.]

48.25.110 Cash surrender value. There shall be a provision for a cash surrender value as required by chapter 48.76 RCW. [1983 c 3 § 153; 1947 c 79 § .25.11; Rem. Supp. 1947 § 45.25.11.]

48.25.120 Reinstatement. There shall be a provision that the policy may be reinstated at any time within two years from the due date of the premium in default unless the cash surrender value has been paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the insurer and the payment of all overdue premiums and payment or reinstatement of any unpaid loans or advances made by the insurer against the policy with interest at a rate not exceeding six percent per annum and payable annually. [1947 c 79 § .25.12; Rem. Supp. 1947 § 45.25.12.]

48.25.130 Settlement. There shall be a provision that when the policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death or after a specified period not exceeding two months after receipt of such proof. [1947 c 79 § .25.13; Rem. Supp. 1947 § 45.25.13.]

48.25.140 Authority to alter policy. (Effective until July 1, 2009.) There shall be a provision that no agent shall have the power or authority to waive, change or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer. [1947 c 79 § .25.14; Rem. Supp. 1947 § 45.25.14.]

48.25.140 Authority to alter policy. (Effective July 1, 2009.) (1) There shall be a provision that no insurance producer shall have the power or authority to waive, change, or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer.

(2) No later than January 1, 2010, or when the insurer has used all of its existing paper industrial life insurance contract forms which were in its possession on July 1, 2009, whichever is earlier, the notice required by subsection (1) of this section shall use the term insurance producer in place of agent. [2008 c 217 § 33; 1947 c 79 § .25.14; Rem. Supp. 1947 § 45.25.14.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.25.150 Beneficiary. (1) Each such policy shall have a space on the front or back page of the policy for the name of the beneficiary designated with a reservation of the right to designate or change the beneficiary after the issuance of the policy.

(2) The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured. [1947 c 79 § .25.15; Rem. Supp. 1947 § 45.25.15.]

48.25.160 Facility of payment clause. Such a policy may also provide that if the beneficiary designated in the policy does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than thirty days after the death of the insured, or if the beneficiary is the estate of the insured or is a minor, or dies before the insured or is not legally competent to give a valid release, then the insurer may make payment thereunder to the executor or administrator of the insured, or to any of the insured's relatives by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. Such policy may also include a similar provision applicable to any other payment due under the policy. [1947 c 79 § .25.16; Rem. Supp. 1947 § 45.25.16.]

48.25.170 Payment of premiums direct. In the case of weekly premium policies, there may be a provision that upon proper notice to the insurer while premiums on the policy are not in default beyond the grace period, of the intention to pay future premiums directly to the insurer at its home office or any office designated by the insurer for the purpose, the insurer will, at the end of each period of a year from the due date of the first premium so paid, for which period such premiums are so paid continuously without default beyond the grace period, refund a stated percentage of the premiums in an amount which fairly represents the savings in collection expense. [1947 c 79 § .25.17; Rem. Supp. 1947 § 45.25.17.]

48.25.180 Conversion—Weekly premium policies. There shall be a provision in the case of weekly premium policies granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his weekly premium industrial insurance to any form of life insurance with

less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of such insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired. [1947 c 79 § .25.18; Rem. Supp. 1947 § 45.25.18.]

48.25.190 Conversion—Monthly premium policies. There shall be a provision, in the case of monthly premium industrial policies, granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting his monthly premium industrial insurance to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making such conversions need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insurer at the age of the insured on the plan of ordinary insurance desired. [1947 c 79 § .25.19; Rem. Supp. 1947 § 45.25.19.]

48.25.200 Title on policy. There shall be a title on the face of each such policy briefly describing its form. [1947 c 79 § .25.20; Rem. Supp. 1947 § 45.25.20.]

48.25.210 Application to term and specified insurance. Any of the provisions required by this chapter or any portion thereof which are not applicable to single premium or term policies or to policies issued or granted pursuant to non-forfeiture provisions, shall to that extent not be incorporated therein. [1947 c 79 § .25.21; Rem. Supp. 1947 § 45.25.21.]

48.25.220 Prohibited provisions. No such policy shall contain:

(1) A provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer.

(2) A provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within two years prior to the issuance of the policy, received institutional, hospital, medical or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk.

(3) A provision giving the insurer the right to declare the policy void because the insured had been rejected for insurance, unless such right be conditioned upon a showing by the insurer, that knowledge of such rejection would have led to a refusal by the insurer to make such contract. [1947 c 79 § .25.22; Rem. Supp. 1947 § 45.25.22.]

48.25.230 Limitation of liability. The insurer may in any such policy limit its liability for the same causes and to the same extent as is provided in RCW 48.23.260 for other life insurance contracts. [1947 c 79 § .25.23; Rem. Supp. 1947 § 45.25.23.]

Chapter 48.25A RCW

LIFE INSURANCE—PROFIT-SHARING, CHARTER, FOUNDERS, AND COUPON POLICIES

Sections

48.25A.010	Definitions.
48.25A.020	Certain policies not to be issued or delivered after September 1, 1967.
48.25A.030	Coupon policies—Approval by commissioner.
48.25A.040	Coupon policies—Requirements.
48.25A.050	Revocation of certificates of authority and licenses for violation of chapter.

48.25A.010 Definitions. As used in this chapter:

(1) "Profit-sharing policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will participate in the distribution of earnings or surplus other than earnings or surplus attributable, by reasonable and nondiscriminatory standards, to the participating policies of the company and allocated to the policyholder on reasonable and nondiscriminatory standards; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(2) "Charter policy" or "founders policy" means:

(a) A life insurance policy which by its terms expressly provides that the policyholder will receive some preferential or discriminatory advantage or benefit not available to persons who purchase insurance from the company at future dates or under other circumstances; or

(b) A life insurance policy the provisions of which, through sales material or oral presentations, are interpreted by the company to prospective policyholders as entitling the policyholder to the benefits described in subsection (a) of this section.

(3) "Coupon policy" means a life insurance policy which provides a series of pure endowments maturing periodically in amounts not exceeding the gross annual policy premiums. The term "pure endowment" or "endowment" is used in its accepted actuarial sense, meaning a benefit becoming payable at a specific future date if the insured person is then living. [1967 ex.s. c 95 § 5.]

48.25A.020 Certain policies not to be issued or delivered after September 1, 1967. No profit-sharing, charter, or

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founders policy shall be issued or delivered in this state after September 1, 1967. [1967 ex.s. c 95 § 6.]

48.25A.030 Coupon policies—Approval by commissioner. No coupon policy shall be issued or delivered in this state until the form of the same has been filed with and approved by the commissioner. [1967 ex.s. c 95 § 7.]

48.25A.040 Coupon policies—Requirements. Coupon policies issued or delivered in this state shall be subject to the following provisions:

(1) No detachable coupons or certificates or passbooks may be used. No other device may be used which tends to emphasize the periodic endowment benefits or which tends to create the impression that the endowments represent interest earnings or anything other than benefits which have been purchased by part of the policyholder's premium payments.

(2) Each endowment benefit must have a fixed maturity date and payment of the endowment benefit shall not be contingent upon the payment of any premium becoming due on or after such maturity date.

(3) The endowment benefits must be expressed in dollar amounts rather than as percentages of other quantities or in other ways, both in the policy itself and in the sale thereof.

(4) A separate premium for the periodic endowment benefits must be shown in the policy adjacent to the rest of the policy premium information and must be given the same emphasis in the policy and in the sale thereof as that given the rest of the policy premium information. This premium shall be calculated with mortality, interest and expense factors which are consistent with those for the basic policy premium. [1967 ex.s. c 95 § 8.]

48.25A.050 Revocation of certificates of authority and licenses for violation of chapter. The commissioner may revoke all certificates of authority and licenses granted to any insurance company, its officers or agents violating any provision of this chapter. [1967 ex.s. c 95 § 9.]

Chapter 48.26 RCW

MARINE AND TRANSPORTATION INSURANCE (RESERVED)

Chapter 48.27 RCW PROPERTY INSURANCE

Sections

48.27.010	Over-insurance prohibited.
48.27.020	Replacement insurance.

Binders: RCW 48.18.230.

Insurable interest, property insurance, nonprofit organizations: RCW 48.18.040.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

Rates: Chapter 48.19 RCW.

Standard form of fire policy: RCW 48.18.120.

48.27.010 Over-insurance prohibited. (1) Over-insurance shall be deemed to exist if property or an insurable interest therein is insured by one or more insurance contracts

against the same hazard in any amount in excess of the fair value of the property or of such interest, as determined as of the effective date of the insurance or of any renewal thereof, or in those instances when insured value is for improvements and land.

(2) For the purposes of this section only the term "fair value" means the cost of replacement less such depreciation as is properly applicable to the subject insured.

(3) No person shall knowingly require, request, issue, place, procure, or accept any insurance contract which would result in over-insurance of the property or interest therein proposed to be insured, except as is provided in RCW 48.27.020.

(4) No person shall compel an insured or applicant for insurance to procure property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy (or combination of policies) in the event of a loss, whether such insurance is required in connection with a loan or otherwise.

(5) Each violation of this section shall subject the violator to the penalties provided by this code. [1984 c 6 § 1; 1947 c 79 § .27.01; Rem. Supp. 1947 § 45.27.01.]

48.27.020 Replacement insurance. By any contract of insurance of property or of any insurable interest therein, the insurer may in connection with a special provision or endorsement made a part of the policy insure the cost of repair or replacement of such property, if damaged or destroyed by a hazard insured against, and without deduction of depreciation, subject to such reasonable rules and regulations as may be made by the commissioner. [1951 c 194 § 1; 1947 c 79 § .27.02; formerly Rem. Supp. 1947 § 45.27.02.]

Chapter 48.28 RCW SURETY INSURANCE

Sections

48.28.010	Requirements deemed met by surety insurer.
48.28.020	Fiduciary bonds—Premium as lawful expense.
48.28.030	Judicial bonds—Premium as part of recoverable costs.
48.28.040	Official bonds—Payment of premiums.
48.28.050	Release from liability.

Binders: RCW 48.18.230.

Official bonds in general: Chapter 42.08 RCW.

Policy forms, execution, filing, etc.: Chapter 48.18 RCW.

48.28.010 Requirements deemed met by surety insurer. Whenever by law or by rule of any court, public official, or public body, any surety bond, recognizance, obligation, stipulation or undertaking is required or is permitted to be given, any such bond, recognizance, obligation, stipulation, or undertaking which is otherwise proper and the conditions of which are guaranteed by an authorized surety insurer, or by an unauthorized surety insurer as a surplus line pursuant to chapter 48.15 RCW of this code, shall be approved and accepted and shall be deemed to fulfill all requirements as to number of sureties, residence or status of sureties, and other similar requirements, and no justification by such surety shall be necessary. [1947 c 79 § .28.01; Rem. Supp. 1947 § 45.28.01.]

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48.28.020 Fiduciary bonds—Premium as lawful expense. Any fiduciary required by law to give bonds, may include as part of his lawful expense to be allowed by the court or official by whom he was appointed, the reasonable amount paid as premium for such bonds to the authorized surety insurer or to the surplus line surety insurer which issued or guaranteed such bonds. [1955 c 30 § 1. Prior: 1947 c 79 § .28.02; Rem. Supp. 1947 § 45.28.02.]

48.28.030 Judicial bonds—Premium as part of recoverable costs. In any proceeding the party entitled to recover costs may include therein such reasonable sum as was paid to such surety insurer as premium for any bond or undertaking required therein, and as may be allowed by the court having jurisdiction of such proceeding. [1955 c 30 § 2. Prior: 1947 c 79 § .28.03; Rem. Supp. 1947 § 45.28.03.]

Rules of court: Cf. RAP 14.3, 18.22.

48.28.040 Official bonds—Payment of premiums. The premium for bonds given by such surety insurers for appointive or elective public officers and for such of their deputies or employees as are required to give bond shall be paid by the state, political subdivision, or public body so served. [1955 c 30 § 3. Prior: 1947 c 79 § .28.04; Rem. Supp. 1947 § 45.28.04.]

48.28.050 Release from liability. A surety insurer may be released from its liability on the same terms and conditions as are provided by law for the release of individuals as sureties. [1947 c 79 § .28.05; Rem. Supp. 1947 § 45.28.05.]

Chapter 48.29 RCW TITLE INSURERS

Sections

48.29.005	Administration of chapter—Rules.
48.29.010	Scope of chapter—Definitions.
48.29.015	Requirement to maintain records—Report to commissioner.
48.29.020	Certificate of authority—Qualifications.
48.29.040	May do business in two or more counties—Restrictions.
48.29.120	Reserve requirements.
48.29.130	Investments.
48.29.140	Premium rates—Required filings—Transition date set by rule.
48.29.143	Premium rates—Actuarially sound estimates.
48.29.147	Required filings—Information subject to review—Commissioner's powers—Timing.
48.29.150	Taxation of title insurers.
48.29.155	Agent license—Financial responsibility—Definitions.
48.29.160	Agents—County tract indexes required.
48.29.170	Agents—Separate licenses for individuals not required.
48.29.180	Disclosure of energy conservation payment obligations—Informational note—Liability.
48.29.190	Conducting business as escrow agent—Requirements—Violation, penalties.
48.29.193	Escrow services—Schedule of fees filed with commissioner.
48.29.195	Escrow services—Schedule of fees made available to public.
48.29.200	Prohibited practices.
48.29.210	Business inducements—Prohibited practices.
48.29.213	Return on ownership interest—Certain payments authorized.
48.29.900	Severability—2008 c 110.

48.29.005 Administration of chapter—Rules. The commissioner may adopt rules to implement and administer this chapter, including but not limited to:

(1) Establishing the information to be included in the report required under RCW 48.29.015;

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(2) Establishing the information required for the filing of rates for title insurance under RCW 48.29.147;

(3) Establishing standards which title insurance rate filings must satisfy under RCW 48.29.147;

(4) Establishing a date, which date shall not be earlier than January 1, 2010, by which all title insurers selling policies in this state must file their rates with the commissioner under RCW 48.29.143 and 48.29.147 rather than under RCW 48.29.140 and refile any rates that were in effect prior to the date established by the commissioner; and

(5) Defining what things of value a title insurance insurer or title insurance agent is permitted to give to any person in a position to refer or influence the referral of title insurance business under RCW 48.29.210(2). In adopting rules under this subsection, the commissioner shall work with representatives of the title insurance and real estate industries and consumer groups in developing the rules. [2008 c 110 § 9.]

48.29.010 Scope of chapter—Definitions. (1) This chapter relates only to title insurers for real property.

(2) This code does not apply to persons engaged in the business of preparing and issuing abstracts of title to property and certifying to their correctness so long as the persons do not guarantee or insure the titles.

(3) For purposes of this chapter, unless the context clearly requires otherwise:

(a) "Title policy" means any written instrument, contract, or guarantee by means of which title insurance liability is assumed.

(b) "Abstract of title" means a written representation, provided under contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of this representation, listing all recorded conveyances, instruments, or documents that, under the laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described. An abstract of title is not a title policy as defined in this subsection.

(c) "Preliminary report," "commitment," or "binder" means reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions in the reports, the conditions and stipulations of the report and the issued policy, and other matters as may be incorporated by reference. The reports are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. The report is not a representation as to the condition of the title to real property, but is a statement of terms and conditions upon which the issuer is willing to issue its title policy, if the offer is accepted.

(d) "Financial interest" means any interest, legal or beneficial, that entitles the holder directly or indirectly to any of the net profits or net worth of the entity in which the interest is held.

(e) "Producers of title insurance business" means real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer or title insurance

agent whether or not the consent or approval of any other person is sought or obtained with respect to the selection of the title insurer or title insurance agent.

(f) "Associates of producers" means any person who has one or more of the following relationships with a producer of title insurance business:

(i) A spouse, parent, or child of a producer;

(ii) A corporation or business entity that controls, is controlled by, or is under common control with a producer;

(iii) An employer, employee, independent contractor, officer, director, partner, franchiser, or franchisee of a producer; or

(iv) Anyone who has an agreement, arrangement, or understanding with a producer, the purpose or substantial effect of which is to enable the person in a position to influence the selection of a title insurer or title insurance agent to benefit financially from the selection of the title insurer or title insurance agent. [2008 c 110 § 1; 2005 c 223 § 14; 1997 c 14 § 1; 1947 c 79 § .29.01; Rem. Supp. 1947 § 45.29.01.]

48.29.015 Requirement to maintain records—Report to commissioner. (1) A title insurance agent shall maintain records of its title orders sufficient to indicate the source of the title orders.

(2) Every title insurance agent shall file with the commissioner annually by March 15th of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for filing, a report, on a form prescribed by the commissioner, setting forth:

(a) The names and addresses of those persons, if any, who have had a financial interest in the title insurance agent during the calendar year, who are known or reasonably believed by the title insurance agent to be producers of title business or associates of producers; and

(b) The percent of title orders originating from each person who owns, or had owned during the preceding calendar year, a financial interest in the title insurance agent.

(3) Each title insurance agent shall keep current the information required by that portion of the report required by subsection (2)(a) of this section by reporting all changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

(4) Each title insurance agent shall file that portion of the report required by subsection (2)(a) of this section with its application for a license.

(5) Each title insurance agent licensed on June 12, 2008, shall file the report required under this section within thirty days after June 12, 2008. [2008 c 110 § 2.]

48.29.020 Certificate of authority—Qualifications. A title insurer is not entitled to have a certificate of authority unless:

(1) It is a stock corporation;

(2) It owns or leases and maintains a complete set of tract indexes of the county in this state in which its principal office is located; and

(3) It has and maintains the capital and surplus requirements set forth in RCW 48.05.340. [2005 c 223 § 15; 1990 c 76 § 1; 1955 c 86 § 12; 1947 c 79 § .29.02; Rem. Supp. 1947 § 45.29.02.]

Effective date—Supervision of transfers—1955 c 86: See notes following RCW 48.05.080.

48.29.040 May do business in two or more counties—Restrictions. (1) Subject to the deposit requirements of *RCW 48.29.030, a title insurer having its principal offices in one county may be authorized to transact business in only such additional counties as to which it owns or leases and maintains, or has a duly authorized agent that owns or leases and maintains, a complete set of tract indexes.

(2) A title insurer not authorized to transact business in a certain county may purchase a title policy on property located therein from another title insurer which is so authorized in that county. The first title insurer may thereafter issue its own policy of title insurance to the owner of such property. The first title insurer may combine the insurance on the title of such property in a single policy which also insures the title of one or more other pieces of property. The first title insurer must pay the full premium based on filed rates for the policy, and must charge the precise same amount to its own customer for the insurance as to the title of such property. A title insurer using the authority granted by this subsection in a transaction must so notify its customer. [1990 c 76 § 2; 1957 c 193 § 17; 1947 c 79 § .29.04; Rem. Supp. 1947 § 45.29.04.]

*Reviser’s note: RCW 48.29.030 was repealed by 2005 c 223 § 35.

48.29.120 Reserve requirements. In determining the financial condition of a title insurer doing business under this title, the general provisions of chapter 48.12 RCW requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense apply, except that a title insurer shall establish and maintain:

(1) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance policies, guaranteed certificates of title, guaranteed searches, and guaranteed abstracts of title, and all unpaid losses, claims, and allocated loss adjustment expenses for which the title insurer may be liable, and for which the insurer has received notice by or on behalf of the insured, holder of a guarantee or escrow, or security depositor;

(2)(a) A statutory or unearned premium reserve consisting of:

(i) The amount of the special reserve fund that was required prior to July 24, 2005, which balance must be released in accordance with (b) of this subsection; and

(ii) Additions to the reserve after July 24, 2005, must be made out of total charges for title insurance policies and guarantees written, as set forth in the title insurer’s most recent annual statement on file with the commissioner, equal to the sum of the following:

(A) For each title insurance policy on a single risk written or assumed after July 24, 2005, fifteen cents per one thousand dollars of net retained liability for policies under five hundred thousand dollars; and

(B) For each title insurance policy on a single risk written or assumed after July 24, 2005, ten cents per one thousand dollars of net retained liability for policies of five hundred thousand or greater.

(b) The aggregate of the amounts set aside in this reserve in any calendar year pursuant to (a) of this subsection must be released from the reserve and restored to net profits over a period of twenty years under the following formula:

(i) Thirty-five percent of the aggregate sum on July 1st of the year next succeeding the year of addition;

(ii) Fifteen percent of the aggregate sum on July 1st of each of the succeeding two years;

(iii) Ten percent of the aggregate sum on July 1st of the next succeeding year;

(iv) Three percent of the aggregate sum on July 1st of each of the next three succeeding years;

(v) Two percent of the aggregate sum on July 1st of each of the next three succeeding years; and

(vi) One percent of the aggregate sum on July 1st of each of the next succeeding ten years.

(c) The insurer shall calculate an adjusted statutory unearned premium reserve as of July 24, 2005. The adjusted reserve is calculated as if (a)(ii) and (b) of this subsection had been in effect for all years beginning twenty years prior to July 24, 2005. For purposes of this calculation, the balance of the reserve as of that date is deemed to be zero. If the adjusted reserve so calculated exceeds the aggregate amount set aside for statutory or unearned premiums in the insurer’s annual statement on file with the commissioner on July 24, 2005, the insurer shall, out of total charges for policies of title insurance, increase its statutory or unearned premium reserve by an amount equal to one-sixth of that excess in each of the succeeding six years, commencing with the calendar year that includes July 24, 2005, until the entire excess has been added.

(d) The aggregate of the amounts set aside in this reserve in any calendar year as adjustments to the insurer’s statutory or unearned premium reserve under (c) of this subsection shall be released from the reserve and restored to net profits, or equity if the additions required by (c) of this subsection reduced equity directly, over a period not exceeding ten years under to the [under the] following table:

Year of Addition	Release
Year 1 ¹	Equally over 10 years
Year 2	Equally over 9 years
Year 3	Equally over 8 years
Year 4	Equally over 7 years
Year 5	Equally over 6 years
Year 6	Equally over 5 years

¹(The calendar year following July 24, 2005).

(3) A supplemental reserve shall be established consisting of any other reserves necessary, when taken in combination with the reserves required by subsections (1) and (2) of this section, to cover the company’s liabilities with respect to all losses, claims, and loss adjustment expenses.

(4) The supplemental reserve required under subsection (3) of this section shall be phased in as follows: Twenty-five percent of the otherwise applicable supplemental reserve is required until December 31, 2006; fifty percent of the otherwise applicable supplemental reserve is required until December 31, 2007; and seventy-five percent of the otherwise applicable supplemental reserve is required until

December 31, 2008. [2005 c 223 § 16; 1947 c 79 § .29.12; Rem. Supp. 1947 § 45.29.12.]

48.29.130 Investments. A domestic title insurer shall invest its funds as follows:

(1) Funds in an amount not less than its reserve required by RCW 48.29.120 must be kept invested in investments eligible for domestic life insurers.

(2) Other funds may be invested in:

(a) The insurer's plant and equipment, up to a maximum of fifty percent of capital plus surplus.

(b) Stocks and bonds of abstract companies when approved by the commissioner.

(c) Investments eligible for the investment of funds of any domestic insurer. [2005 c 223 § 17; 1967 c 150 § 30; 1947 c 79 § .29.13; Rem. Supp. 1947 § 45.29.13.]

48.29.140 Premium rates—Required filings—Transition date set by rule. (1) Premium rates for the insuring or guaranteeing of titles shall not be excessive, inadequate, or unfairly discriminatory.

(2) Each title insurer shall forthwith file with the commissioner a schedule showing the premium rates to be charged by it. Every addition to or modification of such schedule or of any rate therein contained shall likewise be filed with the commissioner, and no such addition or modification shall be effective until expiration of fifteen days after date of such filing.

(3) The commissioner may order the modification of any premium rate or schedule of premium rates found by him or her after a hearing to be excessive, or inadequate, or unfairly discriminatory. No such order shall require retroactive modification.

(4) The commissioner shall by rule set a date, which shall not be earlier than January 1, 2010, by which title insurers must file every manual of rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of these filings, under RCW 48.29.143 and 48.29.147, rather than under this section. [2008 c 110 § 8; 1947 c 79 § .29.14; Rem. Supp. 1947 § 45.29.14.]

48.29.143 Premium rates—Actuarially sound estimates. (1) Premium rates for the insuring or guaranteeing of titles shall not be excessive, inadequate, or unfairly discriminatory.

(2) A rate is not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer. Such costs include claims, claim settlement expenses, operational and administrative expenses, and the cost of capital. [2008 c 110 § 4.]

48.29.147 Required filings—Information subject to review—Commissioner's powers—Timing. (1) Every title insurer shall, before using, file with the commissioner every manual of title insurance rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of the filings under this subsection which it proposes.

(2) Every filing shall be accompanied by sufficient information to permit the commissioner to determine whether the filing meets the requirements of RCW 48.29.143.

(3) Data used to justify title insurance rates may not include escrow income or expenses. The title insurance company shall include a detailed explanation showing how expenses are allocated between the title operations and escrow operations of the insurer or title insurance agent.

(4) Every such filing shall state its proposed effective date.

(5) The commissioner shall review a filing as soon as reasonably possible after it is received, to determine whether it meets the requirements of RCW 48.29.143.

(6) The filing's proposed effective date shall be no earlier than thirty days after the date on which the filing is received by the commissioner. By giving notice to the insurer within this thirty days, the commissioner may extend this waiting period for an additional period not to exceed an additional fifteen days. The commissioner may, upon application and for cause shown, waive part or all of the waiting period with respect to a filing the commissioner has not disapproved. If the commissioner does not disapprove the filing during the waiting period, the filing takes effect on its proposed effective date.

(7) If within the waiting period or any extension thereof as provided in subsection (6) of this section, the commissioner finds that a filing does not meet the requirements of RCW 48.29.143 or the requirements of subsections (2) through (4) of this section, the commissioner shall disapprove the filing and shall give notice to the insurer that the filing has been disapproved. This notice shall specify the respect in which the commissioner finds the filing fails to meet the requirements and shall state that the filing does not become effective as proposed.

(8) If a filing is not disapproved by the commissioner within the waiting period or any extension thereof, the filing becomes effective as proposed.

(9) A filing made under this section is exempt from RCW 48.02.120(3). However, the filing and all supporting information accompanying it is open to public inspection only after the filing becomes effective.

(10) A title insurer or title insurance agent shall not make or issue a title insurance contract or policy, or use or collect any premium on or after a date set by the commissioner by rule, which date shall not be any earlier than January 1, 2010, except in accordance with rates and rules filed with the commissioner as required by this section.

(11) If at any time subsequent to the applicable review period provided for in subsection (6) of this section, the commissioner has reason to believe that a title insurer's rates do not meet the requirements of RCW 48.29.143 or are otherwise contrary to law, or if any person having an interest in the rates makes a written complaint to the commissioner setting forth specific and reasonable grounds for the complaint and requests a hearing, or if any insurer upon notice of the commissioner's disapproval of a filing made under this section requests a hearing, the commissioner shall hold a hearing within thirty days and shall, in advance of it, give written notice of the hearing to all parties in interest. The commissioner may, by issuing an order, confirm, modify, change, or rescind any previous action, if it is warranted by the facts

shown at the hearing. The order shall not affect any contract or policy made or issued prior to a reasonable period of time, to be specified in the order, after the order is issued.

(12) In any hearing regarding rates filed under this chapter the burden shall be upon the title insurer to prove by a preponderance of the evidence that the rates comply with RCW 48.29.143. [2008 c 110 § 5.]

48.29.150 Taxation of title insurers. Title insurers and their property shall be taxed by this state in accordance with the general laws relating to taxation, and not otherwise. [1947 c 79 § .29.15; Rem. Supp. 1947 § 45.29.15.]

48.29.155 Agent license—Financial responsibility—Definitions. (1) At the time of filing an application for a title insurance agent license, or any renewal or reinstatement of a title insurance agent license, the applicant shall provide satisfactory evidence to the commissioner of having obtained the following as evidence of financial responsibility:

(a) A fidelity bond or fidelity insurance providing coverage in the aggregate amount of two hundred thousand dollars with a deductible no greater than ten thousand dollars covering the applicant and each corporate officer, partner, escrow officer, and employee of the applicant conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6), or a guarantee from a licensed title insurance company as authorized by subsection (5) of this section; and

(b) A surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized, or eligible under chapter 48.15 RCW, to do a surety business in this state as surety, or some other security approved by the commissioner, unless the fidelity bond or fidelity insurance obtained by the licensee to satisfy the requirement in (a) of this subsection does not have a deductible. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the commissioner of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the commissioner. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee, including but not limited to any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090.

(2) For the purposes of this section, a "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the bond, acting alone or in collusion with others. The bond shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the title insurance agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(3) For the purposes of this section, "fidelity insurance" means employee dishonesty insurance or its equivalent satisfactory to the commissioner and written by an insurer authorized, or eligible under chapter 48.15 RCW, to transact this line of business in the state of Washington. The insurance shall provide coverage for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners as defined in the policy of insurance, acting alone or in collusion with others. The insurance shall be for the sole benefit of the title insurance agent and under no circumstances whatsoever shall the insurance company be liable under the insurance to any other party. The insurance shall name the title insurance agent as the named insured and shall protect the named insured against the loss of money or other real or personal property belonging to the named insured, or in which the named insured has a pecuniary interest, or for which the named insured is legally liable or held by the named insured in any capacity, whether the named insured is legally liable therefor or not. The insurance coverage may be canceled by the insurer upon delivery of thirty days' written notice to the commissioner and to the title insurance agent.

(4) The fidelity bond or fidelity insurance, and the surety bond or other form of security approved by the commissioner, shall be kept in full force and effect as a condition precedent to the title insurance agent's authority to transact business in this state, and the title insurance agent shall supply the commissioner with satisfactory evidence thereof upon request.

(5) A title insurance company authorized to do business in Washington under RCW 48.05.030 may provide a guarantee in a form satisfactory to the commissioner accepting financial responsibility, up to the aggregate amount of two hundred thousand dollars, for any fraudulent or dishonest acts committed by any one or more of the employees, officers, or owners of a title insurance agent that is appointed as the title insurance company's agent. A title insurance company providing a guarantee as permitted under this subsection may only do so on behalf of its properly appointed title insurance agents. If the title insurance agent is an agent for two or more title insurance companies, any liability under the guarantee shall be borne by the title insurance company for those

escrows for which a title insurance commitment or policy was issued on behalf of that title insurance company. If no commitment or policy was issued regarding the escrow for which moneys were lost, including but not limited to collection escrows, each title insurance company, for which the agent was appointed at the time of the fraudulent or dishonest act, shares in the liability. The liability will be shared proportionally, as follows: The premium the agent remitted to the title insurance company in the year prior to the fraudulent or dishonest act will be compared to the total premium the agent remitted to all title insurance companies, for whom the title insurance agent was appointed, during the same period.

(6) All title insurance agents licensed on or before July 24, 2005, shall comply with this section within thirty days following July 24, 2005. [2005 c 115 § 1; 2003 c 202 § 1.]

48.29.160 Agents—County tract indexes required.

To be licensed as [an] agent of a title insurer, the applicant must own or lease and maintain a complete set of tract indexes of the county or counties in which such agent will do business. [1981 c 223 § 1.]

48.29.170 Agents—Separate licenses for individuals not required. Title insurance agents are exempt from the provisions of *RCW 48.17.180(1) that require that each individual empowered to exercise the authority of a licensed firm or corporation must be separately licensed. [2005 c 223 § 18; 1981 c 223 § 2.]

*Reviser's note: RCW 48.17.180 was amended by 2007 c 117 § 15, deleting subsection (1), effective July 1, 2009.

48.29.180 Disclosure of energy conservation payment obligations—Informational note—Liability. The existence of notices of payment obligations in RCW 80.28.065 may be disclosed as an informational note to a preliminary commitment for policy of title insurance. Neither the inclusion nor the exclusion of any such informational note shall create any liability against such title insurer under any preliminary commitment for title insurance, policy or otherwise. [1993 c 245 § 4.]

Findings—Intent—1993 c 245: See note following RCW 80.28.065.

48.29.190 Conducting business as escrow agent—Requirements—Violation, penalties. (1) Every title insurance company and title insurance agent conducting the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6) shall:

(a) Keep adequate records, as determined by rule by the insurance commissioner, of all transactions handled by the title insurance company or title insurance agent, including itemization of all receipts and disbursements of each transaction. These records shall be maintained in this state, unless otherwise approved by the insurance commissioner, for a period of six years from completion of the transaction. These records shall be open to inspection by the insurance commissioner or his or her authorized representatives;

(b) Keep separate escrow fund account or accounts in a recognized Washington state depository or depositories authorized to receive funds, in which shall be kept separate and apart and segregated from the title insurance company or

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title insurance agent's own funds, all funds or moneys of clients which are being held by the title insurance company or title insurance agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof; and

(c) Not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. A title insurance company or title insurance agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made. The deposits shall be in one of the following forms:

(i) Cash;

(ii) Interbank electronic transfers such that the funds are unconditionally received by the title insurance company or the title insurance agent or the title insurance company or title insurance agent's depository;

(iii) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and certified checks that are payable in Washington state and drawn on financial institutions located in Washington state;

(iv) Checks, negotiable orders of withdrawal, money orders, and any other item that has been finally paid as described in RCW 62A.4-213 before any disbursement; or

(v) Any depository check, including any cashier's check, certified check, or teller's check, which is governed by the provisions of the federal expedited funds availability act, 12 U.S.C. Sec. 4001 et seq.

(2) For purposes of this section, "item" means any instrument for the payment of money even though it is not negotiable, but does not include money.

(3) Violation of this section shall subject a title insurance company or title insurance agent to penalties as prescribed in Title 9A RCW and remedies as provided in chapter 19.86 RCW and shall constitute grounds for suspension or revocation of the certificate of authority of a title insurance company or the license of a title insurance agent. In addition, a violation of this section may subject a title insurance company or a title insurance agent to penalties as prescribed in this title. [1999 c 30 § 34.]

48.29.193 Escrow services—Schedule of fees filed with commissioner. (1) Each title insurer and title insurance agent shall immediately file with the commissioner a schedule of its fees for providing escrow services.

(2) The schedule shall:

(a) Be dated to show the date the fees for providing escrow services are to become effective, which date shall be no earlier than fifteen days after the schedule has been filed with the commissioner; and

(b) Set forth the total fees for providing escrow services by clearly stating the amounts to be charged for the escrow services, the manner in which the fees for the escrow services are to be determined, and any charges that will be charged to the consumer that are not included in the total escrow fee. [2008 c 110 § 6.]

48.29.195 Escrow services—Schedule of fees made available to public. (1) Each title insurer and title insurance agent shall make available to the public schedules of its currently effective title insurance premiums and fees for providing escrow services.

(2) The schedules shall:

(a) Be dated to show the date the title insurance premiums or fees for providing escrow services became effective;

(b) Be made available to the public during normal business hours in each office of the title insurer and its appointed title insurance agents in this state;

(c) Be made available on the title insurer's and title insurance agent's web site, if the title insurer or title insurance agent has a web site;

(d) Set forth the total title insurance premium charged for the title insurance policy issued by the title insurer either by stating the premium for each title insurance policy in given amounts of coverage, or by stating the charge per unit amount of coverage, or by a combination of the two; and

(e) Set forth the total fees for providing escrow services by clearly stating the amounts to be charged for the escrow services, the manner in which the fees for the escrow services are to be determined, and any charges that will be charged to the consumer that are not included in the total escrow fee.

(3) Each title insurer and title insurance agent shall keep a complete file of its schedules of title insurance premiums and fees for providing escrow services and all changes and amendments to those schedules until at least one year after they have ceased to be in effect. [2008 c 110 § 7.]

48.29.200 Prohibited practices. It is a violation of this chapter for any title insurance company and title insurance agent in the conduct of the business of an escrow agent as defined in RCW 18.44.011 and exempt from licensing under RCW 18.44.021(6) to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive act or practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the title insurance company or title insurance agent;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business as required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, or employees the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of a title insurance company or title insurance agent conducting an escrow business, including an order to cease and desist or other order of the insurance commissioner; or

(10) Fail to make any report or statement lawfully required by the insurance commissioner or other public official. [1999 c 30 § 35.]

48.29.210 Business inducements—Prohibited practices. (1) A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give any fee, kick-back, or other thing of value to any person as an inducement, payment, or reward for placing business, referring business, or causing title insurance business to be given to either the title insurer, or title insurance agent, or both.

(2) A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, except as permitted under rules adopted by the commissioner. [2008 c 110 § 3.]

48.29.213 Return on ownership interest—Certain payments authorized. (1) RCW 48.29.210, 18.85.053, 18.44.305, or 19.146.103 does not make unlawful the payment by a title insurer or title insurance agent and the receipt by a producer of title insurance business of a return on ownership interest in the title insurer or title insurance agent.

(2) A return on ownership interest may include:

(a) Bona fide dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliated relationship; and

(b) Bona fide business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(3) A return on ownership interest does not include:

(a) Any payment which has a basis of calculation of no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated, or anticipated referrals;

(b) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(c) A payment based on an ownership, partnership, or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments. [2008 c 110 § 13.]

48.29.900 Severability—2008 c 110. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [2008 c 110 § 14.]

Chapter 48.30 RCW

UNFAIR PRACTICES AND FRAUDS

Sections

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- 48.30.340 Auto glass repair—Restrictions on insurer-owned facilities.

Discrimination prohibited: RCW 48.18.480.

48.30.010 Unfair practices in general—Remedies and penalties. (1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or

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practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in RCW 48.30.015. [2007 c 498 § 2 (Referendum Measure No. 67, approved November 6, 2007); 1997 c 409 § 107; 1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 45.30.01.]

Short title—2007 c 498: See note following RCW 48.30.015.

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Severability—1973 1st ex.s. c 152: See note following RCW 48.05.140.

48.30.015 Unreasonable denial of a claim for coverage or payment of benefits. (1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section.

(2) The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages.

(3) The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the

first party claimant of an insurance contract who is the prevailing party in such an action.

(4) "First party claimant" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

(5) A violation of any of the following is a violation for the purposes of subsections (2) and (3) of this section:

(a) WAC 284-30-330, captioned "specific unfair claims settlement practices defined";

(b) WAC 284-30-350, captioned "misrepresentation of policy provisions";

(c) WAC 284-30-360, captioned "failure to acknowledge pertinent communications";

(d) WAC 284-30-370, captioned "standards for prompt investigation of claims";

(e) WAC 284-30-380, captioned "standards for prompt, fair and equitable settlements applicable to all insurers"; or

(f) An unfair claims settlement practice rule adopted under RCW 48.30.010 by the insurance commissioner intending to implement this section. The rule must be codified in chapter 284-30 of the Washington Administrative Code.

(6) This section does not limit a court's existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law.

(7) This section does not apply to a health plan offered by a health carrier. "Health plan" has the same meaning as in RCW 48.43.005. "Health carrier" has the same meaning as in RCW 48.43.005.

(8)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection. [2007 c 498 § 3 (Referendum Measure No. 67, approved November 6, 2007).]

Short title—2007 c 498: "This act may be known and cited as the insurance fair conduct act." [2007 c 498 § 1.]

48.30.020 Anticompact law. (1) No person shall either within or outside of this state enter into any contract, understanding or combination with any other person to do jointly

or severally any act or engage in any practice for the purpose of

(a) controlling the rates to be charged for insuring any risk or any class of risks in this state; or

(b) unfairly discriminating against any person in this state by reason of his plan or method of transacting insurance, or by reason of his affiliation or nonaffiliation with any insurance organization; or

(c) establishing or perpetuating any condition in this state detrimental to free competition in the business of insurance or injurious to the insuring public.

(2) This section shall not apply relative to ocean marine and foreign trade insurances.

(3) This section shall not be deemed to prohibit the doing of things permitted to be done in accordance with the provisions of chapter 48.19 RCW of this code.

(4) Whenever the commissioner has knowledge of any violation of this section he shall forthwith order the offending person to discontinue such practice immediately or show cause to the satisfaction of the commissioner why such order should not be complied with. If the offender is an insurer or a licensee under this code and fails to comply with such order within thirty days after receipt thereof, the commissioner may forthwith revoke the offender's certificate of authority or licenses. [1947 c 79 § .30.02; Rem. Supp. 1947 § 45.30.02.]

48.30.030 False financial statements. No person shall knowingly file with any public official nor knowingly make, publish, or disseminate any financial statement of an insurer which does not accurately state the insurer's financial condition. [1947 c 79 § .30.03; Rem. Supp. 1947 § 45.30.03.]

48.30.040 False information and advertising. No person shall knowingly make, publish, or disseminate any false, deceptive or misleading representation or advertising in the conduct of the business of insurance, or relative to the business of insurance or relative to any person engaged therein. [1947 c 79 § .30.04; Rem. Supp. 1947 § 45.30.04.]

48.30.050 Advertising must show name and domicile. Every advertisement of, by, or on behalf of an insurer shall set forth the name in full of the insurer and the location of its home office or principal office, if any, in the United States (if an alien insurer). [1947 c 79 § .30.05; Rem. Supp. 1947 § 45.30.05.]

48.30.060 Insurer name—Deceptive use prohibited. No person who is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer. [1947 c 79 § .30.06; Rem. Supp. 1947 § 45.30.06.]

48.30.070 Advertising of financial condition. (1) Every advertisement by or on behalf of any insurer purporting to show its financial condition may be in a condensed form but shall in substance correspond with the insurer's last verified statement filed with the commissioner.

(2) No insurer or person in its behalf shall advertise assets except those actually owned and possessed by the insurer in its own exclusive right, available for the payment of losses and claims, and held for the protection of its policy-

holders and creditors. [1947 c 79 § .30.07; Rem. Supp. 1947 § 45.30.07.]

48.30.075 Using existence of insurance guaranty associations in advertising, etc., to sell insurance. No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Washington Insurance Guaranty Association or the Washington Life and Disability Insurance Guaranty Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington Insurance Guaranty Association Act or the Washington Life and Disability Insurance Guaranty Association Act. [1975-'76 2nd ex.s. c 109 § 9.]

48.30.080 Defamation of insurer. No person shall make, publish, or disseminate, or aid, abet or encourage the making, publishing, or dissemination of any information or statement which is false or maliciously critical and which is designed to injure in its reputation or business any authorized insurer or any domestic corporation or reciprocal being formed pursuant to this code for the purpose of becoming an insurer. [1947 c 79 § .30.08; Rem. Supp. 1947 § 45.30.08.]

48.30.090 Misrepresentation of policies. No person shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any policy or the benefits or advantages promised thereby, or the dividends or share of surplus to be received thereon, or use any name or title of any policy or class of policies misrepresenting the nature thereof. [1947 c 79 § .30.09; Rem. Supp. 1947 § 45.30.09.]

48.30.100 Dividends not to be guaranteed. (Effective until July 1, 2009.) No insurer, agent, broker, solicitor, or other person, shall guarantee or agree to the payment of future dividends or future refunds of unused premiums or savings in any specific or approximate amounts or percentages on account of any insurance contract. [1947 c 79 § .30.10; Rem. Supp. 1947 § 45.30.10.]

48.30.100 Dividends not to be guaranteed. (Effective July 1, 2009.) No insurer, insurance producer, title insurance agent, or other person shall guarantee or agree to the payment of future dividends or future refunds of unused premiums or savings in any specific or approximate amounts or percentages on account of any insurance contract. [2008 c 217 § 34; 1947 c 79 § .30.10; Rem. Supp. 1947 § 45.30.10.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.110 Contributions to candidates for insurance commissioner. (1) No insurer or fraternal benefit society doing business in this state shall directly or indirectly pay or use, or offer, consent, or agree to pay or use any money or (2008 Ed.)

thing of value for or in aid of any candidate for the office of insurance commissioner; nor for reimbursement or indemnification of any person for money or property so used.

(2) Any individual who violates any provision of this section, or who participates in, aids, abets, advises, or consents to any such violation, or who solicits or knowingly receives any money or thing of value in violation of this section, shall be guilty of a gross misdemeanor and shall be liable to the insurer or society for the amount so contributed or received. [1982 c 181 § 18; 1947 c 79 § .30.11; Rem. Supp. 1947 § 45.30.11.]

Severability—1982 c 181: See note following RCW 48.03.010.

48.30.120 Misconduct of officers, employees. No director, officer, agent, attorney-in-fact, or employee of an insurer shall:

(1) Knowingly receive or possess himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud, omit to make or to cause or direct to be made, a full and true entry thereof in its books and accounts; nor

(2) Make or concur in making any false entry, or concur in omitting to make any material entry, in its books or accounts; nor

(3) Knowingly concur in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein; nor

(4) Having the custody or control of its books, wilfully fail to make any proper entry in the books of the insurer as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; nor

(5) If a notice of an application for an injunction or other legal process affecting or involving the property or business of the insurer is served upon him, fail to disclose the fact of such service and the time and place of such application to the other directors, officers, and managers thereof; nor

(6) Fail to make any report or statement lawfully required by a public officer. [1947 c 79 § .30.12; Rem. Supp. 1947 § 45.30.12.]

48.30.130 Presumption of knowledge of director. A director of an insurer is deemed to have such knowledge of its affairs as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of any provision of this chapter. If present at a meeting of directors at which any act, proceeding, or omission of its directors which is a violation of any such provision occurs, he must be deemed to have concurred therein unless at the time he causes or in writing requires his dissent therefrom to be entered on the minutes of the directors.

If absent from such meeting, he must be deemed to have concurred in any such violation if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the insurer for six months thereafter without causing or in writing requiring his dissent from such violation to be entered upon

such record or minutes. [1947 c 79 § .30.13; Rem. Supp. 1947 § 45.30.13.]

48.30.140 Rebating. (Effective until July 1, 2009.) (1)

Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270. [1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

48.30.140 Rebating. (Effective July 1, 2009.) (1)

Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed insurance producer, or title insurance agent for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance producer, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the insurance producer's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, insurance producers,

or title insurance agents whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to an insurance producer as provided in RCW 48.17.270. [2008 c 217 § 35; 1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

Severability--Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.150 Illegal inducements. (Effective until July 1, 2009.) No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with

surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold. [1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

48.30.150 Illegal inducements. (Effective July 1, 2009.) No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with

surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose

of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold. [2008 c 217 § 36; 1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.155 Life or disability insurers—Insurance as inducement to purchase of goods, etc. No life or disability insurer shall directly or indirectly participate in any plan to offer or effect any kind or kinds of insurance in this state as an inducement to the purchase by the public of any goods, securities, commodities, services or subscriptions to publications. This section shall not apply to group or blanket insurance issued pursuant to this code. [1957 c 193 § 19.]

48.30.157 Charges for extra services. (Effective until July 1, 2009.) Notwithstanding the provisions of RCW 48.30.140, 48.30.150, and 48.30.155, the commissioner may permit an agent or broker to enter into reasonable arrangements with insureds and prospective insureds to charge a reduced fee in situations where services that are charged for are provided beyond the scope of services customarily provided in connection with the solicitation and procurement of insurance, so that an overall charge to an insured or prospective insured is reasonable taking into account receipt of commissions and fees and their relation, proportionally, to the value of the total work performed. [1988 c 248 § 17; 1983 c 3 § 154; 1979 ex.s. c 199 § 10.]

48.30.157 Charges for extra services. (Effective July 1, 2009.) Notwithstanding the provisions of RCW 48.30.140, 48.30.150, and 48.30.155, the commissioner may permit an insurance producer to enter into reasonable arrangements with insureds and prospective insureds to charge a reduced fee in situations where services that are charged for are provided beyond the scope of services customarily provided in connection with the solicitation and procurement of insurance, so that an overall charge to an insured or prospective insured is reasonable taking into account receipt of commissions and fees and their relation, proportionally, to the value of the total work performed. [2008 c 217 § 37; 1988 c 248 § 17; 1983 c 3 § 154; 1979 ex.s. c 199 § 10.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.170 Rebate—Acceptance prohibited. (Effective until July 1, 2009.) (1) No insured person shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any favor, advantage, share in dividends, or other benefits, or any valuable consideration or inducement not specified or provided for in the policy, or any commission on any insurance policy to which he or she is not lawfully entitled as a licensed agent, broker, or solicitor. The retention by the nominal policyholder in any group life insurance contract of any part of any dividend or reduction of premium thereon contrary to the provisions of RCW 48.24.260, shall be

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deemed the acceptance and receipt of a rebate and shall be punishable as provided by this code.

(2) The amount of insurance whereon the insured has so received or accepted any such rebate or any such commission, other than as to life or disability insurances, shall be reduced in the proportion that the amount or value of the rebate or commission bears to the premium for such insurance. In addition to such reduction of insurance, if any, any such insured shall be liable to a fine of not more than two hundred dollars.

(3) This section shall not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270. [1994 c 203 § 4; 1947 c 79 § .30.17; Rem. Supp. 1947 § 45.30.17.]

48.30.170 Rebate—Acceptance prohibited. (Effective July 1, 2009.) (1) No insured person shall receive or accept, directly or indirectly, any rebate of premium or part thereof, or any favor, advantage, share in dividends, or other benefits, or any valuable consideration or inducement not specified or provided for in the policy, or any commission on any insurance policy to which he or she is not lawfully entitled as a licensed insurance producer or title insurance agent. The retention by the nominal policyholder in any group life insurance contract of any part of any dividend or reduction of premium thereon contrary to the provisions of RCW 48.24.260, shall be deemed the acceptance and receipt of a rebate and shall be punishable as provided by this code.

(2) The amount of insurance whereon the insured has so received or accepted any such rebate or any such commission, other than as to life or disability insurances, shall be reduced in the proportion that the amount or value of the rebate or commission bears to the premium for such insurance. In addition to such reduction of insurance, if any, any such insured shall be liable to a fine of not more than two hundred dollars.

(3) This section shall not apply to an offset or reimbursement of all or part of a fee paid to an insurance producer as provided in RCW 48.17.270. [2008 c 217 § 38; 1994 c 203 § 4; 1947 c 79 § .30.17; Rem. Supp. 1947 § 45.30.17.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.180 "Twisting" prohibited. No person shall by misrepresentations or by misleading comparisons, induce or tend to induce any insured to lapse, terminate, forfeit, surrender, retain, or convert any insurance policy. [1947 c 79 § .30.18; Rem. Supp. 1947 § 45.30.18.]

48.30.190 Illegal dealing in premiums. (1) No person shall wilfully collect any sum as premium for insurance, which insurance is not then provided or is not in due course to be provided by an insurance policy issued by an insurer as authorized by this code.

(2) No person shall wilfully collect as premium for insurance any sum in excess of the amount actually expended or in due course is to be expended for insurance applicable to the subject on account of which the premium was collected.

(3) No person shall wilfully or knowingly fail to return to the person entitled thereto within a reasonable length of time

any sum collected as premium for insurance in excess of the amount actually expended for insurance applicable to the subject on account of which the premium was collected.

(4) Each violation of this section which does not amount to a felony shall constitute a misdemeanor. [1947 c 79 § .30.19; Rem. Supp. 1947 § 45.30.19.]

48.30.200 Hypothecation of premium notes. (Effective until July 1, 2009.) It shall be unlawful for any insurer or its representative, or any agent or broker, to hypothecate, sell, or dispose of any promissory note, received in payment for any premium or part thereof on any contract of life insurance or of disability insurance applied for, prior to delivery of the policy to the applicant. [1947 c 79 § .30.20; Rem. Supp. 1947 § 45.30.20.]

48.30.200 Hypothecation of premium notes. (Effective July 1, 2009.) It shall be unlawful for any insurer or its representative, or any insurance producer, to hypothecate, sell, or dispose of any promissory note, received in payment for any premium or part thereof on any contract of life insurance or of disability insurance applied for, prior to delivery of the policy to the applicant. [2008 c 217 § 39; 1947 c 79 § .30.20; Rem. Supp. 1947 § 45.30.20.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.210 Misrepresentation in application for insurance. A person who knowingly makes a false or misleading statement or impersonation, or who willfully fails to reveal a material fact, in or relative to an application for insurance to an insurer, is guilty of a gross misdemeanor, and the license of any such person may be revoked. [1995 c 285 § 18; 1990 1st ex.s. c 3 § 10; 1947 c 79 § .30.21; Rem. Supp. 1947 § 45.30.21.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.30.220 Destruction, injury, secretion, etc., of property. Any person, who, with intent to defraud or prejudice the insurer thereof, burns or in any manner injures, destroys, secretes, abandons, or disposes of any property which is insured at the time against loss or damage by fire, theft, embezzlement, or any other casualty, whether the same be the property of or in the possession of such person or any other person, under circumstances not making the offense arson in the first degree, is guilty of a class C felony. [1995 c 285 § 19; 1965 ex.s. c 70 § 25; 1947 c 79 § .30.22; Rem. Supp. 1947 § 45.30.22.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.30.230 False claims or proof—Penalty. (1) It is unlawful for any person, knowing it to be such, to:

(a) Present, or cause to be presented, a false or fraudulent claim, or any proof in support of such a claim, for the payment of a loss under a contract of insurance; or

(b) Prepare, make, or subscribe any false or fraudulent account, certificate, affidavit, or proof of loss, or other document or writing, with intent that it be presented or used in support of such a claim.

(2)(a) Except as provided in (b) of this subsection, a violation of this section is a gross misdemeanor.

(b) If the claim is in excess of one thousand five hundred dollars, the violation is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 270; 1990 1st ex.s. c 3 § 11; 1947 c 79 § .30.23; Rem. Supp. 1947 § 45.30.23.]

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

48.30.240 Rate wars prohibited. (Effective until July 1, 2009.) (1) Any insurer which precipitates, or aids in precipitating or conducting a rate war and by so doing writes or issues a policy of insurance at a less rate than permitted under its schedules filed with the commissioner, or below the rate deemed by him to be proper and adequate to cover the class of risk insured, shall have its certificate of authority to do business in this state suspended until such time as the commissioner is satisfied that it is charging a proper rate of premium.

(2) Any insurer which has precipitated, or aided in precipitating or conducting a rate war for the purpose of punishing or eliminating competitors or stifling competition, or demoralizing the business, or for any other purpose, and has ordered the cancellation or rewriting of policies at a rate lower than that provided by its rating schedules where such rate war is not in operation, and has paid or attempted to pay to the insured any return premiums, on any risk so to be rewritten, on which its agent has received or is entitled to receive his regular commission, such insurer shall not be allowed to charge back to such agent any portion of his commission on the ground that the same has not been earned. [1947 c 79 § .30.24; Rem. Supp. 1947 § 45.30.24.]

48.30.240 Rate wars prohibited. (Effective July 1, 2009.) (1) Any insurer which precipitates, or aids in precipitating or conducting a rate war and by so doing writes or issues a policy of insurance at a less rate than permitted under its schedules filed with the commissioner, or below the rate deemed by him or her to be proper and adequate to cover the class of risk insured, shall have its certificate of authority to do business in this state suspended until such time as the commissioner is satisfied that it is charging a proper rate of premium.

(2) Any insurer which has precipitated, or aided in precipitating or conducting a rate war for the purpose of punishing or eliminating competitors or stifling competition, or demoralizing the business, or for any other purpose, and has ordered the cancellation or rewriting of policies at a rate lower than that provided by its rating schedules where such rate war is not in operation, and has paid or attempted to pay to the insured any return premiums, on any risk so to be rewritten, on which its appointed insurance producer has received or is entitled to receive a regular commission, such insurer shall not be allowed to charge back to such appointed insurance producer any portion of a commission on the ground that the same has not been earned. [2008 c 217 § 40; 1947 c 79 § .30.24; Rem. Supp. 1947 § 45.30.24.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.250 Interlocking ownership, management. (1)

Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent with any other provision of this title, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create a monopoly therein.

(2) Any person otherwise qualified may be a director of two or more insurers which are competitors, unless the effect thereof is to substantially lessen competition between insurers generally or tends to create a monopoly.

(3) If the commissioner finds, after a hearing thereon, that there is violation of this section he shall order all such persons and insurers to cease and desist from such violation within such time, or extension thereof, as may be specified in such order. [1949 c 190 § 34; Rem. Supp. 1949 § 45.30.25.]

48.30.260 Right of debtor or borrower to select agent, broker, insurer. (Effective until July 1, 2009.) (1)

Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the agent, broker, and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender, whether by policy or binder, not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy, or a proper binder therefor containing a brief description of the coverage bound and the identity of the insurer in which the coverage is bound, is delivered to the creditor or lender not later than thirty days prior to the renewal date.

(2) Every person who lends money or extends credit and who solicits insurance on real and personal property must explain to the borrower in prominently displayed writing that the insurance related to such loan or credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (3)(b) of this section.

(3) No person who lends money or extends credit may:

(a) Solicit insurance for the protection of property, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment from the lender as to a loan or credit extension;

(b) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(c) Require that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan, or pay a separate charge to substitute the

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insurance policy of one insurer for that of another. This subsection does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

(d) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) Require any procedures or conditions of duly licensed agents, brokers, or insurers not customarily required of those agents, brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit; or

(f) Require property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy, or combination of policies, in the event of a loss.

(4) Nothing contained in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(5) Nothing contained in this section shall apply to credit life or credit disability insurance. [1990 1st ex.s. c 3 § 13; 1988 c 248 § 18; 1984 c 6 § 2; 1977 c 61 § 1; 1957 c 193 § 20.]

48.30.260 Right of debtor or borrower to select insurance producer or insurer. (Effective July 1, 2009.) (1)

Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the insurance producer and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender, whether by policy or binder, not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy, or a proper binder therefor containing a brief description of the coverage bound and the identity of the insurer in which the coverage is bound, is delivered to the creditor or lender not later than thirty days prior to the renewal date.

(2) Every person who lends money or extends credit and who solicits insurance on real and personal property must explain to the borrower in prominently displayed writing that the insurance related to such loan or credit extension may be purchased from an insurer or insurance producer of the borrower's choice, subject only to the lender's right to reject a given insurer or insurance producer as provided in subsection (3)(b) of this section.

(3) No person who lends money or extends credit may:

(a) Solicit insurance for the protection of property, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment from the lender as to a loan or credit extension;

(b) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreason-

able if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(c) Require that any borrower, mortgagor, purchaser, insurer, or insurance producer pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

(d) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) Require any procedures or conditions of duly licensed insurance producers or insurers not customarily required of those insurance producers or insurers affiliated or in any way connected with the person who lends money or extends credit; or

(f) Require property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy, or combination of policies, in the event of a loss.

(4) Nothing contained in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(5) Nothing contained in this section shall apply to credit life or credit disability insurance. [2008 c 217 § 41; 1990 1st ex.s. c 3 § 13; 1988 c 248 § 18; 1984 c 6 § 2; 1977 c 61 § 1; 1957 c 193 § 20.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (Effective until July 1, 2009.) (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or agent or broker.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall

negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to public construction projects, when the actual or estimated aggregate value of the project, exclusive of insurance and surety costs, exceeds two hundred million dollars. For purposes of applying the two hundred million dollar threshold set forth in this subsection, the term "public construction project" means a project that has a public owner and has phases, segments, or component parts relating to a common geographic site or public transportation system, but does not include the aggregation of unrelated construction projects.

(7) The exclusions specified in subsection (6) of this section do not apply to surety bonds. [2005 c 352 § 1; (2003 c 323 § 2 repealed by 2005 c 352 § 2); 2003 c 323 § 1. Prior: 2000 2nd sp.s. c 4 § 33; 2000 c 143 § 2; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

State convention and trade center—Corporation exempt: RCW 67.40.020.

48.30.270 Public building or construction contracts—Surety bonds or insurance—Violations concerning—Exemption. (Effective July 1, 2009.) (1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer or insurance producer.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of

its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to public construction projects, when the actual or estimated aggregate value of the project, exclusive of insurance and surety costs, exceeds two hundred million dollars. For purposes of applying the two hundred million dollar threshold set forth in this subsection, the term "public construction project" means a project that has a public owner and has phases, segments, or component parts relating to a common geographic site or public transportation system, but does not include the aggregation of unrelated construction projects.

(7) The exclusions specified in subsection (6) of this section do not apply to surety bonds. [2008 c 217 § 42; 2005 c 352 § 1; (2003 c 323 § 2 repealed by 2005 c 352 § 2); 2003 c 323 § 1. Prior: 2000 2nd sp.s. c 4 § 33; 2000 c 143 § 2; 1983 2nd ex.s. c 1 § 6; 1967 ex.s. c 12 § 3.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

State convention and trade center—Corporation exempt: RCW 67.40.020.

48.30.300 Unfair discrimination, generally. Notwithstanding any provision contained in Title 48 RCW to the contrary:

A person or entity engaged in the business of insurance in this state may not refuse to issue any contract of insurance or cancel or decline to renew such contract because of the sex, marital status, or sexual orientation as defined in RCW 49.60.040, or the presence of any sensory, mental, or physical handicap of the insured or prospective insured. The amount of benefits payable, or any term, rate, condition, or type of coverage may not be restricted, modified, excluded, increased, or reduced on the basis of the sex, marital status, or sexual orientation, or be restricted, modified, excluded, or reduced on the basis of the presence of any sensory, mental, or physical handicap of the insured or prospective insured. This subsection does not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any sensory, mental, or physical handicap when bona fide statistical differences in risk or exposure have been substantiated. [2006 c 4 § 18; 2005 c 223 § 19; 1993 c 492 § 287; 1975-'76 2nd ex.s. c 119 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.30.310 Commercial motor vehicle employment driving record not to be considered, when. When an individual applies for a policy of casualty insurance providing either automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage on an individually owned passenger vehicle or a renewal of such policy, an insurer shall not

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consider the applicant's commercial motor vehicle employment driving record in determining whether the policy will be issued or renewed or in determining the rates for the policy. An insurer shall not cancel such policy or discriminate in regard to other terms or conditions of the policy based upon the applicant's commercial motor vehicle employment driving record.

"Employment driving record" means that record maintained by the director pertaining to motor vehicle accidents or convictions for violation of motor vehicle laws while the applicant is driving a commercial motor vehicle as an employee of another. [1977 ex.s. c 356 § 3.]

48.30.320 Notice of reason for cancellation, restrictions based on handicaps. Every authorized insurer, upon canceling, denying, or refusing to renew any individual life, individual disability, homeowner, dwelling fire, or private passenger automobile insurance policy, shall, upon written request, directly notify in writing the applicant or insured, as the case may be, of the reasons for the action by the insurer. Any benefits, terms, rates, or conditions of such an insurance contract which are restricted, excluded, modified, increased, or reduced because of the presence of a sensory, mental, or physical handicap shall, upon written request, be set forth in writing and supplied to the insured. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1979 c 133 § 1.]

48.30.330 Immunity from libel or slander. With respect to contracts of insurance as defined in RCW 48.30.320, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any insurer, its authorized representative, its agents, its employees, furnishing to the insurer information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1979 c 133 § 2.]

48.30.340 Auto glass repair—Restrictions on insurer-owned facilities. (1) A person in this state has the right to choose any glass repair facility for the repair of a loss relating to motor vehicle glass.

(2) An insurer or its third-party administrator that owns in whole or in part an automobile glass repair facility that is processing a claim limited only to auto glass shall:

(a) Verbally inform the person making the claim of loss, of the right provided under subsection (1) of this section, at the time information regarding the automobile glass repair or replacement facilities is provided; and

(b) Verbally inform the person making the claim of loss that the third-party administrator is an entity separate from

the insurer that has a financial arrangement to process automobile glass claims on the insurer's behalf.

(3) An insurer or its third-party administrator that owns an interest in an automobile glass repair or replacement facility shall post the following notice in each of its repair facilities:

"THIS AUTOMOBILE GLASS REPAIR OR REPLACEMENT FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF INSURER OR INSURER'S THIRD-PARTY ADMINISTRATOR). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED UNDER WASHINGTON LAW TO SEEK REPAIRS AT ANY AUTOMOBILE GLASS REPAIR OR REPLACEMENT FACILITY OF YOUR CHOICE."

The notice must be posted, in not less than eighteen point font, prominently in a location in which it is likely to be seen and read by a customer. If the automobile glass repair or replacement facility is mobile, the notice must be given to the person making the claim verbally by the insurer or its third-party administrator prior to commencement of the repair or replacement.

(4) A person making a claim of loss whose motor vehicle is repaired at an automotive glass repair or replacement facility subject to the notice requirements of this section may file a complaint with the office of the insurance commissioner.

(5) This section does not create a private right or cause of action to or on behalf of any person. [2007 c 74 § 1.]

Chapter 48.30A RCW INSURANCE FRAUD

Sections

48.30A.005	Findings—Intent.
48.30A.010	Definitions.
48.30A.015	Unlawful acts—Penalties.
48.30A.020	Defenses to proceedings under this chapter.
48.30A.030	Injunction available—Remedies—Costs—Attorneys' fees—Degree of proof—Time limit.
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48.30A.040	Violation—Cause for discipline—Unprofessional conduct—Regulatory penalty.
48.30A.045	Insurance antifraud plan—File plan and changes with commissioner—Exemptions.
48.30A.050	Insurance antifraud plan—Specific procedures.
48.30A.055	Insurance antifraud plan—Review—Disapproval—Notice—Audit to ensure compliance.
48.30A.060	Insurance antifraud plan—Actions taken by insurer—Report—Not public records.
48.30A.065	Insurance antifraud plan or summary report—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty.
48.30A.070	Duty to investigate, enforce, and prosecute violations.
48.30A.900	Effective date—1995 c 285.

48.30A.005 Findings—Intent. The legislature finds that the business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The payment of kickbacks, bribes, or rebates for referrals to service providers, as has been occurring with increasing regularity in this state, results in inflated or fraudulent insurance claims, results in greater insurance costs for all citizens, and is contrary to the public interest. In particular, the process whereby "cappers" buy and sell insur-

ance claims without the controls of professional licensing and discipline creates a fertile ground for illegal activity and has, in this state, resulted in frauds committed against injured claimants, insurance companies, and the public. Operations that engage in this practice have some or all of the following characteristics: Cappers, acting under an agreement or understanding that they will receive a pecuniary benefit, refer claimants with real or imaginary claims, injuries, or property damage to service providers. This sets off a chain of events that corrupts both the provision of services and casualty or property insurance for all citizens. This chain of events includes false claims for services through the use of false estimates of repair; false prescriptions of care or rehabilitative therapy; services that either do not occur or are provided by persons unqualified to provide the services; submission of false claims; submission of and demands for fraudulent costs, lost wages, pain and suffering, and the like; and other devices meant to result in false claims under casualty or property insurance policies or contracts, whether insured or self-insured, and either directly or through subrogation.

The legislature finds that combatting these practices requires laws carefully fashioned to identify practices that mimic customary business practices. The legislature does not intend this law to be used against medical and other business referral practices that are otherwise legal, customary, and unrelated to the furtherance of some or all of the corrupt practices identified in this chapter. [1995 c 285 § 1.]

48.30A.010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Casualty or property insurance" includes both the insurance under which a claim is filed and insurance that receives a claim through subrogation, and means insurance as defined in RCW 48.11.040 and 48.11.070 and includes self-insurance arrangements.

(2) "Claimant" means a person who has or is believed by an actor to have an insurance claim.

(3) "Group-buying arrangement" means an arrangement made by a membership organization having one hundred or more members in which the organization asks for or receives valuable consideration in exchange for referring its members to a service provider; the consideration asked for or received will be or is used to benefit the entire organization, not just one or more individuals in positions of power or influence in the organization; and reasonable efforts are made to disclose to affected members of the organization the nature of the referral relationship, including the nature, extent, amount, and use of the consideration.

(4) "Health care services" means a service provided to a claimant for treatment of physical or mental illness or injury arising in whole or substantial part from trauma.

(5) "Insurance claim" means a claim for payment, benefits, or damages under a contract, plan, or policy of casualty or property insurance.

(6) "Legal provider" means an active member in good standing of the Washington state bar association, and any other person authorized by the Washington state supreme court to engage in full or limited practice of law.

(7) "Service provider" means a person who directly or indirectly provides, advertises, or otherwise claims to provide services.

(8) "Services" means health care services, motor vehicle body or other motor vehicle repair, and preparing, processing, presenting, or negotiating an insurance claim.

(9) "Trauma" means a physical injury or wound caused by external force or violence. [1995 c 285 § 2.]

48.30A.015 Unlawful acts—Penalties. (1) It is unlawful for a person:

(a) Knowing that the payment is for the referral of a claimant to a service provider, either to accept payment from a service provider or, being a service provider, to pay another; or

(b) To provide or claim or represent to have provided services to a claimant, knowing the claimant was referred in violation of (a) of this subsection.

(2) It is unlawful for a service provider to engage in a regular practice of waiving, rebating, giving, paying, or offering to waive, rebate, give, or pay all or any part of a claimant's casualty or property insurance deductible.

(3) A violation of this section constitutes trafficking in insurance claims.

(4)(a) Trafficking in insurance claims is a gross misdemeanor for a single violation.

(b) Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. [2003 c 53 § 271; 1995 c 285 § 3.]

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

48.30A.020 Defenses to proceedings under this chapter. In a proceeding under this chapter, it is a defense if proven by the defendant by a preponderance of the evidence that, at the time of the offense:

(1) The conduct alleged was authorized by the rules of professional conduct or the admission to practice rules for lawyers as adopted by the state supreme court, Washington business and professions licensing statutes, or rules adopted by the secretary of health or the director of licensing;

(2) The payment was an incidental nonmonetary gift or gratuity, or was purely social in nature;

(3) The conduct alleged was an exercise of a group-buying arrangement;

(4) The conduct alleged was a legal provider paying a service provider's bills from the proceeds of an insurance claim that included the bills;

(5) The conduct alleged was a legal provider paying for services of an expert witness, including reports, consultation, and testimony; or

(6) The conduct alleged was a service provider's purchase of advertising from an unrelated business that provides referrals from advertising for groups of ten or more service providers that are not related to the advertising business and not related to each other. [1995 c 285 § 4.]

48.30A.030 Injunction available—Remedies—Costs—Attorneys' fees—Degree of proof—Time limit. Independent of authority granted to the attorney general, the

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prosecuting attorney may petition the superior court for an injunction against a person who has violated this chapter. Remedies in an injunctive action brought by a prosecuting attorney are limited to an order enjoining, restraining, or preventing the doing of any act or practice that constitutes a violation of this chapter and imposing a civil penalty of up to five thousand dollars for each violation. The prevailing party in the action may, in the discretion of the court, recover its reasonable investigative costs and the costs of the action including a reasonable attorney's fee. The degree of proof required in an action brought under this section is a preponderance of the evidence. An action under this section must be brought within three years after the violation of this chapter occurred. [1995 c 285 § 6.]

48.30A.035 Detrimental judgment—Written notification to appropriate regulatory or disciplinary body or agency. Whenever a service provider or a person licensed by the state in a business or profession is convicted, enjoined, or found liable for damages or a civil penalty or other equitable relief under RCW 48.30A.030, the attorney general or the prosecuting attorney shall provide written notification of the judgment to the appropriate regulatory or disciplinary body or agency. [1995 c 285 § 7.]

48.30A.040 Violation—Cause for discipline—Unprofessional conduct—Regulatory penalty. A violation of this chapter is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this chapter is unprofessional conduct in violation of RCW 18.130.180. [1995 c 285 § 8.]

48.30A.045 Insurance antifraud plan—File plan and changes with commissioner—Exemptions. (1) Each insurer licensed to write direct insurance in this state, except those exempted in subsection (2) of this section, shall institute and maintain an insurance antifraud plan. An insurer licensed after July 1, 1995, shall file its antifraud plan within six months of licensure. An insurer shall file any change to the antifraud plan with the insurance commissioner within thirty days after the plan has been modified.

(2) This section does not apply to:

(a) Health carriers, as defined in RCW 48.43.005;

(b) Life insurers;

(c) Title insurers;

(d) Property or casualty insurers with annual gross written medical malpractice insurance premiums in this state that exceed fifty percent of their total annual gross written premiums in this state;

(e) Credit-related insurance written in connection with a credit transaction in which the creditor is named as a beneficiary or loss payee under the policy, except vendor single-interest or collateral protection coverage as defined in RCW 48.22.110(4); or

(f) Insurers with gross written premiums of less than one thousand dollars in Washington during the reporting year. [2005 c 223 § 20; 1997 c 92 § 1; 1995 c 285 § 9.]

48.30A.050 Insurance antifraud plan—Specific procedures. An insurer's antifraud plan must establish specific procedures to:

(1) Prevent insurance fraud, including internal fraud involving employees or company representatives, fraud resulting from misrepresentation on applications for insurance coverage, and claims fraud;

(2) Review claims in order to detect evidence of possible insurance fraud and to investigate claims where fraud is suspected;

(3) Report fraud to appropriate law enforcement agencies and cooperate with those agencies in their prosecution of fraud cases;

(4) Undertake civil actions against persons who have engaged in fraudulent activities;

(5) Train company employees and agents in the detection and prevention of fraud. [1995 c 285 § 10.]

48.30A.055 Insurance antifraud plan—Review—Disapproval—Notice—Audit to ensure compliance. If after review of an insurer's antifraud plan, the commissioner finds that the plan does not comply with RCW 48.30A.050, the commissioner may disapprove the antifraud plan. Notice of disapproval must include a statement of the specific reasons for disapproval. The insurer shall refile a plan disapproved by the commissioner within sixty days of the date of the notice of disapproval. The commissioner may audit insurers to ensure compliance with antifraud plans. [1995 c 285 § 11.]

48.30A.060 Insurance antifraud plan—Actions taken by insurer—Report—Not public records. By March 31st of each year, each insurer shall provide to the insurance commissioner a summary report on actions taken under its antifraud plan to prevent and combat insurance fraud. The report must also include, but not be limited to, measures taken to protect and ensure the integrity of electronic data processing-generated data and manually compiled data, statistical data on the amount of resources committed to combatting fraud, and the amount of fraud identified and recovered during the reporting period. The antifraud plans and summary of the insurer's antifraud activities are not public records and are exempt from chapter 42.56 RCW, are proprietary, are not subject to public examination, and are not discoverable or admissible in civil litigation. [2005 c 274 § 312; 2005 c 223 § 21; 1995 c 285 § 12.]

Reviser's note: This section was amended by 2005 c 223 § 21 and by 2005 c 274 § 312, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

48.30A.065 Insurance antifraud plan or summary report—Failure to file or exercise good faith—Penalty—Failure to follow plan—Civil penalty. An insurer that fails to file a timely antifraud plan or summary report or that fails to make a good faith attempt to file an antifraud plan that complies with RCW 48.30A.050 or a summary report that complies with RCW 48.30A.060, is subject to the penalty provisions of RCW 48.01.080, but no penalty may be

imposed for the first filing made by an insurer under this chapter. An insurer that fails to follow the antifraud plan is subject to a civil penalty not to exceed ten thousand dollars for each violation, at the discretion of the commissioner after consideration of all relevant factors, including the willfulness of the violation. [2005 c 223 § 22; 1995 c 285 § 13.]

48.30A.070 Duty to investigate, enforce, and prosecute violations. It is the duty of all peace officers, law enforcement officers, and law enforcement agencies within this state to investigate, enforce, and prosecute all violations of this chapter. [1995 c 285 § 14.]

48.30A.900 Effective date—1995 c 285. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 285 § 39.]

Chapter 48.31 RCW

MERGERS, REHABILITATION, LIQUIDATION, SUPERVISION

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48.31.010 Merger or consolidation. (1) Subject to the provisions of RCW 48.08.080, relating to the mutualization of stock insurers, RCW 48.09.350, relating to the conversion or reinsurance of mutual insurers, and RCW 48.10.330, relating to the consolidation or conversion of reciprocal insurers, a domestic insurer may merge or consolidate with another insurer, subject to the following conditions:

(a) The plan of merger or consolidation must be submitted to and be approved by the commissioner in advance of the merger or consolidation.

(b) The commissioner shall not approve any such plan unless, after a hearing, pursuant to such notice as the commissioner may require, he finds that it is fair, equitable, consistent with law, and that no reasonable objection exists. If the commissioner fails to approve the plan, he shall state his reasons for such failure in his order made on such hearing. The insurers involved in the merger shall bear the expense of the mailing of the notice of hearing and of the order on hearing.

(c) No director, officer, member, or subscriber of any such insurer, except as is expressly provided by the plan of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration whatsoever, for in any manner aiding, promoting or assisting in the merger or consolidation.

(d) Any merger or consolidation as to an incorporated domestic insurer shall in other respects be governed by the general laws of this state relating to business corporations. Except, that as to domestic mutual insurers, approval by two-thirds of its members who vote thereon pursuant to such notice and procedure as was approved by the commissioner shall constitute approval of the merger or consolidation as respects the insurer's members.

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(2) Reinsurance of all or substantially all of the insurance in force of a domestic insurer by another insurer shall be deemed a consolidation for the purposes of this section. [1973 1st ex.s. c 107 § 3; 1961 c 194 § 11; 1947 c 79 § .31.01; Rem. Supp. 1947 § 45.31.01.]

Severability—1973 1st ex.s. c 107: See note following RCW 48.17.540.

48.31.020 Definitions—Insurer, exceeded its powers, consent. (1) For the purposes of this chapter, other than as to RCW 48.31.010, and in addition to persons included under RCW 48.99.010, the term "insurer" shall be deemed to include an insurer authorized under chapter 48.05 RCW, an insurer or institution holding a certificate of exemption under RCW 48.38.010, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, as well as all persons engaged as, or purporting to be engaged as insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations in this state, and to persons in process of organization to become insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations.

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

(a) "Exceeded its powers" means the following conditions:

(i) The insurer has refused to permit examination of its books, papers, accounts, records, or affairs by the commissioner, his or her deputies, employees, or duly commissioned examiners as required by this title or any rules adopted by the commissioner;

(ii) A domestic insurer has unlawfully removed from this state books, papers, accounts, or records necessary for an examination of the insurer;

(iii) The insurer has failed to promptly comply with the filing of any applicable financial reports as required by this title or any rules adopted by the commissioner;

(iv) The insurer has neglected or refused to observe a lawful order of the commissioner to comply, within the time prescribed by law, with any prohibited deficiency in its applicable capital, capital stock, or surplus;

(v) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;

(vi) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or with respect to a transaction to which the insurer has without first having obtained written approval of the commissioner if approval is required by law:

(A) Totally reinsured its entire outstanding business; or
(B) Merged or consolidated substantially its entire property or business with another insurer; or

(vii) The insurer engaged in any transaction in which it is not authorized to engage under this title or any rules adopted by the commissioner.

(b) "Consent" means agreement to administrative supervision by the insurer. [2005 c 432 § 1; 1998 c 284 § 8; 1989 c 151 § 1; 1947 c 79 § .31.02; Rem. Supp. 1947 § 45.31.02.]

48.31.021 Insurer—Self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, is an insurer under this chapter. [2004 c 260 § 20.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

48.31.030 Rehabilitation—Grounds. The commissioner may apply for an order directing him or her to rehabilitate a domestic insurer upon one or more of the following grounds: That the insurer

- (1) Is insolvent; or
- (2) Has refused to submit its books, records, accounts, or affairs to the reasonable examination of the commissioner; or
- (3) Has failed to comply with the commissioner's order, made pursuant to law, to make good an impairment of capital (if a stock insurer) or an impairment of assets (if a mutual or reciprocal insurer) within the time prescribed by law; or
- (4) Has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge substantially its entire property or business in that of any other insurer without first having obtained the written approval of the commissioner; or
- (5) Is found, after examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to its members, subscribers, or stockholders, or to the public; or
- (6) Has willfully violated its charter or any law of this state; or
- (7) Has an officer, director, or manager who has refused to be examined under oath, concerning its affairs, for which purpose the commissioner is authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director, or manager may then presently be, to the full extent permitted by the laws of any such other state or territory, this special authorization considered; or
- (8) Has been the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or of its property, or if a receiver, trustee, custodian, or sequestrator is appointed by a federal court or if such appointment is imminent; or
- (9) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers; or
- (10) Has failed to pay a final judgment rendered against it in any state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later; or
- (11) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer; or
- (12) The insurer has failed to remove a person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commis-

sioner to be dishonest or untrustworthy in a way affecting the insurer's business; or

(13) Control of the insurer, whether by stock ownership or ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy; or

(14) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately; or

(15) The board of directors or the holders of a majority of the shares entitled to vote, request, or consent to rehabilitation under this chapter. [1993 c 462 § 75; 1949 c 190 § 28; 1947 c 79 § .31.03; Rem. Supp. 1949 § 45.31.03.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.040 Rehabilitation—Order—Termination. (1) An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he or she may apply to the court for an order of liquidation.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its property and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceedings have been fully accomplished.

(4) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his or her successors in office as the rehabilitator, and shall direct the rehabilitator to immediately take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the recorder of deeds of the county in this state in which the principal business of the company is conducted, or the county in this state in which the company's principal office or place of business is located, imparts the same notice as a deed or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer by operation of law vests title to all assets of the insurer in the rehabilitator.

(5) An order issued under this section requires accountings to the court by the rehabilitator. Accountings must be done at such intervals as the court specifies in its order, but no less frequently than semiannually.

(6) Entry of an order of rehabilitation does not constitute an anticipatory breach of contracts of the insurer nor may it be grounds for retroactive revocation or retroactive cancellation of contracts of the insurer, unless the revocation or cancellation is done by the rehabilitator. [1993 c 462 § 76; 1947 c 79 § .31.04; Rem. Supp. 1947 § 45.31.04.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.045 Rehabilitation order against insurer—Insurer is party to action or proceeding—Stay the action—Statute of limitations or defense of laches. (1) A court in this state before which an action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) A statute of limitations or defense of laches does not run with respect to an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may institute an action or proceeding pursuant to an order of rehabilitation, within the later of two years following entry of the order or two years of the date the rehabilitator discovers, or in the exercise of reasonable care should have discovered, the injury from which the action or proceeding arose and its cause. However, actions against former directors, officers, and employees brought pursuant to an order of rehabilitation for the benefit or the protection of subscribers, policy beneficiaries, or the general public is subject to the limitations period of RCW 4.16.160.

(3) A guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation. [2007 c 80 § 10; 1993 c 462 § 77.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.050 Liquidation—Grounds. The commissioner may apply for an order directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trustee assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in RCW 48.31.030 or upon any one or more of the following grounds: That the insurer

(1) Has ceased transacting business for a period of one year; or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the

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appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer prior to the expiration or revocation of its solicitation permit. [1947 c 79 § .31.05; Rem. Supp. 1947 § 45.31.05.]

48.31.060 Liquidation—Order. (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner or in the name of the insurer as the court may direct, to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply under this chapter for an order dissolving the corporate existence of a domestic insurer:

(a) Upon his application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(b) Upon the grounds specified in item (3) of RCW 48.31.050, regardless of whether an order of liquidation is sought or has been obtained. [1947 c 79 § .31.06; Rem. Supp. 1947 § 45.31.06.]

48.31.070 Liquidation—Alien insurers. An order to liquidate the business of the United States branch of an alien insurer having trustee assets in this state shall be in the same terms as those prescribed for domestic insurers, except that only the assets of the business of such United States branch shall be included therein. [1947 c 79 § .31.07; Rem. Supp. 1947 § 45.31.07.]

48.31.080 Conservation of assets—Foreign insurers. The commissioner may apply for an order directing him to conserve the assets within this state of a foreign insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050.

(2) That its property has been sequestered in its domiciliary sovereignty or in any other sovereignty. [1947 c 79 § .31.08; Rem. Supp. 1947 § 45.31.08.]

48.31.090 Conservation of assets—Alien insurers. The commissioner may apply for an order directing him to conserve the assets within this state of an alien insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050; or

(2) That the insurer has failed to comply, within the time designated by the commissioner, with an order of the commissioner pursuant to law to make good an impairment of its trustee funds; or

(3) That the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere. [1947 c 79 § .31.09; Rem. Supp. 1947 § 45.31.09.]

48.31.100 Foreign or alien insurers—Conservation, ancillary proceedings. (1) An order to conserve the assets of a foreign or alien insurer must direct the commissioner immediately to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver is appointed for a foreign or alien insurer in its domiciliary state that is also a reciprocal state, as defined in RCW 48.99.010, the court shall on application of the commissioner appoint the commissioner as the ancillary receiver in this state, subject to the provisions of the uniform insurers liquidation act. [2005 c 223 § 23; 1947 c 79 § .31.10; Rem. Supp. 1947 § 45.31.10.]

48.31.105 Conduct of proceedings—Requirement to cooperate—Definitions—Violations—Penalties. (1) An officer, manager, director, trustee, owner, employee, or agent of an insurer or other person with authority over or in charge of a segment of the insurer's affairs shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section includes a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. "To cooperate" as used in this section includes the following:

(a) To reply promptly in writing to an inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) A person may not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto.

(3) This section does not abridge existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(4) A person included within subsection (1) of this section who fails to cooperate with the commissioner, or a person who obstructs or interferes with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto, or who violates an order the commissioner issued validly under this chapter may:

(a) Be guilty of a gross misdemeanor and sentenced to pay a fine not exceeding ten thousand dollars or to undergo imprisonment for a term of not more than one year, or both; or

(b) After a hearing, be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and be subject further to the revocation or suspension of insurance licenses issued by the commissioner. [2003 c 53 § 272; 1993 c 462 § 58.]

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

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.111 Commencement of delinquency proceeding by commissioner—Jurisdiction of courts. (Effective until July 1, 2009.) (1) A delinquency proceeding may not be commenced under this chapter by anyone other than the

commissioner of this state, and no court has jurisdiction to entertain a proceeding commenced by another person.

(2) No court of this state has jurisdiction to entertain a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to the proceedings, other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served under the rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is an agent, broker, or other person who has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(b) If the person served is a reinsurer who has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an agent or broker of or for the reinsurer, in an action on or incident to the reinsurance contract;

(c) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in an action concerning the assets; or

(e) If the person served is obligated to the insurer in any way, in an action on or incident to the obligation.

(4) If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state. [2003 c 248 § 11; 1993 c 462 § 59.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.111 Commencement of delinquency proceeding by commissioner—Jurisdiction of courts. (Effective July 1, 2009.) (1) A delinquency proceeding may not be commenced under this chapter by anyone other than the commissioner of this state, and no court has jurisdiction to entertain a proceeding commenced by another person.

(2) No court of this state has jurisdiction to entertain a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to the proceedings, other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served under the rules of civil procedure or other applicable provi-

sions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is an insurance producer, title insurance agent, or other person who has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(b) If the person served is a reinsurer who has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an insurance producer of or for the reinsurer, in an action on or incident to the reinsurance contract;

(c) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in an action concerning the assets; or

(e) If the person served is obligated to the insurer in any way, in an action on or incident to the obligation.

(4) If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state. [2008 c 217 § 43; 2003 c 248 § 11; 1993 c 462 § 59.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.115 Immunity from suit and liability—Persons entitled to protection. (1) The persons entitled to protection under this section are:

(a) The commissioner and any other receiver or administrative supervisor responsible for conducting a delinquency proceeding under this chapter, including present and former commissioners, administrative supervisors, and receivers; and

(b) The commissioner's employees, meaning all present and former special deputies and assistant special deputies and special receivers and special administrative supervisors appointed by the commissioner and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this chapter. Attorneys, accountants, auditors, and other professional persons or firms who are retained as independent contractors, and their employees, are not considered employees of the commissioner for purposes of this section.

(2) The commissioner and the commissioner's employees are immune from suit and liability, both personally and in their official capacities, for a claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment. However, nothing in this subsection may be construed to hold the commissioner or an employee

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immune from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the commissioner or an employee.

(3) If a legal action is commenced against the commissioner or an employee, whether against him or her personally or in his or her official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from an alleged act or omission of the commissioner or an employee arising out of or by reason of his or her duties or employment, the commissioner and any employee shall be indemnified from the assets of the insurer for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act or omission of the commissioner or employee giving rise to the claim did not arise out of or by reason of his or her duties or employment, or was caused by intentional or willful and wanton misconduct.

(a) Attorneys' fees and related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer, as they are incurred, in advance of the final disposition of such action upon receipt of an undertaking by or on behalf of the commissioner or employee to repay the attorneys' fees and expenses if it is ultimately determined upon a final adjudication on the merits and that the commissioner or employee is not entitled to immunity or indemnity under this section.

(b) Any indemnification under this section is an administrative expense of the insurer.

(c) In the event of an actual or threatened litigation against the commissioner or an employee for which immunity or indemnity may be available under this section, a reasonable amount of funds that in the judgment of the commissioner may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run or all actual or threatened actions against the commissioner or an employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(d) In lieu of segregation and reserving of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to secure fully the payment of all obligations under this section.

(4) If a legal action against an employee for which indemnity may be available under this section is settled before final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee, or indemnify the employee for the settlement amount, unless the commissioner determines:

(a) That the claim did not arise out of or by reason of the employee's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the employee.

(5) In a legal action in which the commissioner is a defendant, that portion of a settlement relating to the alleged act or omission of the commissioner is subject to the approval of the court before which the delinquency proceeding is

pending. The court may not approve that portion of the settlement if it determines:

(a) That the claim did not arise out of or by reason of the commissioner's duties or employment; or

(b) That the claim was caused by the intentional or willful and wanton misconduct of the commissioner.

(6) Nothing in this section removes or limits an immunity, indemnity, benefit of law, right, or defense otherwise available to the commissioner, an employee, or any other person, not an employee under subsection (1)(b) of this section, who is employed by or in the office of the commissioner or otherwise employed by the state.

(7)(a) Subsection (2) of this section applies to any suit based in whole or in part on an alleged act or omission that takes place on or after July 25, 1993.

(b) No legal action lies against the commissioner or an employee based in whole or in part on an alleged act or omission that took place before July 25, 1993, unless suit is filed and valid service of process is obtained within twelve months after July 25, 1993.

(c) Subsections (3), (4), and (5) of this section apply to a suit that is pending on or filed after July 25, 1993, without regard to when the alleged act or omission took place. [2005 c 432 § 2; 1993 c 462 § 60.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.121 Court order for a formal delinquency proceeding—Commissioner may petition—Insurer may petition for hearing and review. (1) The commissioner may petition the court alleging, with respect to a domestic insurer:

(a) That there exists a ground that would justify a court order for a formal delinquency proceeding against an insurer under this chapter;

(b) That the interests of policyholders, creditors, or the public will be endangered by delay; and

(c) The contents of an order deemed necessary by the commissioner.

(2) Upon a filing under subsection (1) of this section, the court may issue forthwith, ex parte and without a hearing, the requested order that shall: Direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business; and until further order of the court enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(3) The court shall specify in the order what the order's duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold hearings it deems desirable after such notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter vacates the seizure order.

(4) Entry of a seizure order under this section does not constitute an anticipatory breach of a contract of the insurer.

(5) An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of an order under this section for a hearing and review of the order. The court shall hold the hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers, and it must be so held if the insurer proceeded against so requests.

(6) If, at any time after the issuance of an order under this section, it appears to the court that a person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given does not stay the effect of an order previously issued by the court. [1993 c 462 § 61.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.125 Order of liquidation—Termination of coverage. (1) All policies, including bonds and other noncancelable business, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation continue in force only until the earliest of:

(a) The end of a period of thirty days from the date of entry of the liquidation order;

(b) The expiration of the policy coverage;

(c) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;

(d) The liquidator has effected a transfer of the policy obligation; or

(e) The date proposed by the liquidator and approved by the court to cancel coverage.

(2) An order of liquidation terminates coverages at the time specified in subsection (1) of this section for purposes of any other statute.

(3) Policies of life or health insurance or annuities shall continue in force for the period and under the terms provided by an applicable guaranty association or foreign guaranty association.

(4) Policies of life or health insurance or annuities or a period or coverage of the policies not covered by a guaranty association or foreign guaranty association shall terminate under subsections (1) and (2) of this section. [1993 c 462 § 62.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.131 Appointment of liquidator—Actions at law or equity—Statute of limitations or defense of laches. (1) Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, an action at law or equity or in arbitration may not be brought against the insurer or liquidator, whether in this state or elsewhere, nor may such an existing action be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company when the injunctions are included in an order to liquidate an insurer issued under laws in other states corresponding to this subsection. Whenever, in the liq-

liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend an action in which he or she intervenes under this section at the expense of the estate of the insurer.

(2) The liquidator may institute an action or proceeding pursuant to an order of rehabilitation, within the later of two years following entry of the order or two years of the date the liquidator discovers, or in the exercise of reasonable care should have discovered, the injury from which the action or proceeding arose and its cause. However, actions against former directors, officers, and employees brought pursuant to an order of rehabilitation for the benefit or the protection of subscribers, policy beneficiaries, or the general public is subject to the limitations period of RCW 4.16.160.

(3) A statute of limitation or defense of laches does not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

(4) A guaranty association or foreign guaranty association has standing to appear in a court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation. [2007 c 80 § 11; 1993 c 462 § 63.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.135 Recovery from reinsurers—Not reduced by delinquency proceedings—Direct payment to insured.

The amount recoverable by the commissioner from reinsurers may not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement except as provided in RCW 48.31.290. Payment made directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation. [1993 c 462 § 64.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.141 Responsibility for payment of a premium—Earned or unearned premium—Violations—Penalties—Rights of party aggrieved. (Effective until July 1, 2009.)

(1)(a) An agent, broker, premium finance company, or any other person, other than the policy owner or the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator also has the right to recover from the person a part of an unearned premium that represents commission of the person. Credits or setoffs or both may not be allowed to an agent, broker, or premium finance company for amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the policy owner or the insured.

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(b) Notwithstanding (a) of this subsection, the agent, broker, premium finance company, or other person is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected, and the burden is upon the agent, broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this subsection, "unearned premium" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

(c) An insured is obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) Suspend or revoke or refuse to renew the licenses of the offending party or parties;

(b) Impose a penalty of not more than one thousand dollars for each violation.

(3) Before the commissioner may take an action as set forth in subsection (2) of this section, he or she shall give written notice to the person accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After the hearing, or upon failure of the accused to appear at the hearing, the commissioner, if he or she finds a violation, shall impose those penalties under subsection (2) of this section that he or she deems advisable.

(4) When the commissioner takes action in any or all of the ways set out in subsection (2) of this section, the party aggrieved has the rights granted under the Administrative Procedure Act, chapter 34.05 RCW. [1993 c 462 § 65.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.141 Responsibility for payment of a premium—Earned or unearned premium—Violations—Penalties—Rights of party aggrieved. (Effective July 1, 2009.)

(1)(a) An insurance producer, title insurance agent, premium finance company, or any other person, other than the policy owner or the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator also has the right to recover from the person a part of an unearned premium that represents commission of the person. Credits or setoffs or both may not be allowed to an insurance producer, title insurance agent, or premium finance company for amounts advanced to the insurer by the insurance producer, title insurance agent, surplus line broker, or premium finance company on behalf of, but in the absence of a payment by, the policy owner or the insured.

(b) Notwithstanding (a) of this subsection, the insurance producer, title insurance agent, premium finance company, or other person is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected, and the burden is upon the insurance producer, title insurance agent, pre-

mium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this subsection, "unearned premium" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

(c) An insured is obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) Suspend or revoke or refuse to renew the licenses of the offending party or parties;

(b) Impose a penalty of not more than one thousand dollars for each violation.

(3) Before the commissioner may take an action as set forth in subsection (2) of this section, he or she shall give written notice to the person accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After the hearing, or upon failure of the accused to appear at the hearing, the commissioner, if he or she finds a violation, shall impose those penalties under subsection (2) of this section that he or she deems advisable.

(4) When the commissioner takes action in any or all of the ways set out in subsection (2) of this section, the party aggrieved has the rights granted under the Administrative Procedure Act, chapter 34.05 RCW. [2008 c 217 § 44; 1993 c 462 § 65.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.145 Liquidator denies claim—Written notice—Objections of claimant—Court hearing. (1) When the liquidator denies a claim in whole or in part, the liquidator shall give written notice of the determination to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file his or her objections with the liquidator. If no such a filing is made, the claimant may not further object to the determination.

(2) Whenever the claimant files objections with the liquidator and the liquidator does not alter his or her denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his or her recommendation. [1993 c 462 § 66.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.151 Creditor's claim against insurer is secured by other person—Subrogated rights—Agreements concerning distributions. Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the

undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and is subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he or she discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person is not entitled to a distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. The creditor shall hold any excess received by him or her in trust for the other person. The term "other person" as used in this section does not apply to a guaranty association or foreign guaranty association. [1993 c 462 § 67.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.155 Unclaimed funds—Liquidator's application for discharge—Deposits with the department of revenue. Unclaimed funds subject to distribution remaining in the liquidator's hands when he or she is ready to apply to the court for discharge, including the amount distributable to a person who is unknown or cannot be found, shall be deposited with the state department of revenue as unclaimed funds, and shall be paid without interest to the person entitled to them or his or her legal representative upon proof satisfactory to the state department of revenue of his or her right to them. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the state treasurer. [2007 c 80 § 12; 1993 c 462 § 68.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.161 After termination of liquidation proceeding—Good cause to reopen proceedings. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order. [1993 c 462 § 69.]

Severability—Implementation—1993 c 462: See note following RCW 48.31B.901 and 48.31B.902.

48.31.165 Domiciliary receiver not appointed—Court order to liquidate—Notice—Domiciliary receiver appointed in other state. (1) If no domiciliary receiver has been appointed, the commissioner may apply to the court for an order directing him or her to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the grounds stated in: RCW 48.31.030, except subsection (10) of that section; 48.31.050(2); or 48.31.080.

(2) When an order is sought under subsection (1) of this section, the court shall cause the insurer to be given thirty days' notice and time to respond, or a lesser period reasonable under the circumstances.

(3) If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may

issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the recorder of deeds of the county in which the principal business of the company in this state is located or the county in which its principal office or place of business in this state is located, imparts the same notice as a deed or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

(4) If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under RCW 48.99.030. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under RCW 48.99.030.

(5) On the same grounds as are specified in subsection (1) of this section, the commissioner may petition an appropriate federal court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the commissioner deems desirable for the protection of policyholders, creditors, and the public in this state.

(6) The court may order the commissioner, when he or she has liquidated the assets of a foreign or alien insurer under this section, to pay claims of residents of this state against the insurer under those rules on the liquidation of insurers under this chapter that are otherwise compatible with this section. [1993 c 462 § 70.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.171 Domiciliary liquidator—Reciprocal state—Nonreciprocal state—Commissioner's duties. (1) Except as to special deposits and security on secured claims under RCW 48.99.030(2), the domiciliary liquidator of an insurer domiciled in a reciprocal state is vested by operation of law with the title to all of the assets, property, contracts, and rights of action, agents' balances, and all the books, accounts, and other records of the insurer located in this state. The date of vesting is the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting is the date of entry of the order directing possession to be taken. The domiciliary liquidator has the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator also has the right to recover all other assets of the insurer located in this state, subject to RCW 48.99.030.

(2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts, and rights of action, and all the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under RCW 48.31.100 or 48.99.030, or for an ancillary receivership under RCW 48.99.030, or after approval by the court may transfer

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title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

(3) Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings. [1993 c 462 § 71.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.175 Foreign or alien insurer—Property located in this state—Commissioner's discretion. The commissioner in his or her sole discretion may institute proceedings under RCW 48.31.121 at the request of the commissioner or other appropriate insurance official of the domiciliary state of a foreign or alien insurer having property located in this state. [1993 c 462 § 72.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.181 Liquidation proceedings—One or more reciprocal states—Distributions—Special deposit claims—Secured claims. (1) In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state controls as to claims of residents of this and reciprocal states. Claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where the assets are located.

(2) The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state shall be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in a deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(3) The owner of a secured claim against an insurer for which a liquidator has been appointed in this or another state may surrender his or her security and file his or her claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. [1993 c 462 § 73.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.184 Ancillary receiver in another state or foreign country—Failure to transfer assets. If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state assets within his or her control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, then the claims filed in the ancillary receivership, other than special deposit claims or secured

claims, shall be placed in the class of claims under RCW 48.31.280(8). [2003 c 248 § 12; 1993 c 462 § 74.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.185 Receiver's proposal to disperse assets upon liquidation—Application for approval—Contents of proposal—Notice of application. (1) Within one hundred twenty days of a final determination of insolvency of an insurer and order of liquidation by a court of competent jurisdiction of this state, the receiver shall make application to the court for approval of a proposal to disperse assets out of that insurer's marshalled assets from time to time as assets become available to the Washington insurance guaranty association and the Washington life and disability insurance guaranty association and to any entity or person performing a similar function in another state. For purposes of this section, "associations" means the Washington insurance guaranty association and the Washington life and disability insurance guaranty association and any entity or person performing a similar function in other states.

(2) Such a proposal must at least include provisions for:

(a) Reserving amounts for the payment of claims falling within the priorities established in RCW 48.31.280;

(b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(c) Equitable allocation of disbursements to each of the associations entitled thereto;

(d) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section an agreement to return to the receiver assets previously disbursed that are required to pay claims of secured creditors and claims falling within the priorities established in RCW 48.31.280. A bond is not required of any association; and

(e) A full report by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on those assets, and any other matters as the court may direct.

(3) The receiver's proposal must provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver, and must further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the associations then disbursements must be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life insurance, disability insurance, or annuities, provide for disbursements of assets to the Washington life and disability insurance guaranty association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Washington life and disability insurance guaranty association act.

(5) Notice of an application must be given to the associations in and to the commissioners of insurance of each of the states. Notice is effected when deposited in the United States certified mails, first class postage prepaid, at least thirty days

prior to submission of the application to the court. [2003 c 248 § 13; 1975-'76 2nd ex.s. c 109 § 10.]

48.31.190 Commencement of proceeding—Venue—Effect of appellate review. (1) Proceedings under this chapter involving a domestic insurer shall be commenced in the superior court for the county in which is located the insurer's home office or, at the election of the commissioner, in the superior court for Thurston county. Proceedings under this chapter involving other insurers shall be commenced in the superior court for Thurston county.

(2) The commissioner shall commence any such proceeding, the attorney general representing him, by an application to the court or to any judge thereof, for an order directing the insurer to show cause why the commissioner should not have the relief prayed for.

(3) Upon a showing of an emergency or threat of imminent loss to policyholders of the insurer the court may issue an ex parte order authorizing the commissioner immediately to take over the premises and assets of the insurer, the commissioner then to preserve the status quo, pending a hearing on the order to show cause, which shall be heard as soon as the court calendar permits in preference to other civil cases.

(4) In response to any order to show cause issued under this chapter the insurer shall have the burden of going forward with and producing evidence to show why the relief prayed for by the commissioner is not required.

(5) On the return of such order to show cause, and after a full hearing, the court shall either deny the relief sought in the application or grant the relief sought in the application together with such other relief as the nature of the case and the interest of policyholders, creditors, stockholders, members, subscribers, or the public may require.

(6) No appellate review of a superior court order, entered after a hearing, granting the commissioner's petition to rehabilitate an insurer or to carry out an insolvency proceeding under this chapter, shall stay the action of the commissioner in the discharge of his responsibilities under this chapter, pending a decision by the appellate court in the matter.

(7) In any proceeding under this chapter the commissioner and his deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the commissioner or his deputies. [1993 c 462 § 82; 1988 c 202 § 46; 1969 ex.s. c 241 § 13; 1967 c 150 § 31; 1947 c 79 § .31.19; Rem. Supp. 1947 § 45.31.19.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Severability—1988 c 202: See note following RCW 2.24.050.

48.31.200 Injunctions. (1) Upon application by the commissioner for such an order to show cause or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(2) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commis-

sioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof. [1947 c 79 § .31.20; Rem. Supp. 1947 § 45.31.20.]

48.31.210 Change of venue. At any time after the commencement of a proceeding under this chapter the commissioner may apply to the court for an order changing the venue of, and removing the proceeding to Thurston county, or to any other county of this state in which he deems that such proceeding may be most economically and efficiently conducted. [1947 c 79 § .31.21; Rem. Supp. 1947 § 45.31.21.]

48.31.220 Deposit of moneys collected. The moneys collected by the commissioner in a proceeding under this chapter, shall be, from time to time, deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this state, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking law of this state. The commissioner may in his discretion deposit such moneys or any part thereof in a national bank or trust company as a trust fund. [1947 c 79 § .31.22; Rem. Supp. 1947 § 45.31.22.]

48.31.230 Exemption from filing fees. The commissioner shall not be required to pay any fee to any public officer in this state for filing, recording, issuing a transcript or certificate, or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees, or attorneys of record and whether or not it is connected with the commencement of an action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding. [1947 c 79 § .31.23; Rem. Supp. 1947 § 45.31.23.]

48.31.240 Borrowing on pledge of assets. For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property whether real, personal or mixed of such insurer, and the commissioner, subject to the approval of the court, shall have power to take any and all other action necessary and proper to consummate any such loans and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity as commissioner to repay any loan made pursuant to this section. [1947 c 79 § .31.24; Rem. Supp. 1947 § 45.31.24.]

48.31.260 Liquidation—Date rights, liabilities fixed. The rights and liabilities of the insurer and of its creditors,

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policyholders, stockholders, members, subscribers, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to the provisions of RCW 48.31.300 with respect to the rights of claimants holding contingent claims and RCW 48.31.280 with respect to the priority and order of distributions of claims. [2001 c 40 § 2; 1947 c 79 § .31.26; Rem. Supp. 1947 § 45.31.26.]

Application—Severability—2001 c 40: See notes following RCW 48.31.280.

48.31.270 Voidable transfers. (1) Any transfer of, or lien upon, the property of an insurer which is made or created within four months prior to the granting of an order to show cause under this chapter with the intent of giving to any creditor or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such a preference will occur, shall be voidable.

(2) Every director, officer, employee, stockholder, member, subscriber, and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer or the benefit thereof shall be personally liable therefor and shall be bound to account to the commissioner.

(3) The commissioner as liquidator, rehabilitator or conservator in any proceeding under this chapter, may avoid any transfer of, or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the granting of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as above specified. [1947 c 79 § .31.27; Rem. Supp. 1947 § 45.31.27.]

48.31.280 Priority and order of distribution of claims. The priority of distribution of claims from the insurer's estate is as follows: Every claim in a class must be paid in full or adequate funds retained for payment before the members of the next class receive any payment; no subclasses may be established within a class; and no claim by a shareholder, policyholder, or other creditor may circumvent the priority classes through the use of equitable remedies. The order of distribution of claims is:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

(a) The actual and necessary costs of preserving or recovering the assets of the insurer;

(b) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(c) Necessary filing fees;

(d) The fees and mileage payable to witnesses;

(e) Authorized reasonable attorneys' fees and other professional services rendered in the rehabilitation and liquidation;

(f) The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.

(2) Class 2. Loss claims. For purposes of this section, loss claims are all claims under policies, including claims of the federal or a state or local government, for losses incurred, including third-party claims, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, are loss claims. That portion of any loss indemnification that is provided for by other benefits or advantages recovered by the claimant, is not included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to an employee may be treated as a gratuity. Loss claims also include claims under nonassessable policies for unearned premium or other premium refunds.

(3) Class 3. Claims of the federal government, other than claims which are included as loss claims under subsection (2) of this section.

(4) Class 4. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation; except, where there are no claims and no potential claims of the federal government in the estate, in which case claims in this class shall have priority over claims in class 2 and below. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(5) Class 5. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.

(6) Class 6. Claims of any state or local government, except those under subsection (2) of this section. Claims, including those of any governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims are postponed to the class of claims under subsection (9) of this section.

(7) Class 7. Claims filed late or any other claims other than claims under subsections (8) and (9) of this section.

(8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies are limited in accordance with law.

(9) Class 9. The claims of shareholders or other owners in their capacity as shareholders. [2001 c 40 § 1; 1993 c 462 § 83; 1975-'76 2nd ex.s. c 109 § 1; 1947 c 79 § .31.28; Rem. Supp. 1947 § 45.31.28.]

Application—2001 c 40: "This act applies to and governs all claims filed in any proceeding to liquidate an insurer that is initiated on or after January 1, 2001." [2001 c 40 § 3.]

Severability—2001 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 40 § 4.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.290 Offsets. (1) In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid, except as provided in subsection (2) of this section.

(2) No offset shall be allowed in favor of any such person where (a) the obligation of the insurer to such person would not at the date of the entry of any liquidation order, or otherwise, as provided in RCW 48.31.260, entitle him to share as a claimant in the assets of the insurer, or (b) the obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or (c) the obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon a subscription to the capital stock of a stock insurer. [1947 c 79 § .31.29; Rem. Supp. 1947 § 45.31.29.]

48.31.300 Allowance of contingent and other claims.

(1) No contingent claim shall share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to RCW 48.31.310, except that such claims shall be considered, if properly presented, and may be allowed to share where:

(a) Such claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of such insurer, or

(b) There is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent.

(2) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of such insurer under a liability insurance policy issued by such insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that such claim may be contingent, and such claim may be allowed

(a) If it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

(b) If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against such insurer arising out of his or her cause of action other than those already presented can be made; and

(c) If the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

No judgment against such an insured taken after the date of the entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of

the liquidation order shall be considered as conclusive evidence in the liquidation proceeding either of the liability of such insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

(3) No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for fixation of rights and liabilities as provided in RCW 48.31.260 unless the claimant shall surrender his or her security to the commissioner in which event the claim shall be allowed in the full amount for which it is valued.

(4) Whether or not the third party files a claim, the insured may file a claim on his or her own behalf in the liquidation.

(5) No claim may be presented under this section if it is or may be covered by a guaranty association or foreign guaranty association. [1993 c 462 § 84; 1947 c 79 § .31.30; Rem. Supp. 1947 § 45.31.30.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.31.310 Time to file claims. (1) If upon the granting of an order of liquidation under this chapter or at any time thereafter during the liquidation proceeding, the insurer shall not be clearly solvent, the court shall after such notice and hearing as it deems proper, make an order declaring the insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against such insurer and who have not filed proper proofs thereof, to present the same to him, at a place specified in such notice, within four months from the date of the entry of such order, or if the commissioner shall certify that it is necessary, within such longer time as the court shall prescribe. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

(2) Proofs of claim may be filed subsequent to the date specified, but no such claim shall share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full with interest. [1947 c 79 § .31.31; Rem. Supp. 1947 § 45.31.31.]

48.31.320 Report for assessment. Within three years from the date an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer was filed in the office of the clerk of the court by which such order was made, the commissioner may make a report to the court setting forth

- (1) the reasonable value of the assets of the insurer;
- (2) the insurer's probable liabilities; and
- (3) the probable necessary assessment, if any, to pay all claims and expenses in full, including expenses of administration. [1947 c 79 § .31.32; Rem. Supp. 1947 § 45.31.32.]

48.31.330 Levy of assessment. (1) Upon the basis of the report provided for in RCW 48.31.320, including any

amendments thereof, the court, ex parte, may levy one or more assessments against all members of such insurer who, as shown by the records of the insurer, were members (if a mutual insurer) or subscribers (if a reciprocal insurer) at any time within one year prior to the date of issuance of the order to show cause under RCW 48.31.190.

(2) Such assessment or assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the estimated cost of collection and percentage of uncollectibility thereof. The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to this chapter or pursuant to any other provisions of this code, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this code; except that if the court finds that the policy was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, the court may determine the upper limit of such assessment upon the basis of such minimum rate.

(3) No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this code. [1947 c 79 § .31.33; Rem. Supp. 1947 § 45.31.33.]

48.31.340 Order for payment of assessment. After levy of assessment as provided in RCW 48.31.330, upon the filing of a further detailed report by the commissioner, the court shall issue an order directing each member (if a mutual insurer) or each subscriber (if a reciprocal insurer) if he shall not pay the amount assessed against him to the commissioner on or before a day to be specified in the order, to show cause why he should not be held liable to pay such assessment together with costs as set forth in RCW 48.31.360 and why the commissioner should not have judgment therefor. [1947 c 79 § .31.34; Rem. Supp. 1947 § 45.31.34.]

48.31.350 Publication, transmittal of assessment order. The commissioner shall cause a notice of such assessment order setting forth a brief summary of the contents of such order to be:

- (1) Published in such manner as shall be directed by the court; and
- (2) Enclosed in a sealed envelope, addressed and mailed postage prepaid to each member or subscriber liable thereunder at his last known address as it appears on the records of the insurer, at least twenty days before the return day of the order to show cause provided for in RCW 48.31.340. [1947 c 79 § .31.35; Rem. Supp. 1947 § 45.31.35.]

48.31.360 Judgment upon the assessment. (1) On the return day of the order to show cause provided for in RCW 48.31.340 if the member or subscriber does not appear and serve verified objections upon the commissioner, the court shall make an order adjudging that such member or subscriber is liable for the amount of the assessment against him together with ten dollars costs, and that the commissioner may have judgment against the member or subscriber therefor.

(2) If on such return day the member or subscriber shall appear and serve verified objections upon the commissioner

there shall be a full hearing before the court or a referee to hear and determine, who, after such hearing, shall make an order either negating the liability of the member or subscriber to pay the assessment or affirming his liability to pay the whole or some part thereof together with twenty-five dollars costs and the necessary disbursements incurred at such hearing, and directing that the commissioner in the latter case may have judgment therefor.

(3) A judgment upon any such order shall have the same force and effect, and may be entered and docketed, and may be appealed from as if it were a judgment in an original action brought in the court in which the proceeding is pending. [1947 c 79 § .31.36; Rem. Supp. 1947 § 45.31.36.]

48.31.400 Administrative supervision—Conditions—Notice and hearing. (1) An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time the commissioner makes a finding that:

(a) The insurer's condition renders the continuance of its business financially hazardous to the public or to its insureds consistent with this title or any rules adopted by the commissioner;

(b) The insurer has or appears to have exceeded its powers granted under its certificate of authority and this title or any rules adopted by the commissioner;

(c) The insurer has failed to comply with the applicable provisions of Title 48 RCW or rules adopted by the commissioner such that its condition has or will render the continuance of its business financially hazardous to the public or to its insureds;

(d) The business of the insurer is being conducted fraudulently; or

(e) The insurer gives its consent.

(2) If the commissioner determines that the conditions set forth in subsection (1) of this section exist, the commissioner shall:

(a) Notify the insurer of his or her determination;

(b) Furnish to the insurer a written list of the requirements to abate this determination; and

(c) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of this chapter. Action by the commissioner shall be subject to review pursuant to chapters 48.04 and 34.05 RCW.

(3) If placed under administrative supervision, the insurer has sixty days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of this chapter.

(4) If it is determined after notice and hearing that the conditions giving rise to the administrative supervision still exist at the end of the supervision period under subsection (3) of this section, the commissioner may extend the period.

(5) If it is determined that none of the conditions giving rise to the administrative supervision exist, or that the insurer has remedied the conditions that gave rise to the supervision, the commissioner shall release the insurer from supervision. [2005 c 432 § 3.]

48.31.405 Administrative supervision—Confidentiality. (1) Except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the commissioner relating to the supervision of any insurer under this chapter are confidential and are not subject to chapter 42.56 RCW, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action, except as provided by this section. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(2) The employees of the commissioner have access to these proceedings, hearings, notices, correspondence, reports, records, or information as permitted by the commissioner. Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner may share the notices, correspondence, reports, records, or information with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States, and provided that the recipient agrees to maintain the confidentiality of the documents, material, or other information. No waiver of any applicable privilege or claim of confidentiality may occur as a result of the sharing of documents, materials, or other information under this subsection.

(4) The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer or its insureds, creditors, or the general public. However, the determination of whether to disclose any confidential information at the public proceedings or hearings is subject to applicable law.

(5) This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction. [2006 c 209 § 5; 2005 c 432 § 4.]

Effective date—2006 c 209: See RCW 42.56.903.

48.31.410 Administrative supervision—Standards and procedures—Limitations on insurer. During the period of administrative supervision, the commissioner or the commissioner's designated appointee shall serve as the administrative supervisor. The commissioner shall establish standards and procedures that maintain reasonable and customary claims practices and otherwise provide for the orderly continuation of the insurer's operations and business. Considering these standards and procedures, the commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or the appointed administrative supervisor:

- (1) Dispose of, convey, or encumber any of its assets or its business in force;
- (2) Withdraw any of its bank accounts;
- (3) Lend any of its funds;
- (4) Invest any of its funds;
- (5) Transfer any of its property;
- (6) Incur any debt, obligation, or liability;
- (7) Merge or consolidate with another company;
- (8) Approve new premiums or renew any policies;
- (9) Enter into any new reinsurance contract or treaty;
- (10) Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate, or contract, except for nonpayment of premiums due;
- (11) Release, pay, or refund premium deposits; accrued cash or loan values; unearned premiums; or other reserves on any insurance policy, certificate, or contract;
- (12) Make any material change in management; or
- (13) Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends, or other payments deemed preferential. [2005 c 432 § 5.]

48.31.415 Administrative supervision—Insurer may contest. During the period of administrative supervision the insurer may contest an action taken, proposed to be taken, or failed to be taken by the administrative supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under chapters 48.04 and 34.05 RCW. [2005 c 432 § 6.]

48.31.420 Administrative supervision—No limitation on judicial proceedings. RCW 48.31.020, 48.31.115, 48.31.400 through 48.31.415, 48.31.425, and 48.31.435 do not preclude the commissioner from initiating judicial proceedings to place an insurer in rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this chapter against the insurer. [2005 c 432 § 7.]

48.31.425 Administrative supervision—Commissioner contacts. The commissioner may meet with the administrative supervisor appointed under this chapter and with the attorney or other representative of the administrative supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this chapter to carry out the commissioner's duties under this chapter or for the supervisor to carry out his or her duties under this chapter. [2005 c 432 § 8.]

48.31.430 Administrative supervision—Chapters 48.04 and 34.05 RCW. An action or the failure to act by the commissioner is subject to chapters 48.04 and 34.05 RCW. [2005 c 432 § 9.]

48.31.435 Administrative supervision—Rules. The commissioner may adopt rules to implement and administer (2008 Ed.)

RCW 48.31.020, 48.31.115, and 48.31.400 through 48.31.425. [2005 c 432 § 10.]

48.31.900 Severability—2005 c 432. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 432 § 11.]

Chapter 48.31B RCW INSURER HOLDING COMPANY ACT

Sections

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48.31B.005 Definitions. As used in this chapter, the following terms have the meanings set forth in this section, unless the context requires otherwise.

(1) An "affiliate" of, or person "affiliated" with, a specific person, is a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in a manner similar to that provided by RCW 48.31B.025(11) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and

making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

(4) The term "insurer" has the same meaning as set forth in RCW 48.01.050; it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, a similar entity, or any combination of the foregoing acting in concert, but does not include a joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

(6) A "securityholder" of a specified person is one who owns a security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A "subsidiary" of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(8) The term "voting security" includes a security convertible into or evidencing a right to acquire a voting security. [1993 c 462 § 2.]

48.31B.010 Insurer ceases to control subsidiary—Disposal of investment. If an insurer ceases to control a subsidiary, it shall dispose of any investment in the subsidiary within three years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after the investment has been made, the investment meets the requirements for investment under any other section of this Title, and the insurer has notified the commissioner thereof. [1993 c 462 § 3.]

48.31B.015 Control of insurer—Acquisition, merger, or exchange—Preacquisition notification—Jurisdiction of courts. (1) No person other than the issuer may make a tender offer for or a request or invitation for tenders of, or enter into an agreement to exchange securities of, seek to acquire, or acquire, in the open market or otherwise, voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly, or by conversion or by exercise of a right to acquire, be in control of the insurer. No person may enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or person controlling a domestic insurer unless, at the time the offer, request, or invitation is made or the agreement is entered into, or before the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner as prescribed in this section.

For purposes of this section a domestic insurer includes a person controlling a domestic insurer unless the person, as

determined by the commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the commissioner containing the information set forth in RCW 48.31B.020(3)(a) sixty days before the proposed effective date of the acquisition. Persons who fail to file the required preacquisition notification with the commissioner are subject to the penalties in RCW 48.31B.020(5)(c). For the purposes of this section, "person" does not include a securities broker holding, in usual and customary broker's function, less than twenty percent of the voting securities of an insurance company or of a person who controls an insurance company.

(2) The statement to be filed with the commissioner under this section must be made under oath or affirmation and must contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected, hereinafter called "acquiring party," and:

(i) If that person is an individual, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) If that person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person's subsidiaries; any convictions of crimes during the past ten years; and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to those positions. The list must include for each such individual the information required by (a)(i) of this subsection.

(b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including a pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety days before the filing of the statement.

(d) Any plans or proposals that each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security referred to in subsection (1) of this section that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this

section, and a statement as to the method by which the fairness of the proposal was arrived at.

(f) The amount of each class of any security referred to in subsection (1) of this section that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve calendar months before the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve calendar months before the filing of the statement, by an acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and, if distributed, of additional soliciting material relating to the securities.

(k) The term of an agreement, contract, or understanding made with or proposed to be made with a broker-dealer as to solicitation or securities referred to in subsection (1) of this section for tender, and the amount of fees, commissions, or other compensation to be paid to broker-dealers with regard to the securities.

(l) Such additional information as the commissioner may prescribe by rule as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by (a) through (l) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls a partner or member. If a partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by (a) through (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If a material change occurs in the facts set forth in the statement filed with the commissioner and sent to the insurer under this section, an amendment setting forth the change, together with copies of all documents and other material rel-

evant to the change, must be filed with the commissioner and sent to the insurer within two business days after the person learns of the change.

(3) If an offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may use those documents in furnishing the information called for by that statement.

(4)(a) The commissioner shall approve a merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing thereon, he or she finds that:

(i) After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein. In applying the competitive standard in (a)(ii) of this subsection:

(A) The informational requirements of RCW 48.31B.020(3)(a) and the standards of RCW 48.31B.020(4)(b) apply;

(B) The commissioner may not disapprove the merger or other acquisition if the commissioner finds that any of the situations meeting the criteria provided by RCW 48.31B.020(4)(c) exist; and

(C) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(iii) The financial condition of an acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(v) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vi) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(b) The commissioner shall approve an exchange or other acquisition of control referred to in this section within sixty days after he or she declares the statement filed under this section to be complete and after holding a public hearing. At the hearing, the person filing the statement, the insurer, and any person whose significant interest is determined by the commissioner to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith may conduct discovery proceedings in the same manner as is allowed in the super-

rior court of this state. All discovery proceedings must be concluded not later than three days before the commencement of the public hearing.

(c) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All reasonable costs of a hearing held under this section, as determined by the commissioner, including costs associated with the commissioner's use of investigatory, professional, and other necessary personnel, mailing of required notices and other information, and use of equipment or facilities, must be paid before issuance of the commissioner's order by the acquiring person.

(5) This section does not apply to:

(a) A transaction that is subject to RCW 48.31.010, dealing with the merger or consolidation of two or more insurers;

(b) An offer, request, invitation, agreement, or acquisition that the commissioner by order has exempted from this section as: (i) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) otherwise not comprehended within the purposes of this section.

(6) The following are violations of this section:

(a) The failure to file a statement, amendment, or other material required to be filed under subsection (1) or (2) of this section; or

(b) The effectuation or an attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given approval thereto.

(7) The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving that person arising out of violations of this section, and each such person is deemed to have performed acts equivalent to and constituting an appointment by that person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in an action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at the person's last known address. [1993 c 462 § 4.]

48.31B.020 Acquisition of insurer—Change in control—Definitions—Exemptions—Competition—Preacquisition notification—Violations—Penalties. (1) The definitions in this subsection apply only for the purposes of this section.

(a) "Acquisition" means an agreement, arrangement, or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.

(b) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(2)(a) Except as exempted in (b) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(b) This section does not apply to the following:

(i) An acquisition subject to approval or disapproval by the commissioner under RCW 48.31B.015;

(ii) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under RCW 48.31B.005(2), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(iii) The acquisition of a person by another person when neither person is directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the commissioner in accordance with subsection (3)(a) of this section sixty days before the proposed effective date of the acquisition. However, preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this subsection (2)(b);

(iv) The acquisition of already affiliated persons;

(v) An acquisition if, as an immediate result of the acquisition:

(A) In no market would the combined market share of the involved insurers exceed five percent of the total market;

(B) There would be no increase in any market share; or

(C) In no market would:

(I) The combined market share of the involved insurers exceed twelve percent of the total market; and

(II) The market share increase by more than two percent of the total market.

For the purpose of (b)(v) of this subsection, a "market" means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state;

(vi) An acquisition for which a preacquisition notification would be required under this section due solely to the resulting effect on the ocean marine insurance line of business;

(vii) An acquisition of an insurer whose domiciliary commissioner affirmatively finds: That the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; and the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.

(3) An acquisition covered by subsection (2) of this section may be subject to an order under subsection (5) of this section unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification.

(a) The preacquisition notification must be in such form and contain such information as prescribed by the commissioner relating to those markets that, under subsection

(2)(b)(v) of this section, cause the acquisition not to be exempted from this section. The commissioner may require such additional material and information as he or she deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the person indicating his or her ability to render an informed opinion.

(b) The waiting period required begins on the date the commissioner declares the preacquisition notification to be complete and ends on the earlier of the sixtieth day after the date of the declaration or the termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner may require the submission of additional needed information relevant to the proposed acquisition. If additional information is required, the waiting period ends on the earlier of the sixtieth day after the commissioner declares he or she has received the additional information or the termination of the waiting period by the commissioner.

(4)(a) The commissioner may enter an order under subsection (5)(a) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in a line of insurance in this state or tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection (3) of this section.

(b) In determining whether a proposed acquisition would violate the competitive standard of (a) of this subsection, the commissioner shall consider the following:

(i) An acquisition covered under subsection (2) of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:

(A) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more; or

(B) If the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in (a) of this subsection. For the purpose of (b)(i) of this subsection, the insurer with the largest share of the market is Insurer A.

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(ii) There is a significant trend toward increased concentration when the aggregate market share of a grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from a base year five to ten years before the acquisition up to the time of the acquisition. An acquisition or merger covered under subsection (2) of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in (a) of this subsection if:

(A) There is a significant trend toward increased concentration in the market;

(B) One of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(C) Another involved insurer's market is two percent or more.

(iii) For the purposes of (b) of this subsection:

(A) The term "insurer" includes a company or group of companies under common management, ownership, or control;

(B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, adopted by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

(C) The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(iv) Even though an acquisition is not prima facie violative of the competitive standard under (b)(i) and (ii) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under (b)(i) and (ii) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under (b)(iv) of this subsection include, but are not limited to, the following: Market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(c) An order may not be entered under subsection (5)(a) of this section if:

(i) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would arise from the economies exceed the public benefits that would arise from not lessening competition; or

(ii) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits that would arise from not lessening competition.

(5)(a)(i) If an acquisition violates the standards of this section, the commissioner may enter an order:

(A) Requiring an involved insurer to cease and desist from doing business in this state with respect to the line or lines of insurance involved in the violation; or

(B) Denying the application of an acquired or acquiring insurer for a license to do business in this state.

(ii) The commissioner may not enter the order unless:

(A) There is a hearing; (B) notice of the hearing is issued before the end of the waiting period and not less than fifteen days before the hearing; and (C) the hearing is concluded and the order is issued no later than sixty days after the end of the waiting period. Every order must be accompanied by a written decision of the commissioner setting forth his or her findings of fact and conclusions of law.

(iii) An order entered under (a) of this subsection may not become final earlier than thirty days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(iv) An order pursuant to (a) of this subsection does not apply if the acquisition is not consummated.

(b) A person who violates a cease and desist order of the commissioner under (a) of this subsection and while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(i) A monetary penalty of not more than ten thousand dollars for every day of violation; or

(ii) Suspension or revocation of the person's license; or

(iii) Both (b)(i) and (b)(ii) of this subsection.

(c) An insurer or other person who fails to make a filing required by this section and who also fails to demonstrate a good faith effort to comply with the filing requirement, is subject to a civil penalty of not more than fifty thousand dollars.

(6) RCW 48.31B.045 (2) and (3) and 48.31B.050 do not apply to acquisitions covered under subsection (2) of this section. [1993 c 462 § 5.]

48.31B.025 Registration with commissioner—Information required—Rule making—Disclaimer of affiliation—Failure to file. (1) Every insurer authorized to do business in this state that is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

(a) This section;

(b) RCW 48.31B.030 (1)(a), (2), and (3); and

(c) Either RCW 48.31B.030(1)(b) or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

An insurer subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by May 15th of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require an insurer authorized to do business in the state that is a member of a holding company system, but that is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(2) An insurer subject to registration shall file the registration statement on a form prescribed by the commissioner, containing the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchange of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of subsidiary or controlling affiliate, for a loan made to a member of the insurance holding company system;

(e) Other matters concerning transactions between registered insurers and affiliates as may be included from time to time in registration forms adopted or approved by the commissioner.

(3) Registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed under subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the 31st day of the previous December are not material for purposes of this section.

(5)(a) Subject to RCW 48.31B.030(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within five business days

after their declaration and at least fifteen business days before payment, and shall provide the commissioner such other information as may be required by rule.

(b) If the commissioner determines that a registered insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the commissioner may order the registered insurance company to limit or discontinue the payment of stockholder dividends until such time as the surplus is adequate.

(6) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with this chapter.

(7) The commissioner shall terminate the registration of an insurer that demonstrates that it no longer is a member of an insurance holding company system.

(8) The commissioner may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The commissioner may allow an insurer authorized to do business in this state and part of an insurance holding company system to register on behalf of an affiliated insurer that is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section does not apply to an insurer, information, or transaction if and to the extent that the commissioner by rule or order exempts the insurer, information, or transaction from this section.

(11) A person may file with the commissioner a disclaimer of affiliation with an authorized insurer, or an insurer or a member of an insurance holding company system may file the disclaimer. The person making such a filing with the commissioner shall at the same time deliver a complete copy of the filing to each domestic insurer which is the subject of such filing. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section that may arise out of the insurer's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(12) Failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section. [2000 c 214 § 1; 1993 c 462 § 6.]

48.31B.030 Insurer subject to registration—Standards for transactions within a holding company system—Extraordinary dividends or distributions—Insurer's surplus. (1)(a) Transactions within a holding company system to which an insurer subject to registration is a party are subject to the following standards:

(i) The terms must be fair and reasonable;

(ii) Charges or fees for services performed must be fair and reasonable;

(iii) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(iv) The books, accounts, and records of each party to all such transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(v) The insurer's surplus regarding policyholders after dividends or distributions to shareholders or affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction and the commissioner declares the notice to be sufficient at least sixty days before, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

(i) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to or exceed: (A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; (B) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of the previous December;

(ii) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed: (A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; (B) with respect to life insurers, three percent of the insurer's admitted assets; each as of the 31st day of the previous December;

(iii) Reinsurance agreements or modifications to them in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of the previous December, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) Management agreements, service contracts, and cost-sharing arrangements; and

(v) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing contained in this section authorizes or permits a transaction that, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over a twelve-month period for that purpose, the commissioner may apply for an order as described in RCW 48.31B.045(1).

(d) The commissioner, in reviewing transactions under (b) of this subsection, shall consider whether the transactions comply with the standards set forth in (a) of this subsection and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty days of an investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

(2)(a) No domestic insurer may pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until: (i) Thirty days after the commissioner declares that he or she has received sufficient notice of the declaration thereof and has not within that period disapproved the payment; or (ii) the commissioner has approved the payment within the thirty-day period.

(b) For purposes of this section, an extraordinary dividend or distribution is a dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the period of twelve consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution, exceeds the greater of: (i) Ten percent of the company's surplus as regards policyholders as of the 31st day of the previous December; or (ii) the net gain from operations of the company if the company is a life insurance company, or the net income if the company is not a life insurance company, for the twelve month period ending the 31st day of the previous December, but does not include pro rata distributions of any class of the company's own securities.

(c) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon shareholders until: (i) The commissioner has approved the payment of the dividend or distribution; or (ii) the commissioner has not disapproved the payment within the thirty-day period referred to in (a) of this subsection.

(3) For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, may be considered:

(a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) The extent to which the insurer's business is diversified among the several lines of insurance;

(c) The number and size of risks insured in each line of business;

(d) The extent of the geographical dispersion of the insurer's insured risks;

(e) The nature and extent of the insurer's reinsurance program;

(f) The quality, diversification, and liquidity of the insurer's investment portfolio;

(g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) The surplus as regards policyholders maintained by other comparable insurers;

(i) The adequacy of the insurer's reserves;

(j) The quality and liquidity of investments in affiliates. The commissioner may discount any such investment or may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment the investment so warrants; and

(k) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items. [1993 c 462 § 7.]

48.31B.035 Examination of insurers—Commissioner may order production of information—Failure to comply—Costs of examination.

(1) Subject to the limitation contained in this section and in addition to the powers that the commissioner has under chapter 48.03 RCW relating to the examination of insurers, the commissioner also may order an insurer registered under RCW 48.31B.025 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition of the insurer or to determine compliance with this title. If the insurer fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered insurer producing for examination records, books, and papers under subsection (1) of this section are liable for and shall pay the expense of the examination in accordance with RCW 48.03.060. [1993 c 462 § 8.]

48.31B.040 Rule making. The commissioner may, upon notice and opportunity for all interested persons to be heard, adopt rules and issue orders that are necessary to carry out this chapter. [1993 c 462 § 9.]

48.31B.045 Violations of chapter—Commissioner may seek superior court order.

(1) Whenever it appears to the commissioner that an insurer or a director, officer, employee, or agent of the insurer has committed or is about to commit a violation of this chapter or any rule or order of the commissioner under this chapter, the commissioner may apply to the superior court for Thurston county or to the court for the county in which the principal office of the insurer is located for an order enjoining the insurer or the director,

officer, employee, or agent from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(2) No security that is the subject of an agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this chapter or of a rule or order of the commissioner under this chapter may be voted at a shareholders' meeting, or may be counted for quorum purposes. Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but no action taken at any such meeting may be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the commissioner has reason to believe that a security of the insurer has been or is about to be acquired in contravention of this chapter or of a rule or order of the commissioner under this chapter, the insurer or the commissioner may apply to the superior court for Thurston county or to the court for the county in which the insurer has its principal place of business to enjoin an offer, request, invitation, agreement, or acquisition made in contravention of RCW 48.31B.015 or a rule or order of the commissioner under that section to enjoin the voting of a security so acquired, to void a vote of the security already cast at a meeting of shareholders, and for such other relief as the nature of the case and the interest of the insurer's policyholders, creditors, and shareholders or the public may require.

(3) If a person has acquired or is proposing to acquire voting securities in violation of this chapter or a rule or order of the commissioner under this chapter, the superior court for Thurston county or the court for the county in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the commissioner seize or sequester voting securities of the insurer owned directly or indirectly by the person, and issue such order with respect to the securities as may be appropriate to carry out this chapter.

Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of domestic insurers is in this state. [1993 c 462 § 10.]

48.31B.050 Violations of chapter—Penalties—Civil forfeitures—Orders—Referral to prosecuting attorney—Imprisonment. (1) The commissioner shall require, after notice and hearing, an insurer failing, without just cause, to file a registration statement as required in this chapter, to pay a penalty of not more than ten thousand dollars per day. The maximum penalty under this section is one million dollars. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer. The commissioner shall pay a fine collected under this section to the state treasurer for the account of the general fund.

(2) Every director or officer of an insurance holding company system who knowingly violates this chapter, or participates in, or assents to, or who knowingly permits an officer or agent of the insurer to engage in transactions or make investments that have not been properly reported or

submitted under RCW 48.31B.025(1) or 48.31B.030(1)(b) or (2), or that violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than ten thousand dollars per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the commissioner that an insurer subject to this chapter or a director, officer, employee, or agent of the insurer has engaged in a transaction or entered into a contract that is subject to RCW 48.31B.030 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any such contracts and restore the status quo if that action is in the best interest of the policyholders, creditors, or the public.

(4) Whenever it appears to the commissioner that an insurer or a director, officer, employee, or agent of the insurer has committed a willful violation of this chapter, the commissioner may refer the matter to the prosecuting attorney of Thurston county or the county in which the principal office of the insurer is located. An insurer that willfully violates this chapter may be fined not more than one million dollars. Any individual who willfully violates this chapter may be fined in his or her individual capacity not more than ten thousand dollars, or be imprisoned for not more than three years, or both.

(5) An officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement or false report or false filing with the intent to deceive the commissioner in the performance of his or her duties under this chapter, upon conviction thereof, shall be imprisoned for not more than three years or fined not more than ten thousand dollars or both. The officer, director, or employee upon whom the fine is imposed shall pay the fine in his or her individual capacity. [1993 c 462 § 11.]

48.31B.055 Violations of chapter—Impairment of financial condition—Commissioner may take possession.

Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to take possession of the property of the domestic insurer and to conduct the business of the insurer. [1993 c 462 § 12.]

48.31B.060 Order for liquidation or rehabilitation—Recovery of distributions or payments—Personal liability—Maximum amount recoverable.

(1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order may recover on behalf of the insurer: (a) From a parent corporation or holding company or person or affiliate who otherwise con-

trolled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or (b) a payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, where the distribution or payment under (a) or (b) of this subsection is made at any time during the one year before the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3), and (4) of this section.

(2) No such distribution is recoverable if it is shown that when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) A person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate when the distributions were paid is liable up to the amount of distributions or payments under subsection (1) of this section the person received. A person who controlled the insurer at the time the distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that a person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it under those provisions, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for a resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it. [1993 c 462 § 13.]

48.31B.065 Violations of chapter—Contrary to interests of policyholders or the public—Suspension, revocation, or nonrenewal of license. Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew the insurer's license or authority to do business in this state for such period as he or she finds is required for the protection of policyholders or the public. Such a determination must be accompanied by specific findings of fact and conclusions of law. [1993 c 462 § 14.]

48.31B.070 Person aggrieved by actions of commissioner. (1) A person aggrieved by an act, determination, rule, order, or any other action of the commissioner under this chapter may proceed in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

(2) A person aggrieved by a failure of the commissioner to act or make a determination required by this chapter may

petition the commissioner under the procedure described in RCW 34.05.330. [1993 c 462 § 15.]

48.31B.900 Short title. This chapter may be known and cited as the Insurer Holding Company Act. [1993 c 462 § 1.]

48.31B.901 Severability—1993 c 462. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 462 § 112.]

48.31B.902 Implementation—1993 c 462. The insurance commissioner may take such steps as are necessary to ensure that this act is implemented on July 25, 1993. [1993 c 462 § 106.]

Chapter 48.31C RCW

HOLDING COMPANY ACT FOR HEALTH CARE SERVICE CONTRACTORS AND HEALTH MAINTENANCE ORGANIZATIONS

Sections

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48.31C.900	Severability—2001 c 179.
48.31C.901	Effective date—2001 c 179.

48.31C.010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Acquisition" or "acquire" means an agreement, arrangement, or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, all or substantially all of the assets, bulk reinsurance, consolidations, affiliations, and mergers.

(2) "Affiliate" of, or person "affiliated" with, a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, voting rights, by contract other than a commercial contract for goods, nonmanagement services, a debt obligation which is not convertible into a right to acquire a voting security, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(a) For a for-profit person, control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact. A person may file with the commissioner a disclaimer of control of a health carrier. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the health carrier as well as the basis for disclaiming the control. After furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such a determination, the commissioner may:

- (i) Allow a disclaimer; or
- (ii) Disallow a disclaimer notwithstanding the absence of a presumption to that effect.

(b) For a nonprofit corporation organized under chapters 24.03 and 24.06 RCW, control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing a majority of voting rights of the person or the power to elect or appoint a majority of the board of directors, trustees, or other governing body of the person, unless the power is the result of an official position of, or corporate office held by, the person.

(c) Control includes either permanent or temporary control, or both.

(4) "Domestic health carrier" means a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, that is formed under the laws of this state.

(5) "Foreign health carrier" means a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, that is formed under the laws of the United States, of a state or territory of the United States other than this state, or the District of Columbia.

(6) "Health carrier holding company system" means two or more affiliated persons, one or more of which is a health care service contractor or health maintenance organization.

(7) "Health coverage business" means the business of a disability insurer authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, entering into any policy, contract, or agreement to arrange, reimburse, or pay for health care services.

(8) "Involved carrier" means an insurer, health care service contractor, or health maintenance organization, which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(9) "Person" means an individual, corporation, partnership, association, joint stock company, limited liability company, trust, unincorporated organization, similar entity, or any combination acting in concert, but does not include a joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or personal property.

(10) "Security holder" of a specified person means one who owns a security of that person, including (a) common stock, (b) preferred stock, (c) debt obligations convertible into the right to acquire voting securities, and any other security convertible into or evidencing the right to acquire (a) through (c) of this subsection.

(11) "Subsidiary" of a specified person means an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(12) "Voting security" includes a security convertible into or evidencing a right to acquire a voting security. [2001 c 179 § 1.]

48.31C.020 Acquisition of a foreign health carrier—Preacquisition notification—Review. (1) No person may acquire control of a foreign health carrier registered to do business in this state unless a preacquisition notification is filed with the commissioner under this section and the waiting period has expired. If a preacquisition notification is not filed with the commissioner an involved carrier may be subject to an order under subsection (3) of this section. The acquired person may file a preacquisition notification.

(a) The preacquisition notification must be in the form and contain the information prescribed by the commissioner. The commissioner may require additional material and information necessary to determine whether the proposed acquisition, if consummated, would have the effect of substantially lessening competition, or tending to create a monopoly, in the health coverage business in this state. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of the person indicating his or her ability to render an informed opinion.

(b) The waiting period required under this section begins on the date the commissioner receives the preacquisition notification and ends on the earlier of the sixtieth day after the date of the receipt by the commissioner of the preacquisition notification or the termination of the waiting period by the commissioner. Before the end of the waiting period, the commissioner may require the submission of additional needed information relevant to the proposed acquisition. If additional information is required, the waiting period ends on the earlier of the thirtieth day after the commissioner has received the additional information or the termination of the waiting period by the commissioner.

(2)(a) The commissioner may enter an order under subsection (3)(a) of this section with respect to an acquisition if:

(i) The health carrier fails to file adequate information in compliance with subsection (1)(a) of this section; or

(ii) The antitrust section of the office of the attorney general and any federal antitrust enforcement agency has chosen not to undertake a review of the proposed acquisition and the commissioner pursuant to his or her own review finds that there is substantial evidence that the effect of the acquisition

may substantially lessen competition or tend to create a monopoly in the health coverage business.

(b) If the antitrust section of the office of the attorney general undertakes a review of the proposed transaction then the attorney general shall seek input from the commissioner throughout the review.

(c) If the antitrust section of the office of the attorney general does not undertake a review of the proposed acquisition and the review is being conducted by the commissioner, then the commissioner shall seek input from the attorney general throughout the review.

(3)(a)(i) If an acquisition violates the standards of this section, the commissioner may enter an order:

(A) Requiring an involved carrier to cease and desist from doing business in this state with respect to business as a health care service contractor or health maintenance organization; or

(B) Denying the application of an acquired or acquiring carrier for a license, certificate of authority, or registration to do business in this state.

(ii) The commissioner may not enter the order unless:

(A) There is a hearing;

(B) Notice of the hearing is issued before the end of the waiting period and not less than fifteen days before the hearing; and

(C) The hearing is concluded and the order is issued no later than thirty days after the conclusion of the hearing.

Every order must be accompanied by a written decision of the commissioner setting forth his or her findings of fact and conclusions of law.

(iii) An order entered under (a) of this subsection may not become final earlier than thirty days after it is issued, during which time the involved carrier may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon the plan or other information, the commissioner shall specify the conditions, if any, under the time period during which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified.

(iv) An order under (a) of this subsection does not apply if the acquisition is not consummated.

(b) A person who violates a cease and desist order of the commissioner under (a) of this subsection and while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(i) A monetary penalty of not more than ten thousand dollars for every day of violation; or

(ii) Suspension or revocation of the person's license, certificate of authority, or registration; or

(iii) Both (b)(i) and (b)(ii) of this subsection.

(c) A carrier or other person who fails to make a filing required by this section and who also fails to demonstrate a good faith effort to comply with the filing requirement, is subject to a civil penalty of not more than fifty thousand dollars.

(4) An order may not be entered under subsection (3)(a) of this section if:

(a) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would

arise from the economies exceed the public benefits that would arise from more competition; or

(b) The acquisition will substantially increase the availability of health care coverage, and the public benefits of the increase exceed the public benefits that would arise from more competition.

(5)(a) RCW 48.31C.080 (2) and (3) and 48.31C.090 do not apply to acquisitions covered under this section.

(b) This section does not apply to the following:

(i) An acquisition subject to approval or disapproval by the commissioner under RCW 48.31C.030;

(ii) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in the health coverage business in this state;

(iii) The acquisition of a person by another person when neither person is directly, nor through affiliates, primarily engaged in the business of a domestic or foreign health carrier, if preacquisition notification is filed with the commissioner in accordance with subsection (1) of this section sixty days before the proposed effective date of the acquisition. However, preacquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by this subsection (5)(b);

(iv) The acquisition of already affiliated persons;

(v) An acquisition if, as an immediate result of the acquisition:

(A) In no market would the combined market share of the involved carriers exceed five percent of the total market;

(B) There would be no increase in any market share; or

(C) In no market would:

(I) The combined market share of the involved carriers exceed twelve percent of the total market; and

(II) The market share increase by more than two percent of the total market.

For the purpose of (b)(v) of this subsection, "market" means direct written premium in this state for a line of business as contained in the annual statement required to be filed by carriers licensed to do business in this state;

(vi) An acquisition of a health carrier whose domiciliary commissioner affirmatively finds: That the health carrier is in failing condition; there is a lack of feasible alternatives to improving such a condition; and the public benefits of improving the health carrier's condition through the acquisition exceed the public benefits that would arise from more competition, and the findings are communicated by the domiciliary commissioner to the commissioner of this state. [2001 c 179 § 2.]

48.31C.030 Acquisition of a domestic health carrier—Filing—Review—Jurisdiction of courts. (1) No person may acquire control of a domestic health carrier unless the person has filed with the commissioner and has sent to the health carrier a statement containing the information required by this section and the acquisition has been approved by the commissioner as prescribed in this section.

(2) The statement to be filed with the commissioner under this section must be made under oath or affirmation and must contain the following information:

(a) The name and address of the acquiring party. For purposes of this section, "acquiring party" means each person by

whom or on whose behalf the acquisition of control under subsection (1) of this section is to be effected:

(i) If the acquiring party is an individual, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(ii) If the acquiring party is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the person and any predecessors have been in existence; an informative description of the business intended to be done by the person's subsidiaries; any convictions of crimes during the past ten years; and a list of all individuals who are or who have been selected to become directors, trustees, or executive officers of the person, or who perform or will perform functions appropriate to those positions. The list must include for each such individual the information required by (a)(i) of this subsection.

(b) The source, nature, and amount of the consideration used or to be used in effecting the acquisition of control, a description of any transaction in which funds were or are to be obtained for any such purpose, including a pledge of assets, a pledge of the health carrier's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration. However, where a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the person filing the statement so requests.

(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety days before the filing of the statement. If the acquiring party and any predecessor has not had fully audited financial statements prepared during any of the preceding five years, then reviewed financial statements may be substituted for those years, except for the latest fiscal year which must be fully audited financial statements.

(d) Any plans or proposals that each acquiring party may have to liquidate the health carrier, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(e) The number of shares of any security or number and description of other voting rights referred to in RCW 48.31C.010(3) that each acquiring party proposes to acquire, the terms of the offer, request, invitation, agreement, or acquisition under RCW 48.31C.010(3), and a statement as to the method by which the fairness of the proposal was arrived at.

(f) The amount of each class of any security referred to in RCW 48.31C.010(3) that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in RCW 48.31C.010(3) in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of

profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements, or understandings have been entered into.

(h) A description of the purchase of any security referred to in RCW 48.31C.010(3) during the twelve calendar months before the filing of the statement, by an acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the security.

(i) A description of any recommendations to purchase any security referred to in RCW 48.31C.010(3) made during the twelve calendar months before the filing of the statement, by an acquiring party, or by anyone based upon interviews with outside parties or at the suggestion of the acquiring party.

(j) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in RCW 48.31C.010(3), and, if distributed, of additional soliciting material relating to the securities.

(k) The term of an agreement, contract, or understanding made with or proposed to be made with a broker-dealer as to solicitation or securities referred to in RCW 48.31C.010(3) for tender, and the amount of fees, commissions, or other compensation to be paid to broker-dealers with regard to the securities.

(l) Such additional information as the commissioner may prescribe by rule as necessary or appropriate for the protection of subscribers of the health carrier or in the public interest.

If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information required under (a) through (l) of this subsection must be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls a partner or member. If a partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information required under (a) through (l) of this subsection must be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of the corporation.

If a material change occurs in the facts set forth in the statement filed with the commissioner and sent to the health carrier under this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the commissioner and sent to the health carrier within two business days after the person learns of the change.

(3) If an offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred

to in subsection (1) of this section may use those documents in furnishing the information called for by that statement.

(4) The commissioner shall approve an exchange or other acquisition of control referred to in this section within sixty days after he or she declares the statement filed under this section to be complete and if a hearing is requested by the commissioner or either party to the transaction, after holding a public hearing. Unless the commissioner declares the statement to be incomplete and requests additional information, the statement is deemed complete sixty days after receipt of the statement by the commissioner. If the commissioner declares the statement to be incomplete and requests additional information, the sixty-day time period in which the statement is deemed complete shall be tolled until fifteen days after receipt by the commissioner of the additional information. If the commissioner declares the statement to be incomplete, the commissioner shall promptly notify the person filing the statement of the filing deficiencies and shall set forth with specificity the additional information required to make the filing complete. At the hearing, the person filing the statement, the health carrier, and any person whose significant interest is determined by the commissioner to be affected may present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith may conduct discovery proceedings in the same manner as is allowed in the superior court of this state. All discovery proceedings must be concluded not later than three business days before the commencement of the public hearing.

(5)(a) The commissioner shall approve an acquisition of control referred to in subsection (1) of this section unless, after a public hearing, he or she finds that:

(i) After the change of control, the domestic health carrier referred to in subsection (1) of this section would not be able to satisfy the requirements for registration as a health carrier;

(ii) The antitrust section of the office of the attorney general and any federal antitrust enforcement agency has chosen not to undertake a review of the proposed acquisition and the commissioner pursuant to his or her own review finds that there is substantial evidence that the effect of the acquisition may substantially lessen competition or tend to create a monopoly in the health coverage business.

If the antitrust section of the office of the attorney general does not undertake a review of the proposed acquisition and the review is being conducted by the commissioner, then the commissioner shall seek input from the attorney general throughout the review.

If the antitrust section of the office of the attorney general undertakes a review of the proposed transaction then the attorney general shall seek input from the commissioner throughout the review. As to the commissioner, in making this determination:

(A) The informational requirements of RCW 48.31C.020(1)(a) apply;

(B) The commissioner may not disapprove the acquisition if the commissioner finds that:

(I) The acquisition will yield substantial economies of scale or economies in resource use that cannot be feasibly achieved in any other way, and the public benefits that would

arise from the economies exceed the public benefits that would arise from more competition; or

(II) The acquisition will substantially increase or will prevent significant deterioration in the availability of health care coverage, and the public benefits of the increase exceed the public benefits that would arise from more competition;

(C) The commissioner may condition the approval of the acquisition on the removal of the basis of disapproval, as follows, within a specified period of time:

(I) The financial condition of an acquiring party is such as might jeopardize the financial stability of the health carrier, or prejudice the interest of its subscribers;

(II) The plans or proposals that the acquiring party has to liquidate the health carrier, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to subscribers of the health carrier and not in the public interest;

(III) The competence, experience, and integrity of those persons who would control the operation of the health carrier are such that it would not be in the interest of subscribers of the health carrier and of the public to permit the merger or other acquisition of control; or

(IV) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(b) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All reasonable costs of a hearing held under this section, as determined by the commissioner, including reasonable costs associated with the commissioner's use of investigatory, professional, and other necessary personnel, mailing of required notices and other information, and use of equipment or facilities, must be paid before issuance of the commissioner's order by the acquiring person.

(c) The commissioner may condition approval of an acquisition on the removal of the basis of disapproval within a specified period of time.

(6) Upon the request of a party to the acquisition the commissioner may order that this section does not apply to an offer, request, invitation, agreement, or acquisition as:

(a) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic health carrier; or

(b) Otherwise not comprehended within the purposes of this section.

(7) The following are violations of this section:

(a) The failure to file a statement, amendment, or other material required to be filed under subsection (1) or (2) of this section; or

(b) The effectuation or an attempt to effectuate an acquisition of control of a domestic health carrier unless the commissioner has given approval.

(8) The courts of this state have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and over all actions involving that person arising out of violations of this section, and such a person has performed acts equivalent to and constituting an appointment

by that person of the commissioner to be the person's true and lawful attorney upon whom may be served all lawful process in an action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such a person at the person's last known address. [2001 c 179 § 3.]

48.31C.040 Registration with commissioner—Information required—Rule making—Disclaimer of affiliation—Failure to file. (1) Every health carrier registered to do business in this state that is a member of a health carrier holding company system shall register with the commissioner, except a foreign health carrier subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in:

- (a) This section;
- (b) RCW 48.31C.050(1) and 48.31C.060; and
- (c) Either RCW 48.31C.050(1)(b) or a provision such as the following: Each registered health carrier shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each change or addition.

A health carrier subject to registration under this section shall register within one hundred twenty days of May 7, 2001, and thereafter within fifteen days after it becomes subject to registration, and annually thereafter by May 15th of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require a health carrier authorized to do business in the state that is a member of a health carrier holding company system, but that is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by the health carrier with the regulatory authority of its domiciliary jurisdiction.

(2) A health carrier subject to registration shall file the registration statement on a form prescribed by the commissioner, containing the following current information:

- (a) The capital structure, general financial condition, ownership, and management of the health carrier and any person controlling the health carrier;
- (b) The identity and relationship of every member of the health carrier holding company system;
- (c) The following agreements in force, and transactions currently outstanding or that have occurred during the last calendar year between the health carrier and its affiliates:
 - (i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the health carrier or of the health carrier by its affiliates;
 - (ii) Purchases, sales, or exchange of assets;
 - (iii) Transactions not in the ordinary course of business;
 - (iv) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the health carrier's assets to liability, other than subscriber contracts entered into in the ordinary course of the health carrier's business;

- (v) All management agreements, service contracts, and cost-sharing arrangements;
- (vi) Reinsurance agreements;
- (vii) Dividends and other distributions to shareholders; and
- (viii) Consolidated tax allocation agreements;
- (d) Any pledge of the health carrier's stock, including stock of a subsidiary or controlling affiliate, for a loan made to a member of the health carrier holding company system; and
- (e) Other matters concerning transactions between registered health carriers and affiliates as may be included from time to time in registration forms adopted or approved by the commissioner by rule.

(3) Registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) No information need be disclosed on the registration statement filed under subsection (2) of this section if the information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees, involving two percent or less of a health carrier's admitted assets as of the 31st day of the previous December are not material for purposes of this section.

(5) A person within a health carrier holding company system subject to registration shall provide complete and accurate information to a health carrier, where the information is reasonably necessary to enable the health carrier to comply with this chapter.

(6) The commissioner shall terminate the registration of a health carrier under this section that demonstrates that it no longer is a member of a health carrier holding company system.

(7) The commissioner may require or allow two or more affiliated health carriers subject to registration under this section to file a consolidated registration statement.

(8) The commissioner may allow a health carrier registered to do business in this state and part of a health carrier holding company system to register on behalf of an affiliated health carrier that is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(9) This section does not apply to a health carrier, information, or transaction if, and to the extent that, the commissioner by rule or order exempts the health carrier, information, or transaction from this section.

(10) A person may file with the commissioner a disclaimer of affiliation with an authorized health carrier, or a health carrier or a member of a health carrier holding company system may file the disclaimer. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the health carrier as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the health carrier is relieved of any duty to register or report under this section that may arise out of the health carrier's relationship with the person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

(11) Failure to file a registration statement or a summary of the registration statement required by this section within the time specified for the filing is a violation of this section. [2001 c 179 § 4.]

48.31C.050 Health carrier subject to registration—Standards for transactions within a holding company system—Notice to commissioner—Review. (1) Transactions within a health carrier holding company system to which a health carrier subject to registration is a party are subject to the following standards:

- (a) The terms must be fair and reasonable;
- (b) Charges or fees for services performed must be fair and reasonable;
- (c) Expenses incurred and payment received must be allocated to the health carrier in conformity with customary statutory accounting practices consistently applied;
- (d) The books, accounts, and records of each party to all such transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and
- (e) The health carrier's net worth after the transaction must exceed the health carrier's company action level risk-based capital. In addition, the commissioner may disapprove a transaction if the health carrier's risk-based capital net worth is less than the product of 2.5 and the health carrier's authorized control level risk-based capital and the commissioner reasonably believes that the health carrier's net worth is at risk of falling below its company action level risk-based capital due to anticipated future financial losses not reflected in the risk-based capital calculation. This subsection (1)(e) does not prohibit transactions that improve or help maintain the health carrier's net worth.

(2) The following transactions, excepting those transactions which are subject to approval by the commissioner elsewhere within this title, involving a domestic health carrier and a person in its health carrier holding company system may not be entered into unless the health carrier has notified the commissioner in writing of its intention to enter into the transaction and the commissioner does not declare the notice to be incomplete at least thirty days before, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. Unless the commissioner declares the notice to be incomplete and requests additional information, the notice is deemed complete thirty days after receipt of the notice by the commissioner. If the commissioner declares the notice to be incomplete, the thirty-day time period in which the notice is deemed complete shall be tolled until fifteen days after the receipt by the commissioner of the additional information:

- (a) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to or exceed the lesser of (i) two months of the health carrier's annualized claims and administrative costs, (ii) five percent of the health carrier's admitted assets, or (iii) twenty-five percent of net worth, as of the 31st day of the previous December;
- (b) Loans or extensions of credit to any person who is not an affiliate, if the health carrier makes the loans or extensions

of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the health carrier making the loans or extensions of credit, if the transactions are equal to or exceed the lesser of (i) two months of the health carrier's annualized claims and administrative costs, (ii) three percent of the health carrier's admitted assets, or (iii) twenty-five percent of net worth, as of the 31st day of the previous December;

(c) Reinsurance agreements or modifications to them in which the reinsurance premium or a change in the health carrier's liabilities equals or exceeds five percent of the health carrier's net worth, as of the 31st day of the previous December, including those agreements that may require as consideration the transfer of assets from a health carrier to a nonaffiliate, if an agreement or understanding exists between the health carrier and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the health carrier;

(d) Management agreements, service contracts, and cost-sharing arrangements; and

(e) Other acquisitions or dispositions of assets involving more than five percent of the health carrier's admitted assets, specified by rule, that the commissioner determines may adversely affect the interests of the health carrier's subscribers.

(3) A domestic health carrier may not enter into transactions that are part of a plan or series of like transactions with persons within the health carrier holding company system if the aggregate amount of the transactions within a twelve-month period exceed the statutory threshold amount. If the commissioner determines that the separate transactions entered into over a twelve-month period exceed the statutory threshold amount, the commissioner may apply for an order as described in RCW 48.31C.080(1).

(4) The commissioner, in reviewing transactions under subsection (2) of this section, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section.

(5) If a health carrier complies with the terms of a management agreement, service contract, or cost-sharing agreement that has not been disapproved by the commissioner under subsection (2) of this section, then the health carrier is not required to obtain additional approval from the commissioner for individual transactions conducted under the terms of the management agreement, service contract, or cost-sharing agreement. The commissioner, however, retains the authority to examine the individual transactions to determine their compliance with the terms of the management agreement, service contract, or cost-sharing agreement and subsection (1) of this section.

(6) This section does not authorize or permit a transaction that, in the case of a health carrier not a member of the same health carrier holding company system, would be otherwise contrary to law. [2001 c 179 § 5.]

48.31C.060 Extraordinary dividends or distributions—Restrictions—Definition of distribution. (1)(a) Subject to subsection (2) of this section, each registered health carrier shall report to the commissioner all dividends

and other distributions to shareholders or members not within the ordinary course of business within five business days after their declaration and at least fifteen business days before payment and shall provide the commissioner such other information as may be required by rule.

(b) Any payment of a dividend or other distribution to shareholders or members which would reduce the net worth of the health carrier below the greater of (i) the minimum required by RCW 48.44.037 for a health care service contractor or RCW 48.46.235 for a health maintenance organization or (ii) the company action level RBC under RCW 48.43.300(9)(a) is prohibited.

(2)(a) No domestic health carrier may pay an extraordinary dividend or make any other extraordinary distribution to its shareholders or members until: (i) Thirty days after the commissioner has received sufficient notice of the declaration, unless the commissioner declares the notice to be incomplete and requests additional information in which event the thirty days shall be tolled until fifteen days after receipt by the commissioner of the additional information or thirty days after the original receipt of the notice by the commissioner, whichever is later, and the commissioner has not within that period disapproved the payment; or (ii) the commissioner has approved the payment within the thirty-day period.

(b) For purposes of this section, an extraordinary dividend or distribution is a dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions not within the ordinary course of business made within the period of twelve consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution, exceeds the lesser of: (i) Ten percent of the health carrier's net worth as of the 31st day of the previous December; or (ii) the net income of the health carrier for the twelve-month period ending the 31st day of the previous December, but does not include pro rata distributions of any class of the company's own securities.

(c) Notwithstanding any other provision of law, a health carrier may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon shareholders or members until: (i) The commissioner has approved the payment of the dividend or distribution; or (ii) the commissioner has not disapproved the payment within the thirty-day period referred to in (a) of this subsection.

(3) For the purpose of this section, "distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a health carrier to or for the benefit of its members or shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; or a distribution of indebtedness in respect to any of its shares. It does not include any remuneration to a shareholder or member made as consideration for services or items provided by such shareholder or member, including but not limited to remuneration in exchange for health care services, equipment or supplies, or administrative support services or equipment. [2001 c 179 § 6.]

(2008 Ed.)

48.31C.070 Examination of health carriers—Commissioner may order production of information—Failure to comply—Costs. (1) Subject to the limitation contained in this section and in addition to the powers that the commissioner has under RCW 48.44.145 relating to the examination of health care service contractors and under RCW 48.46.120 relating to the examination of health maintenance organizations, the commissioner also may order a health carrier registered under RCW 48.31C.040 to produce such records, books, or other information papers in the possession of the health carrier or its affiliates as are reasonably necessary to ascertain the financial condition of the health carrier or to determine compliance with this title. If the health carrier fails to comply with the order, the commissioner may examine the affiliates to obtain the information.

(2) The commissioner may retain at the registered health carrier's expense those attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Persons so retained are under the direction and control of the commissioner and shall act in a purely advisory capacity.

(3) Each registered health carrier producing for examination records, books, and papers under subsection (1) of this section are liable for and shall pay the expense of the examination in accordance with RCW 48.03.060.

(4) Chapter 48.03 RCW applies to this chapter except to the extent expressly modified by this chapter. [2001 c 179 § 7.]

48.31C.080 Violations of chapter—Commissioner may seek superior court order. (1) Whenever it appears to the commissioner that a health carrier or a director, officer, employee, or agent of the health carrier has committed or is about to commit a violation of this chapter or any rule or order of the commissioner under this chapter, the commissioner may apply to the superior court for Thurston county or to the court for the county in which the principal office of the health carrier is located for an order enjoining the health carrier or the director, officer, employee, or agent from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interest of the health carrier's subscribers or the public may require.

(2) No security that is the subject of an agreement or arrangement regarding acquisition, or that is acquired or to be acquired, in contravention of this chapter or of a rule or order of the commissioner under this chapter may be voted at a shareholders' meeting, or may be counted for quorum purposes. Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding, but no action taken at any such meeting may be invalidated by the voting of the securities, unless the action would materially affect control of the health carrier or unless the courts of this state have so ordered. If a health carrier or the commissioner has reason to believe that a security of the health carrier has been or is about to be acquired in contravention of this chapter or of a rule or order of the commissioner under this chapter, the health carrier or the commissioner may apply to the superior court for Thurston county or to the court for the county in

which the health carrier has its principal place of business to enjoin an offer, request, invitation, agreement, or acquisition made in contravention of RCW 48.31C.030 or a rule or order of the commissioner under that section to enjoin the voting of a security so acquired, to void a vote of the security already cast at a meeting of shareholders, and for such other relief as the nature of the case and the interest of the health carrier's subscribers or the public may require.

(3) If a person has acquired or is proposing to acquire voting securities in violation of this chapter or a rule or order of the commissioner under this chapter, the superior court for Thurston county or the court for the county in which the health carrier has its principal place of business may, on such notice as the court deems appropriate, upon the application of the health carrier or the commissioner seize or sequester voting securities of the health carrier owned directly or indirectly by the person, and issue such order with respect to the securities as may be appropriate to carry out this chapter.

(4) Notwithstanding any other provisions of law, for the purposes of this chapter, the situs of the ownership of the securities of domestic health carriers is in this state.

(5) Subsections (2) and (3) of this section do not apply to acquisitions under RCW 48.31C.020. [2001 c 179 § 8.]

48.31C.090 Violations of chapter—Penalties—Civil forfeitures—Orders—Referral to prosecuting attorney—Imprisonment. (1) The commissioner may require, after notice and hearing, a health carrier failing, without just cause, to file a registration statement as required in this chapter, to pay a penalty of not more than ten thousand dollars per day. The maximum penalty under this section is one million dollars. The commissioner may reduce the penalty if the health carrier demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the health carrier. The commissioner shall transfer a fine collected under this section to the state treasurer for deposit into the general fund.

(2) Every director or officer of a health carrier holding company system who knowingly violates this chapter, or participates in, or assents to, or who knowingly permits an officer or agent of the health carrier to engage in transactions or make investments that have not been properly reported or submitted under RCW 48.31C.040(1), 48.31C.050(2), or 48.31C.060, or that violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than ten thousand dollars per violation, after notice and hearing. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(3) Whenever it appears to the commissioner that a health carrier subject to this chapter, or a director, officer, employee, or agent of the health carrier, has engaged in a transaction or entered into a contract that is subject to RCW 48.31C.050 and 48.31C.060 and that would not have been approved had approval been requested, the commissioner may order the health carrier to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the health carrier to void any such contracts and restore the status

quo if that action is in the best interest of the subscribers or the public.

(4) Whenever it appears to the commissioner that a health carrier or a director, officer, employee, or agent of the health carrier has committed a willful violation of this chapter, the commissioner may refer the matter to the prosecuting attorney of Thurston county or the county in which the principal office of the health carrier is located. A health carrier that willfully violates this chapter may be fined not more than one million dollars. Any individual who willfully violates this chapter may be fined in his or her individual capacity not more than ten thousand dollars, or be imprisoned for not more than three years, or both.

(5) An officer, director, or employee of a health carrier holding company system who willfully and knowingly subscribes to or makes or causes to be made a false statement, false report, or false filing with the intent to deceive the commissioner in the performance of his or her duties under this chapter, upon conviction thereof, shall be imprisoned for not more than three years or fined not more than ten thousand dollars or both. The officer, director, or employee upon whom the fine is imposed shall pay the fine in his or her individual capacity.

(6) This section does not apply to acquisitions under RCW 48.31C.020. [2001 c 179 § 9.]

48.31C.100 Violations of chapter—Impairment of financial condition. Whenever it appears to the commissioner that a person has committed a violation of this chapter that so impairs the financial condition of a domestic health carrier as to threaten insolvency or make the further transaction of business by it hazardous to its subscribers or the public, the commissioner may proceed as provided in RCW 48.31.030 and 48.31.040 to take possession of the property of the domestic health carrier and to conduct the business of the health carrier. [2001 c 179 § 10.]

48.31C.110 Order for liquidation or rehabilitation—Recovery of distributions or payments—Liability—Maximum amount recoverable. (1) If an order for liquidation or rehabilitation of a domestic health carrier has been entered, the receiver appointed under the order may recover on behalf of the health carrier:

(a) From a parent corporation or a holding company, a person, or an affiliate, who otherwise controlled the health carrier, the amount of distributions, other than distributions of shares of the same class of stock, paid by the health carrier on its capital stock; or

(b) A payment in the form of a bonus, termination settlement, or extraordinary lump sum salary adjustment, made by the health carrier or its subsidiary to a director, officer, or employee;

Where the distribution or payment under (a) or (b) of this subsection is made at anytime during the one year before the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4) of this section.

(2) No such distribution is recoverable if it is shown that when paid, the distribution was lawful and reasonable, and that the health carrier did not know and could not reasonably

have known that the distribution might adversely affect the ability of the health carrier to fulfill its contractual obligations.

(3) A person who was a parent corporation, a holding company, or a person, who otherwise controlled the health carrier, or an affiliate when the distributions were paid, is liable up to the amount of distributions or payments under subsection (1) of this section the person received. A person who controlled the health carrier at the time the distributions were declared is liable up to the amount of distributions he or she would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent health carrier to pay the contractual obligations of the impaired or insolvent health carrier.

(5) To the extent that a person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from it under those provisions, its parent corporation, holding company, or person, who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for a resulting deficiency in the amount recovered from the parent corporation, holding company, or person, who otherwise controlled it. [2001 c 179 § 11.]

48.31C.120 Violations of chapter—Contrary to interests of subscribers or the public. Whenever it appears to the commissioner that a person has committed a violation of this chapter that makes the continued operation of a health carrier contrary to the interests of subscribers or the public, the commissioner may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew the health carrier's registration to do business in this state for such period as he or she finds is required for the protection of subscribers or the public. Such a suspension, revocation, or refusal to renew the health carrier's registration must be accompanied by specific findings of fact and conclusions of law. [2001 c 179 § 12.]

48.31C.130 Confidential proprietary and trade secret information—Exempt from public disclosure—Exceptions. Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070 are exempt from public inspection and copying and shall not be subject to subpoena directed to the commissioner or any person who received the confidential proprietary financial and trade secret information while acting under the authority of the commissioner. This information shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health carrier to which it pertains unless the commissioner, after giving the health carrier that would be affected by the disclosure notice and hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, members, shareholders, or the public will be served by the publication, in which event the commissioner may publish information related to the transactions or filings in the man-

ner and time frame he or she reasonably deems appropriate and sensitive to the interest in preserving confidential proprietary and trade secret information. The commissioner is authorized to use such documents, materials, or information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The confidentiality created by chapter 179, Laws of 2001 shall apply only to the commissioner, any person acting under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, and the insurance departments of other states. [2001 c 179 § 13.]

48.31C.140 Person aggrieved by actions of commissioner. A person aggrieved by an act, determination, rule, order, or any other action of or failure to act by the commissioner under this chapter may proceed in accordance with chapters 34.05 and 48.04 RCW. [2001 c 179 § 15.]

48.31C.150 Rule making. The commissioner may adopt rules to implement and administer this chapter. [2001 c 179 § 16.]

48.31C.160 Dual holding company system membership. If an insurance company holding a certificate of authority from the commissioner under chapter 48.05 RCW is a member of both a health carrier holding company system under this chapter and an insurance holding company system under chapter 48.31B RCW, then chapter 48.31B RCW applies to the authorized insurance company. [2001 c 179 § 17.]

48.31C.900 Severability—2001 c 179. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 c 179 § 18.]

48.31C.901 Effective date—2001 c 179. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]. [2001 c 179 § 19.]

Chapter 48.32 RCW

WASHINGTON INSURANCE GUARANTY ASSOCIATION ACT

Sections

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48.32.900	Short title.
48.32.901	Effective date—2005 c 100.
48.32.910	Construction—1971 ex.s. c 265.
48.32.920	Section headings not part of law.
48.32.930	Severability—1971 ex.s. c 265.

48.32.010 Purpose. The purpose of this chapter is to provide a mechanism for the payment of covered claims to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders under certain policies of insurance covered by the scope of this chapter because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers. [2005 c 100 § 1; 1971 ex.s. c 265 § 1.]

48.32.020 Scope. This chapter applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, workers' compensation, and ocean marine. Workers' compensation as used in this section does not include longshore and harbor workers' compensation act insurance. [2005 c 100 § 2; 1987 c 185 § 29; 1975-'76 2nd ex.s. c 109 § 2; 1971 ex.s. c 265 § 2.]

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

48.32.030 Definitions. As used in this chapter:

(1) "Account" means one of the three accounts created in RCW 48.32.040.

(2) "Association" means the Washington insurance guaranty association created in RCW 48.32.040.

(3) "Commissioner" means the insurance commissioner of this state.

(4) "Covered claim" means:

(a) Except for longshore and harbor workers' compensation act insurance, an unpaid claim, including one for unearned premiums, that arises out of and is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after the first day of April, 1971 and (i) the claimant or insured is a resident of this state at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this state. "Covered claim" does not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. However, a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become an insolvent insurer, which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a "covered claim" may be filed directly with the receiver of the insolvent insurer, but in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. In addition, "covered claim" does not include any claim filed with the association subsequent to the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer; and

(b) For longshore and harbor workers' compensation act insurance, an unpaid claim, excluding one for unearned premiums, for benefits due an injured worker under the long-

shore and harbor workers' compensation act that is within the coverage of an insurance policy to which this chapter applies issued by an insurer, if that insurer becomes an insolvent insurer after April 20, 2005, and (i) the worksite from which the injury occurred is within this state or on the navigable waters within or immediately offshore of this state, or (ii) the worksite from which the injury occurred is outside this state, the injured worker is a permanent resident of this state, the injured worker is temporarily working at the worksite from which the injury occurred, and the injured worker is not covered under a policy of longshore and harbor workers' compensation insurance issued in another state. "Covered claim" does not include any amount due any insurer, reinsurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) "Insolvent insurer" means:

(a) An insurer (i) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (ii) determined to be insolvent and ordered liquidated by a court of competent jurisdiction, and which adjudication was subsequent to the first day of April, 1971; and

(b) In the case of an insurer writing longshore and harbor workers' compensation act insurance, an insurer (i) authorized to write this class of insurance at the time the policy was written and (ii) determined to be insolvent and ordered liquidated by a court of competent jurisdiction subsequent to April 20, 2005.

(6) "Longshore and harbor workers' compensation act" means the longshore and harbor workers' compensation act as defined in U.S.C. Title 33, Chapter 18, 901 et seq. and its extensions commonly known as the defense base act, outer continental shelf lands act, nonappropriated funds instrumentalities act, District of Columbia workers' compensation act, and the war hazards act.

(7) "Member insurer" means any person who (a) writes any kind of insurance to which this chapter applies under RCW 48.32.020, including the exchange of reciprocal or interinsurance contracts, and (b) holds a certificate of authority to transact insurance in this state.

(8) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(9) "Person" means any individual, corporation, partnership, association, or voluntary organization. [2005 c 100 § 3; 1975-'76 2nd ex.s. c 109 § 3; 1971 ex.s. c 265 § 3.]

48.32.040 Creation of the association—Required accounts. There is hereby created a nonprofit unincorporated legal entity to be known as the Washington insurance guaranty association. All insurers defined as member insurers in RCW 48.32.030 shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under RCW 48.32.070 and shall exercise its powers through a board of directors established under RCW 48.32.050. For purposes of administration and assessment, the association

shall be divided into three separate accounts: (1) The automobile insurance account; (2) the account for longshore and harbor workers' compensation act insurance; and (3) the account for all other insurance to which this chapter applies. [2005 c 100 § 4; 1975-'76 2nd ex.s. c 109 § 4; 1971 ex.s. c 265 § 4.]

48.32.050 Board of directors. (1) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented. In the event of the insolvency of a member insurer who writes longshore and harbor workers' compensation act insurance, at least one member of the board must represent the interests of this class of insurer, and this member shall be added to the board at the next annual meeting following the insolvency.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors. [2005 c 100 § 5; 1975-'76 2nd ex.s. c 109 § 5; 1971 ex.s. c 265 § 5.]

48.32.060 Powers and duties of the association. (1) The association shall:

(a)(i) For other than covered claims involving the longshore and harbor workers' compensation act, be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty days after the order of liquidation, or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of the order of liquidation, but such an obligation includes only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(ii) For covered claims involving longshore and harbor workers' compensation act insurance, be obligated to the extent of covered claims for insolvencies occurring after April 20, 2005. This obligation is for the statutory obligations established under the longshore and harbor workers' compensation act. However, the insured employer shall reimburse the association for any deductibles that are owed as part of the insured's obligations.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c)(i) Allocate claims paid and expenses incurred among the three accounts enumerated in RCW 48.32.040 separately, and assess member insurers separately for each account

amounts necessary to pay the obligations of the association under (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under RCW 48.32.110, and other expenses authorized by this chapter. Except as provided for in this subsection for member insurers who write longshore and harbor workers' compensation act insurance, the assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available may be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable, including the payment of claims in the order such claims are received from claimants or in groups or categories of claims, or otherwise. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer if they are chargeable to the account for which the assessment is made.

(ii) For member insurers who write longshore and harbor workers' compensation act insurance, (c)(i) of this subsection applies except as modified by the following:

(A) Beginning July 1, 2005, and prior to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer assessments prior to an insolvency shall continue until a fund is established that equals four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance;

(B) Subsequent to an insolvency, each member insurer who writes longshore and harbor workers' compensation act insurance in this state, whether on a primary or excess coverage basis, shall be assessed at a rate to be determined by the association, but not more than an annual rate of three percent of the net direct written premium for the calendar year preceding the assessment on this kind of insurance. Insurer

assessments subsequent to an insolvency shall continue until a fund is established that the association deems sufficient to meet all claim and loan obligations of the fund, provided that the net fund balance may not at any time exceed four percent of the aggregate net direct premium for the calendar year preceding the assessment on all insurers authorized to write this kind of insurance; and

(C) If any insurer fails to provide its net direct written premium data in an accurate and timely manner upon request by the association, the association may, at its discretion, substitute that insurer's direct written premiums for workers' compensation reported or reportable in its statutory annual statement page fourteen data for the state of Washington.

(d) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(e) Notify such persons as the commissioner directs under RCW 48.32.080(2)(a).

(f) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such designation may be declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(2) The association may:

(a) Appear in, defend, and appeal any action on a claim brought against the association.

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(c) Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation. If such a loan is related to the account for longshore and harbor workers' compensation act insurance, the association may seek such a loan from the Washington longshore and harbor workers' compensation act insurance assigned risk plan under RCW 48.22.070 or from other interested parties.

(d) Sue or be sued.

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter.

(f) Perform such other acts as are necessary or proper to effectuate the purpose of this chapter.

(g) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

(3) The association shall not access any funds from the automobile insurance account or the account for all other insurance to which this chapter applies to cover the cost of claims or administration arising under the account for longshore and harbor workers' compensation act insurance. [2005 c 100 § 6; 1975-'76 2nd ex.s. c 109 § 6; 1971 ex.s. c 265 § 6.]

48.32.070 Plan of operation. (1)(a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

(b) If the association fails to submit a suitable plan of operation within ninety days following May 21, 1971 or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall:

(a) Establish the procedures whereby all the powers and duties of the association under RCW 48.32.060 will be performed.

(b) Establish procedures for handling assets of the association.

(c) Establish the amount and method of reimbursing members of the board of directors under RCW 48.32.050.

(d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

(e) Establish regular places and times for meetings of the board of directors.

(f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.

(h) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

(i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under RCW 48.32.060 subsections (1)(c) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. [1971 ex.s. c 265 § 7.]

48.32.080 Duties and powers of the commissioner.

(1) The commissioner shall:

(a) Notify the association promptly whenever he or any of his examiners has, or comes into, possession of any data or information relative to any insurer under his jurisdiction for any purpose indicating that such insurer is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency.

(b) Furnish to the association copies of all preliminary and final audits, investigations, memorandums, opinions, and reports relative to any insurer under his jurisdiction for any purpose, promptly upon the preparation of any thereof.

(c) Notify the association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency. The association shall be entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member insurer at the same time such complaint is filed with a court of competent jurisdiction.

(d) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(2) The commissioner may:

(a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication or in a newspaper of general circulation shall be sufficient.

(b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than one hundred dollars per month.

(c) Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(3) Whenever the commissioner or any of his examiners comes into possession of or obtains any data or information indicating that any insurer under his jurisdiction for any purpose is in or is approaching a condition of impaired assets, imminent insolvency, or insolvency, he shall within fifteen days of having such data or information commence investigation and/or take formal action relative to any such insurer, and in addition within said time shall notify the association of such condition. Upon failure of the commissioner so to act, the association is hereby authorized and directed to act and commence appropriate investigation or proceedings or may at its option refer the matter to the attorney general for appropriate action relative to which the attorney general shall keep the association advised throughout any such action or proceedings.

(4) Any final action or order of the commissioner under this chapter shall be subject to judicial review in a court of competent jurisdiction. [1975-'76 2nd ex.s. c 109 § 7; 1971 ex.s. c 265 § 8.]

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48.32.090 Effect of paid claims. (1) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out.

(2) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(3) The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the right of the association against the assets of the insolvent insurer. [1971 ex.s. c 265 § 9.]

48.32.100 Nonduplication of recovery. (1) Any person having a claim against his or her insurer under any provision in his or her insurance policy which is also a covered claim shall be required to exhaust first any right under that policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of a recovery under the claimant's insurance policy.

(2) Any person having a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim or a longshore and harbor workers' compensation act claim, from the association of the permanent residence of the claimant. Any recovery under this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent. [2005 c 100 § 7; 1987 c 185 § 30; 1971 ex.s. c 265 § 10.]

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

48.32.110 Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(2) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by

such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (3) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(3) It shall be the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(4) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner. [1971 ex.s. c 265 § 11.]

48.32.120 Examination of the association. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the commissioner. [1971 ex.s. c 265 § 12.]

48.32.130 Tax exemption. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property. [1971 ex.s. c 265 § 13.]

48.32.145 Credit against premium tax for assessments paid pursuant to RCW 48.32.060(1)(c). Every member insurer that prior to April 1, 1993, or after July 27, 1997, shall have paid one or more assessments levied pursuant to RCW 48.32.060(1)(c) shall be entitled to take a credit against any premium tax falling due under RCW 48.14.020. The amount of the credit shall be one-fifth of the aggregate amount of such aggregate assessments paid during such calendar year for each of the five consecutive calendar years beginning with the calendar year following the calendar year in which such assessments are paid. Whenever the allowable credit is or becomes less than one thousand dollars, the entire amount of the credit may be offset against the premium tax at the next time the premium tax is paid. [1997 c 300 § 1; 1993

sp.s. c 25 § 901; 1977 ex.s. c 183 § 1; 1975-'76 2nd ex.s. c 109 § 11.]

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

48.32.150 Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this chapter. [1971 ex.s. c 265 § 15.]

48.32.160 Stay of proceedings—Setting aside judgment. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for one hundred eighty days and such additional time thereafter as may be fixed by the court from the date the insolvency is determined to permit proper defense by the association of all pending causes of action. Any judgment under any decision, verdict, or finding based on default of the insolvent insurer or on its failure to defend an insured which is unsatisfied at the date the insolvency is determined shall be set aside on the motion of the association and the association shall be permitted to defend such claim on the merits. [1975-'76 2nd ex.s. c 109 § 8; 1971 ex.s. c 265 § 16.]

48.32.170 Termination, distribution of fund. (1) The commissioner shall by order terminate the operation of the Washington insurers insolvency pool as to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which:

(a) Is a permanent plan which is adequately funded or for which adequate funding is provided; and

(b) Extends, or will extend to state policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents than the protection and benefits provided with respect to such kind of insurance under this chapter.

(2) The commissioner shall by the same such order authorize discontinuance of future payments by insurers to the Washington insurers insolvency pool with respect to the same kinds of insurance: PROVIDED, That assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(3) In the event the operation of any account of the Washington insurers insolvency pool shall be so terminated as to all kinds of insurance otherwise within its scope, the pool as soon as possible thereafter shall distribute the balance of the moneys and assets remaining in said account (after discharge of the functions of the pool with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in this state policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by the respective insurers to such account during the

period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in RCW 48.32.060, this chapter shall be deemed to have expired. [1971 ex.s. c 265 § 17.]

48.32.900 Short title. This chapter shall be known and may be cited as the Washington Insurance Guaranty Association Act. [1971 ex.s. c 265 § 18.]

48.32.901 Effective date—2005 c 100. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 20, 2005]. [2005 c 100 § 8.]

48.32.910 Construction—1971 ex.s. c 265. This chapter shall be liberally construed to effect the purpose under RCW 48.32.010 which shall constitute an aid and guide to interpretation. [1971 ex.s. c 265 § 19.]

48.32.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1971 ex.s. c 265 § 22.]

48.32.930 Severability—1971 ex.s. c 265. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 265 § 23.]

Chapter 48.32A RCW

WASHINGTON LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

Sections

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48.32A.901	Prospective application—Savings—2001 c 50.
48.32A.902	Captions not law—2001 c 50.

Group stop loss insurance exemption: RCW 48.21.015.

48.32A.005 Short title. This chapter may be known and cited as the Washington life and disability insurance guaranty association act. [2001 c 50 § 1.]

48.32A.015 Purpose. (1) The purpose of this chapter is to protect, subject to certain limitations, the persons specified

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in RCW 48.32A.025(1) against failure in the performance of contractual obligations, under life and disability insurance policies and annuity contracts specified in RCW 48.32A.025(2), because of the impairment or insolvency of the member insurer that issued the policies or contracts.

(2) To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited by this chapter, and members of the association are subject to assessment to provide funds to carry out the purpose of this chapter. [2001 c 50 § 2.]

48.32A.025 Coverage and limitations. (1) This chapter provides coverage for the policies and contracts specified in subsection (2) of this section as follows:

(a) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under (b) of this subsection;

(b) To persons who are owners of or certificate holders under the policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

(i) Are residents; or

(ii) Are not residents, but only under all of the following conditions:

(A) The insurer that issued the policies or contracts is domiciled in this state;

(B) The states in which the persons reside have associations similar to the association created by this chapter; and

(C) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law;

(c) For unallocated annuity contracts specified in subsection (2) of this section, (a) and (b) of this subsection do not apply, and this chapter, except as provided in (e) and (f) of this subsection, does provide coverage to:

(i) Persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(ii) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents;

(d) For structured settlement annuities specified in subsection (2) of this section, (a) and (b) of this subsection do not apply, and this chapter, except as provided in (e) and (f) of this subsection, does provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) Is a resident, regardless of where the contract owner resides; or

(ii) Is not a resident, but only under both of the following conditions:

(A)(I) The contract owner of the structured settlement annuity is a resident; or

(II) The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state; and the state in which the contract owner resides has an association similar to the association created by this chapter; and

(B) Neither the payee, nor beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides;

(e) This chapter does not provide coverage to:

(i) A person who is a payee, or beneficiary, of a contract owner resident of this state, if the payee, or beneficiary, is afforded any coverage by the association of another state; or

(ii) A person covered under (c) of this subsection, if any coverage is provided by the association of another state to the person; and

(f) This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person shall not be provided coverage under this chapter. In determining the application of this subsection (1)(f) in situations where a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

(2)(a) This chapter provides coverage to the persons specified in subsection (1) of this section for direct, nongroup life, disability, or annuity policies or contracts and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts. However, any annuity contracts that are unallocated annuity contracts are subject to the specific provisions in this chapter for unallocated annuity contracts.

(b) This chapter does not provide coverage for:

(i) A portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner;

(ii) A policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(iii) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(A) Averaged over the period of four years prior to the date on which the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; and

(B) On and after the date on which the member insurer becomes an impaired or insolvent insurer under this chapter,

whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(iv) A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, disability, or annuity benefits to its employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or other person under:

(A) A multiple employer welfare arrangement as defined in 29 U.S.C. Sec. 1144;

(B) A minimum premium group insurance plan;

(C) A stop-loss group insurance plan; or

(D) An administrative services only contract;

(v) A portion of a policy or contract to the extent that it provides for:

(A) Dividends or experience rating credits;

(B) Voting rights; or

(C) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(vi) A policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(vii) An unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;

(viii) A portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery;

(ix) A portion of a policy or contract to the extent that the assessments required by RCW 48.32A.085 with respect to the policy or contract are preempted by federal or state law;

(x) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(C) Misrepresentations of or regarding policy benefits;

(D) Extra-contractual claims; or

(E) A claim for penalties or consequential or incidental damages;

(xi) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; or

(xii) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the

member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subsection (2)(b)(xii), the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

(3) The benefits that the association may become obligated to cover shall in no event exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(b)(i) With respect to one life, regardless of the number of policies or contracts:

(A) Five hundred thousand dollars in life insurance death benefits, but not more than five hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) In disability insurance benefits:

(I) Five hundred thousand dollars for coverages not defined as disability income insurance or basic hospital, medical, and surgical insurance or major medical insurance including any net cash surrender and net cash withdrawal values;

(II) Five hundred thousand dollars for disability income insurance;

(III) Five hundred thousand dollars for basic hospital medical and surgical insurance or major medical insurance; or

(C) Five hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values, except as provided in (ii), (iii), and (v) of this subsection (3)(b);

(ii) With respect to each individual participating in a governmental retirement benefit plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, one hundred thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(iii) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, five hundred thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iv) However, in no event shall the association be obligated to cover more than: (A) An aggregate of five hundred thousand dollars in benefits with respect to any one life under (i), (ii), and (iii) of this subsection (3)(b) except with respect to benefits for basic hospital, medical, and surgical insurance and major medical insurance under (i)(B) of this subsection (3)(b), in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; or (B) with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and

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whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits, regardless of the number of policies and contracts held by the owner;

(v) With respect to either: (A) One contract owner provided coverage under subsection (1)(d)(ii) of this section; or (B) one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in (ii) of this subsection (3)(b), five million dollars in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event shall the association be obligated to cover more than five million dollars in benefits with respect to all these unallocated contracts; or

(vi) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(4) In performing its obligations to provide coverage under RCW 48.32A.075, the association is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract. [2001 c 50 § 3.]

48.32A.035 Construction. This chapter shall be construed to effect the purpose under RCW 48.32A.015. [2001 c 50 § 4.]

48.32A.045 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Account" means either of the two accounts created under RCW 48.32A.055.

(2) "Association" means the Washington life and disability insurance guaranty association created under RCW 48.32A.055.

(3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.

(4) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

(5) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been

issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

(6) "Commissioner" means the insurance commissioner of this state.

(7) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under RCW 48.32A.025.

(8) "Covered policy" means a policy or contract or portion of a policy or contract for which coverage is provided under RCW 48.32A.025.

(9) "Extra-contractual claims" includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs.

(10) "Impaired insurer" means a member insurer which, after July 22, 2001, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(11) "Insolvent insurer" means a member insurer which, after July 22, 2001, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(12) "Member insurer" means an insurer licensed, or that holds a certificate of authority, to transact in this state any kind of insurance for which coverage is provided under RCW 48.32A.025, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

(a) A health care service contractor, whether profit or nonprofit;

(b) A health maintenance organization;

(c) A fraternal benefit society;

(d) A mandatory state pooling plan;

(e) A mutual assessment company or other person that operates on an assessment basis;

(f) An insurance exchange;

(g) An organization that has a certificate or license limited to the issuance of charitable gift annuities under RCW 48.38.010; or

(h) An entity similar to (a) through (g) of this subsection.

(13) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or any successor thereto.

(14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. "Owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

(15) "Person" means an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(16) "Plan sponsor" means:

(a) The employer in the case of a benefit plan established or maintained by a single employer;

(b) The employee organization in the case of a benefit plan established or maintained by an employee organization; or

(c) In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(17) "Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits and less dividends and experience credits. "Premiums" does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under RCW 48.32A.025(2), except that assessable premium shall not be reduced on account of RCW 48.32A.025(2)(b)(iii) relating to interest limitations and RCW 48.32A.025(3)(b) relating to limitations with respect to one individual, one participant, and one contract owner. "Premiums" does not include:

(a) Premiums in excess of five million dollars on an unallocated annuity contract not issued under a governmental retirement benefit plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code; or

(b) With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

(18)(a) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:

(i) The state in which the primary executive and administrative headquarters of the entity is located;

(ii) The state in which the principal office of the chief executive officer of the entity is located;

(iii) The state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(iv) The state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings;

(v) The state from which the management of the overall operations of the entity is directed; and

(vi) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors in (a)(i) through (v) of this subsection.

However, in the case of a plan sponsor, if more than fifty percent of the participants in the benefit plan are employed in a single state, that state is the principal place of business of the plan sponsor.

(b) The principal place of business of a plan sponsor of a benefit plan described in subsection (16)(c) of this section is the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, is the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

(19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

(20) "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person is its principal place of business. Citizens of the United States that are either (a) residents of foreign countries, or (b) residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this chapter, are residents of the state of domicile of the insurer that issued the policies or contracts.

(21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.

(23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, disability, or annuity policy or contract.

(24) "Unallocated annuity contract" means an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate. [2001 c 50 § 5.]

48.32A.055 Creation of the association. (1) There is created a nonprofit unincorporated legal entity to be known as the Washington life and disability insurance guaranty association which is composed of the commissioner ex officio and each member insurer. All member insurers must be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under RCW 48.32A.095 and shall exercise its powers through a board of directors established under RCW 48.32A.065. For purposes of administration and assessment, the association shall maintain two accounts:

(a) The life insurance and annuity account which includes the following subaccounts:

(i) Life insurance account;

(ii) Annuity account which includes annuity contracts owned by a governmental retirement plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code, but otherwise excludes unallocated annuities; and

(iii) Unallocated annuity account, which excludes contracts owned by a governmental retirement benefit plan, or its trustee, established under section 401, 403(b), or 457 of the United States Internal Revenue Code; and

(b) The disability insurance account.

(2) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association. [2001 c 50 § 6.]

48.32A.065 Board of directors. (1) The board of directors of the association consists of the commissioner ex officio and not less than five nor more than nine member insurers serving terms as established in the plan of operation. The insurer members of the board are selected by member insurers subject to the approval of the commissioner.

Vacancies on the board are filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(2) In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board are not otherwise compensated by the association for their services. [2001 c 50 § 7.]

48.32A.075 Powers and duties of the association. (1) If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner:

(a) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; or

(b) Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate (a) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under (a) of this subsection.

(2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(a)(i)(A) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(B) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide moneys, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties; or

(b) Provide benefits and coverages in accordance with the following provisions:

(i) With respect to life and disability insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to the policies and contracts;

(B) With respect to nongroup policies, contracts, and annuities not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to the policies or contracts;

(ii) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, thirty days notice of the termination of the benefits provided;

(iii) With respect to nongroup life and disability insurance policies and annuities covered by the association, make diligent efforts to make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make diligent efforts to make available substitute coverage on an individual basis in accordance with the provisions of (b)(iv) of this subsection, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class;

(iv)(A) The substitute coverage under (b)(iii) of this subsection, must be offered through a solvent, admitted insurer. In the alternative, the association in its discretion, and subject to any conditions imposed by the association and approved by the commissioner, may reissue the terminated coverage;

(B) Substituted coverage must be offered without requiring evidence of insurability, and may not provide for any waiting period or exclusion that would not have applied under the terminated policy;

(C) The association may reinsure any reissued policy;

(v) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

(vi) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued policy cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association; or

(vii) When proceeding under this subsection (2)(b) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with RCW 48.32A.025(2)(b)(iii).

(3) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(4) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(5) The protection provided by this chapter does not apply when any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(6) In carrying out its duties under subsection (2) of this section, the association may:

(a) Subject to approval by a court in this state, impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, are in the public interest; and

(b) Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(7) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, under RCW 48.31.171, shall be promptly paid to the association. The association is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which

the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and not retained under this subsection. Any amount so paid to the association less the amount not retained by it shall be treated as a distribution of estate assets under RCW 48.31.185 or similar provision of the state of domicile of the impaired or insolvent insurer.

(8) If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection (2) of this section, the commissioner has the powers and duties of the association under this chapter with respect to the insolvent insurer.

(9) The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(10) The association has standing to appear or intervene before a court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Standing extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(11)(a) A person receiving benefits under this chapter is deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon the person.

(b) The subrogation rights of the association under this subsection have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

(c) In addition to (a) and (b) of this subsection, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contracts, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against a person originally or by

succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the United States Internal Revenue Code.

(d) If (a) through (c) of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the association.

(e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in this subsection, the person shall pay to the association the portion of the recovery attributable to the policies, or portion thereof, covered by the association.

(12) In addition to the rights and powers elsewhere in this chapter, the association may:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;

(b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under RCW 48.32A.085 and to settle claims or potential claims against it;

(c) Borrow money to effect the purposes of this chapter; any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(d) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;

(e) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;

(f) Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or disability insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter;

(g) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(h) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; and

(i) Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

(13) The association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(14)(a) At any time within one year after the coverage date, which is the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of

the member insurer, that accrue on or after the coverage date and that relate to contracts covered, in whole or in part, by the association, under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election is effective when notice is provided to the receiver, rehabilitator, or liquidator and to the affected reinsurers. If the association makes an election, the following provisions apply with respect to the agreements selected by the association:

(i) The association is responsible for all unpaid premiums due under the agreements, for periods both before and after the coverage date, and is responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association;

(ii) The association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part. However, upon receipt of any such amounts, the association is obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of: The amount received by the association, over the benefits paid by the association on account of the policy or contract, less the retention of the impaired or insolvent member insurer applicable to the loss or event;

(iii) Within thirty days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer, or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due the other within five days of the completion of this calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to (a)(ii) of this subsection, the receiver, rehabilitator, or liquidator shall remit the same to the association as promptly as practicable; and

(iv) If the association, within sixty days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association, in whole or in part, the reinsurer is not entitled to terminate the reinsurance agreements, insofar as the agreements relate to contracts covered by the association, in whole or in part, and is not entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association;

(b) In the event the association transfers its obligations to another insurer and if the association and the other insurer agree, the other insurer succeeds to the rights and obligations

of the association under (a) of this subsection effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in (a) of this subsection. However:

(i) The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;

(ii) The obligations described in (a)(ii) of this subsection no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and

(iii) This subsection (14)(b) does not apply if the association has previously expressly determined in writing that it will not exercise the election referred to in (a) of this subsection;

(c) The provisions of this subsection supersede the provisions of any law of this state or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator remains entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions; and

(d) Except as set forth under this subsection, this subsection does not alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. This subsection does not abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This subsection does not give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

(15) The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association provides the benefits of this chapter in an economical and efficient manner.

(16) When the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(17) Venue in a suit against the association arising under this chapter is in the county in which liquidation or rehabilitation proceedings have been filed in the case of a domestic insurer. In other cases, venue is in King county or Thurston county. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

(18) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsection (1) or (2) of this section, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

(a) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for: (i) A fixed interest rate; (ii) payment of dividends with minimum guarantees; or (iii) a different method for calculating interest or changes in value;

(b) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

(c) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms. [2001 c 50 § 8.]

48.32A.085 Assessments. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments are due not less than thirty days after prior written notice to the member insurers and accrue interest at twelve percent per annum on and after the due date.

(2) There are two classes of assessments, as follows:

(a) Class A assessments are authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer; and

(b) Class B assessments are authorized and called to the extent necessary to carry out the powers and duties of the association under RCW 48.32A.075 with regard to an impaired or an insolvent insurer.

(3)(a) The amount of a class A assessment is determined by the board and may be authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. The total of all nonpro rata assessments may not exceed one hundred fifty dollars per member insurer in any one calendar year. The amount of a class B assessment may be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board to be fair and reasonable under the circumstances.

(b) Class B assessments against member insurers for each account and subaccount must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to premiums received on business in this state for those calendar years by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection must be made with a reasonable degree of accuracy, recognizing that exact

determinations are not always possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(5)(a)(i) Subject to the provisions of (a)(ii) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for the health account may not in one calendar year exceed two percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

(ii) If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation in (a)(i) of this subsection must be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated under this section.

(iii) If the maximum assessment, together with the other assets of the association in an account, does not provide in one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon thereafter as permitted by this chapter.

(b) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment is insufficient to cover anticipated claims.

(c) If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the association, then under subsection (3)(b) of this section, the board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in (a) of this subsection.

(6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any account to provide

funds for the continuing expenses of the association and for future losses claims.

(7) Any member insurer may when determining its premium rates and policy owner dividends, as to any kind of insurance within the scope of this chapter, consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(8) The association shall issue to each insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment paid. All outstanding certificates must be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(9)(a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment is available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment must be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

(b) Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(c) Within thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess must be returned to the member company. Interest on a refund due a protesting member must be paid at the rate actually earned by the association.

(10) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request. [2001 c 50 § 9.]

48.32A.095 Plan of operation. (1)(a) The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments are effective upon the commissioner's written approval or unless it has not been disapproved within thirty days.

(b) If the association fails to submit a suitable plan of operation within one hundred twenty days following July 22, 2001, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt reasonable rules as necessary

or advisable to effectuate the provisions of this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation must, in addition to requirements enumerated elsewhere in this chapter:

(a) Establish procedures for handling the assets of the association;

(b) Establish the amount and method of reimbursing members of the board of directors under RCW 48.32A.065;

(c) Establish regular places and times for meetings including telephone conference calls of the board of directors;

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(e) Establish the procedures whereby selections for the board of directors are made and submitted to the commissioner;

(f) Establish any additional procedures for assessments under RCW 48.32A.085; and

(g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(4) The plan of operation may provide that any or all powers and duties of the association, except those under RCW 48.32A.075(12)(c) and 48.32A.085, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization must be reimbursed for any payments made on behalf of the association and must be paid for its performance of any function of the association. A delegation under this subsection takes effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter. [2001 c 50 § 10.]

48.32A.105 Duties and powers of the commissioner.

(1) In addition to the duties and powers enumerated elsewhere in this chapter, the commissioner shall:

(a) Upon request of the board of directors, provide the association with a statement of the premiums in this and other appropriate states for each member insurer;

(b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer constitutes notice to its shareholders, if any; the failure of the insurer to promptly comply with such a demand does not excuse the association from the performance of its powers and duties under this chapter; and

(c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(2) In addition to the duties and powers enumerated elsewhere in this chapter, the commissioner may suspend or revoke, after notice and hearing, the certificate of authority to

transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent of the unpaid assessment per month, but no forfeiture may be less than one hundred dollars per month.

(3) A final action by the board of directors of the association may be appealed to the commissioner by a member insurer if the appeal is taken within sixty days of the member insurer's receipt of notice of the final action being appealed. A final action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

(4) The liquidator, rehabilitator, or conservator of an impaired insurer may notify all interested persons of the effect of this chapter. [2001 c 50 § 11.]

48.32A.115 Prevention of insolvencies. The commissioner shall aid in the detection and prevention of insurer insolvencies or impairments.

(1) It is the duty of the commissioner to:

(a) Notify the commissioners of all the other states, territories of the United States, and the District of Columbia within thirty days following the action taken or the date the action occurs, when the commissioner takes any of the following actions against a member insurer:

(i) Revocation of license;

(ii) Suspension of license; or

(iii) Makes a formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners or creditors;

(b) Report to the board of directors when the commissioner has taken any of the actions set forth in (a) of this subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner;

(c) Report to the board of directors when the commissioner has reasonable cause to believe from an examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer; and

(d) Furnish to the board of directors the national association of insurance commissioners insurance regulatory information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information must be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the duties and responsibilities of the commissioner regarding the financial condition of member insurers and

companies seeking admission to transact insurance business in this state.

(3) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. The reports and recommendations are not public documents.

(4) The board of directors may, upon majority vote, notify the commissioner of any information indicating a member insurer may be an impaired or insolvent insurer.

(5) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies. [2001 c 50 § 12.]

48.32A.125 Credits for assessments paid—Tax offsets. (1) A member insurer may offset against its premium tax liability to this state an assessment described in RCW 48.32A.085(8) to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(2) Any sums that are acquired by refund, under RCW 48.32A.085(6), from the association by member insurers, and that have been offset against premium taxes as provided in subsection (1) of this section, must be paid by the insurers to the commissioner and then deposited with the state treasurer for credit to the general fund of the state of Washington. The association shall notify the commissioner that refunds have been made. [2001 c 50 § 13.]

48.32A.135 Miscellaneous provisions. (1) This chapter does not reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(2) Records must be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under RCW 48.32A.075. The records of the association with respect to an impaired or insolvent insurer may not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under RCW 48.32A.145.

(3) For the purpose of carrying out its obligations under this chapter, the association is a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee under RCW 48.32A.075(11). Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been

established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(4) As a creditor of the impaired or insolvent insurer as established in subsection (3) of this section, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association is entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(5)(a) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and the policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration must be given to the welfare of the policy owners of the continuing or successor insurer.

(b) A distribution to stockholders, if any, of an impaired or insolvent insurer shall not be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under RCW 48.32A.075 with respect to the insurer have been fully recovered by the association.

(6)(a) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of (b) through (d) of this subsection.

(b) A distribution is not recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, is liable up to the amount of distributions which would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If any person liable under (c) of this subsection is insolvent, all its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any

resulting deficiency in the amount recovered from the insolvent affiliate. [2001 c 50 § 14.]

48.32A.145 Examination of the association—Annual report. The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one hundred eighty days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year. Upon the request of a member insurer, the association shall provide the member insurer with a copy of the report. [2001 c 50 § 15.]

48.32A.155 Tax exemptions. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property. [2001 c 50 § 16.]

48.32A.165 Immunity. There is no liability on the part of and no cause of action of any nature may arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission by them in the performance of their powers and duties under this chapter. Immunity extends to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees. [2001 c 50 § 17.]

48.32A.175 Stay of proceedings—Reopening default judgments. All proceedings in which the insolvent insurer is a party in any court in this state are stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default the association may apply to have such a judgment set aside by the same court that made such a judgment and must be permitted to defend against the suit on the merits. [2001 c 50 § 18.]

48.32A.185 Prohibited advertisement of insurance guaranty association act in insurance sales—Notice to policy owners. (1) No person, including an insurer, agent, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Washington life and disability insurance guaranty association act. However, this section does not apply to the Washington life and disability insurance guaranty association or any other entity which does not sell or solicit insurance.

(2) Within one hundred eighty days after July 22, 2001, the association shall prepare a summary document describing the general purposes and current limitations of this chapter and complying with subsection (3) of this section. This document must be submitted to the commissioner for approval. The document must also be available upon request by a policy owner. The distribution, delivery, contents, or interpretation of this document does not guarantee that either the policy or the contract or the owner of the policy or contract is covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this chapter may require. Failure to receive this document does not give the policy owner, contract owner, certificate holder, or insured any greater rights than those stated in this chapter.

(3) The document prepared under subsection (2) of this section must contain a clear and conspicuous disclaimer on its face. The commissioner shall establish the form and content of the disclaimer. The disclaimer must:

(a) State the name and address of the life and disability insurance guaranty association and insurance department;

(b) Prominently warn the policy or contract owner that the life and disability insurance guaranty association may not cover the policy or, if coverage is available, it is subject to substantial limitations and exclusions and conditioned on continued residence in this state;

(c) State the types of policies for which guaranty funds provide coverage;

(d) State that the insurer and its agents are prohibited by law from using the existence of the life and disability insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(e) State that the policy or contract owner should not rely on coverage under the life and disability insurance guaranty association when selecting an insurer;

(f) Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter; and

(g) Provide other information as directed by the commissioner including but not limited to, sources for information about the financial condition of insurers provided that the information is not proprietary and is subject to disclosure under chapter 42.56 RCW.

(4) A member insurer must retain evidence of compliance with subsection (2) of this section for as long as the policy or contract for which the notice is given remains in effect. [2005 c 274 § 313; 2001 c 50 § 19.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

48.32A.901 Prospective application—Savings—2001 c 50. (1) This chapter does not apply to any impaired insurer that was under an order of rehabilitation or conservation, or to any insolvent insurer that was placed under an order of liquidation, prior to July 22, 2001.

(2) Any section repealed in this act pertaining to the powers and obligations of the association, reinsurance and guaranty of policies, assessments, and premium tax offsets shall apply to impaired insurers placed under an order of rehabilitation or conservation, and to insolvent insurers

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placed under an order of liquidation, prior to July 22, 2001. [2001 c 50 § 20.]

48.32A.902 Captions not law—2001 c 50. Captions used in this act are not any part of the law. [2001 c 50 § 21.]

Chapter 48.34 RCW

CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

Sections

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48.34.900	Severability—1961 c 219.

48.34.010 Declaration of purpose—Liberal construction. The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit accident and health insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed. [1961 c 219 § 1.]

48.34.020 Chapter part of insurance code—What insurance subject to chapter. (1) This chapter is a part of the insurance code.

(2) All life insurance and all accident and health insurance in connection with loans or other credit transactions shall be subject to the provisions of this chapter, except such insurance under an individual policy in connection with a loan or other credit transaction of more than ten years duration. Insurance shall not be subject to the provisions of this chapter where its issuance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. [1969 ex.s. c 241 § 14; 1961 c 219 § 2.]

48.34.030 Definitions. For the purpose of this chapter: (1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;

(2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;

(3) "Creditor" means the lender of money or vendor or lessor of goods, services, properties, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any such lender, vendor, or lessor, and an affiliate, associate, or subsidiary of

any of them or a director, officer, or employee of any of them or any other person in any way associated with any of them;

(4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, properties, rights, or privileges for which payment is arranged through a credit transaction;

(5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with the loan or other credit transaction. [1961 c 219 § 3.]

48.34.040 Authorized forms. Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

(1) Individual policies of life insurance issued to debtors on the term plan;

(2) Individual policies of accident and health insurance issued to debtors on a term plan, or disability benefit provisions in individual policies of credit life insurance;

(3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors, or disability benefit provisions in group credit life insurance policies to provide such coverage. [1961 c 219 § 4.]

48.34.050 Life—Limitation on amount under individual policy. The initial amount of credit life insurance under an individual policy shall not exceed the total amount repayable under the contract of indebtedness. Where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. [1961 c 219 § 5.]

48.34.060 Life—Limitation on amount repayable under group policy. The initial amount of credit life insurance under a group policy shall at no time exceed the amount owed by the debtor which is repayable in installments to the creditor. [1987 c 130 § 1; 1983 1st ex.s. c 32 § 23; 1977 c 61 § 2; 1967 ex.s. c 82 § 1; 1961 c 219 § 6.]

48.34.070 Accident and health—Limitation on amount. The total amount of periodic indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of such periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments. [1961 c 219 § 7.]

48.34.080 Commencement, termination date of term. The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor: PROVIDED, That, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty days after the date when the debtor becomes obli-

gated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than fifteen days beyond the scheduled maturity date of indebtedness, except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in RCW 48.34.110. [1961 c 219 § 8.]

48.34.090 Policy or certificate—Contents—Delivery, copy of application or notice in lieu—Substitute insurer, premium, etc., on rejection. (1) All credit life insurance and credit accident and health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

(2) Each individual policy or group certificate of credit life insurance, and/or credit accident and health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor or in the case of a certificate under a group policy, the identity by name or otherwise of the debtor, the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit accident and health insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance exceeds the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate. With respect to any policy issued after September 8, 1975, credit life insurance shall not be subject to any exceptions or reductions other than for fraud, or for suicide occurring within two years of the effective date of the insurance.

(3) The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as provided in subsections (4) and (5).

(4) If such individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer; the name or names of the debtor; the premium or amount of payment by the debtor, if any, separately for credit life insurance and credit accident and health insurance; the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument, or agreement, or the application for any such loan, sale or credit, unless the information required by this subsection is prominently set

forth therein under a descriptive heading which shall be underlined and printed in capital letters. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in RCW 48.34.080.

(5) If the named insurer does not accept the risk, then the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund shall be made. [1975 1st ex.s. c 266 § 13; 1961 c 219 § 9.]

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

48.34.100 Filing policies, notices, riders, etc.—Approval by commissioner—Preexisting policies—Forms. (1) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

(2) No such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, or riders shall be used in this state until approved by the commissioner pursuant to RCW 48.18.100 and RCW 48.18.110. In addition to any grounds for disapproval provided therein, the form shall be disapproved both as to credit life and credit accident and health insurance if the benefits provided therein are not reasonable in relation to the premium charged.

(3) If a group policy of credit life insurance or credit accident and health insurance has been delivered in this state before midnight, June 7, 1961, on the first anniversary date following such time the terms of the policy as they apply to persons newly insured thereafter shall be rewritten to conform with the provisions of this chapter.

(4) If a group policy has been or is delivered in another state before or after August 11, 1969, the forms to be filed by the insurer with the commissioner are the group certificates and notices of proposed insurance delivered or issued for delivery in this state. He shall approve them if:

(a) They provide the information that would be required if the group policy was delivered in this state; and

(b) The applicable premium rates or charges do not exceed those established by his rules or regulations. [1969 ex.s. c 241 § 15; 1961 c 219 § 10.]

48.34.110 Refunds—Credits—Charges to debtor.

(1) Each individual policy, or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto. The formula to be used in computing such refund shall be filed with and approved by the commissioner.

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(2) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

(3) The amount charged to a debtor for any credit life or credit accident and health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined. [1961 c 219 § 11.]

48.34.120 Debtor's right to furnish and obtain own insurance. When the credit life insurance or credit accident and health insurance is required in connection with any credit transaction, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this state. [1961 c 219 § 12.]

48.34.900 Severability—1961 c 219. If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of the chapter and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby. [1961 c 219 § 13.]

Chapter 48.35 RCW ALIEN INSURERS

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48.35.200	Domestication—When effective—Deposits—Transfer of assets.

48.35.010 Application—Definition. This chapter applies to all alien insurers using this state as a state of entry to transact insurance in the United States.

For the purposes of this chapter, "alien insurer" has the definition supplied in RCW 48.05.010. [1991 c 268 § 1.]

48.35.020 Deposit required—Amount. (1) An alien insurer may use this state as a state of entry to transact insurance in the United States by maintaining in this state a deposit

of assets in a solvent trust company or other solvent financial institution having trust powers domiciled in this state and so designated by the commissioner. The commissioner's designated depositories are authorized to receive and hold a deposit of assets. A deposit so held is at the expense of the insurer. A solvent financial institution domiciled in this state, the deposits of which are insured by the federal deposit insurance corporation and which is a member of the federal reserve system, may be designated as the commissioner's depository to receive and hold a deposit of assets.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, must be in an amount not less than the higher of deposits required of an alien insurer under RCW 48.05.090 or five hundred thousand dollars and consist of eligible assets as set forth in RCW 48.16.030.

(3) The deposit may be referred to as "trusteed assets." [1991 c 268 § 2.]

48.35.030 Deposit required—Duration. The deposit required by this chapter must be for the benefit, security, and protection of the policyholders or creditors, or both, of the insurer in the United States. It shall be maintained as long as there is outstanding any liability of the insurer arising out of its insurance transactions in the United States. [1991 c 268 § 4.]

48.35.040 Trusts created before May 17, 1991. All trusts of trusteed assets created before May 17, 1991, must be continued under the instruments creating those trusts. If the commissioner determines that the instruments are inconsistent with the provisions of this chapter, the insurer shall correct those inconsistencies within six months of the commissioner's determination. [1991 c 268 § 3.]

48.35.050 Alien insurer—State authorization required. An alien insurer proposing to use this state as a state of entry to transact insurance in the United States, must be authorized to transact insurance in this state and may make and execute any trust agreement required by this chapter. [1991 c 268 § 6.]

48.35.060 Trusteed assets—Creation—Commissioner's approval of trust agreement. (1) The alien insurer shall create the trusteed assets required by this chapter under a written trust agreement between the insurer and the trustee, consistent with the provisions of this chapter, and in such form and manner as the commissioner may designate or approve.

(2) The agreement is effective when filed with and approved in writing by the commissioner. The commissioner shall not approve any trust agreement not found to be in compliance with state or federal law or the terms of which do not in fact provide reasonably adequate protection for the insurer's policyholders or creditors, or both, in the United States. [1991 c 268 § 5.]

48.35.070 Trust agreement—Amendment. A trust agreement may be amended. However, the amendment is not effective until filed with the commissioner and the commis-

sioner finds and states in writing that the amendment is in compliance with this chapter. [1991 c 268 § 7.]

48.35.080 Trust agreement—Withdrawal of commissioner's approval. The commissioner may withdraw his or her approval of a trust agreement, or of an amendment to the agreement, if the commissioner determines that the requisites for the approval no longer exist. The determination shall be made after notice and a hearing as provided in chapter 48.04 RCW. [1991 c 268 § 8.]

48.35.090 Trust agreement—Vesting of trusteed assets. The trust agreement must provide that title to the trusteed assets vests and remains vested in the trustees and their successors for the purposes of the trust deposit. [1991 c 268 § 9.]

48.35.100 Trusteed assets—Trustee's records. The trustee shall keep the trusteed assets separate from other assets and shall maintain a record sufficient to identify the trusteed assets at all times. [1991 c 268 § 10.]

48.35.110 Trusteed assets—Trustee's statements—Commissioner's approval. (1) The trustee of trusteed assets shall file statements with the commissioner, in a form required by the commissioner, certifying the character and amount of the assets.

(2) If the trustee fails to file a requested statement after a reasonable time has expired, the commissioner may suspend or revoke the certificate of authority of the insurer required under RCW 48.05.030. [1991 c 268 § 11.]

48.35.120 Trusteed assets—Examination—Commissioner's approval of assignment or transfer. (1) The commissioner may examine trusteed assets of any insurer at any time in accordance with the same conditions and procedures governing the examination of insurers provided in chapter 48.03 RCW.

(2) The depositing insurer shall not assign or transfer, voluntarily, involuntarily, or by operation of law, all or a part of its interest in the trusteed assets without the prior written approval of the commissioner, and a transfer or assignment occurring without approval is void. The assignee or transferee of the trusteed assets shall irrevocably and automatically assume all of the obligations and liabilities of the assignor or transferor. [1991 c 268 § 12.]

48.35.130 Trusteed assets—Commissioner's approval of withdrawals. (1) The trust agreement must provide that the commissioner shall authorize and approve in writing all withdrawals of trusteed assets in advance except as follows:

(a) Any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) Withdrawals coincident with substitutions of securities or assets that are at least equal in value to those being withdrawn, if the substituted securities or assets would be eligible for investment by domestic insurers, and the insurer's

United States manager requests the withdrawal in writing under a general or specific written authority previously given or delegated by the insurer's board of directors, or other similar governing body, and a copy of such authority has been filed with the trustee;

(c) For the purpose of making deposits required by another state in which the insurer is, or becomes, an authorized insurer and for the protection of the insurer's policyholders or creditors, or both, in the state or United States, if the withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required. The trustee shall transfer any assets withdrawn and in the amount required to be deposited in the other state, directly to the depository required to receive the deposit as certified in writing by the public official having supervision of insurance in that state; and

(d) For the purpose of transferring the trustee's assets to an official liquidator, conservator, or rehabilitator under an order of a court of competent jurisdiction.

(2) The commissioner shall authorize a withdrawal of only those assets that are in excess of the amount of assets required to be held in trust, or as may otherwise be consistent with the provisions of this chapter.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less than required as determined by the commissioner, the commissioner shall order in writing the trustee to suspend the withdrawal of assets until a further order of the commissioner releasing the assets. [1991 c 268 § 13.]

48.35.140 Trusteed assets—Substitution of trustee.

A new trustee may be substituted for the original trustee of trustee assets in the event of a vacancy or for other proper cause. Any such substitution is subject to the commissioner's approval. [1991 c 268 § 14.]

48.35.150 Trusteed assets—Compensation and expenses of trustees. The insurer shall provide for the compensation and expenses of the trustees of assets of an alien insurer under this chapter in an amount, or on a basis, as agreed upon by the insurer and the trustees in the trust agreement, subject to the prior approval of the commissioner. [1991 c 268 § 15.]

48.35.160 United States manager—Mexican or Canadian insurers. The provisions of this chapter applicable to a United States manager shall, in the case of insurers domiciled in Mexico or Canada, be deemed to refer to the president, vice president, secretary, or treasurer of the Mexican or Canadian insurer. [1991 c 268 § 16.]

48.35.170 Domestication of alien insurer—Commissioner's approval. (1) Upon compliance with this chapter, an alien insurer authorized to do business in this state may, with the prior written approval of the commissioner, domesticate its United States branch by entering into an agreement in writing with a domestic insurer providing for the acquisition by the domestic insurer of all of the assets and the assumption of all of the liabilities of the United States branch.

(2) The acquisition of assets and assumption of liabilities of the United States branch by the domestic insurer is effected by filing with the commissioner an instrument or instruments of transfer and assumption in form satisfactory to the commissioner and executed by the alien insurer and the domestic insurer. [1991 c 268 § 17.]

48.35.180 Domestication agreement—Necessary authorization. (1) The domestication agreement shall be authorized, adopted, approved, signed, and acknowledged by the alien insurer in accordance with the laws of the country under which it is organized.

(2) In the case of a domestic insurer, the domestication agreement shall be approved, adopted, and authorized by its board of directors and executed by its president or a vice president and attested by its secretary or assistant secretary under its corporate seal. [1991 c 268 § 18.]

48.35.190 Domestication agreement—Commissioner's approval of corporate proceedings. An executed counterpart of the domestication agreement, together with certified copies of the corporate proceedings of the domestic insurer and the alien insurer, approving, adopting, and authorizing the execution of the domestication agreement, shall be submitted to the commissioner for approval. The commissioner shall thereupon consider the agreement, and, if the commissioner finds that the same is in accordance with the provisions hereof and that the interests of the policyholders of the United States branch of the alien insurer and of the domestic insurer are not materially adversely affected, the commissioner shall approve the domestication agreement and authorize the consummation thereof. [1991 c 268 § 19.]

48.35.200 Domestication—When effective—Deposits—Transfer of assets. (1) Upon the filing with the commissioner of a certified copy of the instrument of transfer and assumption pursuant to which a domestic company succeeds to the business and assets of the United States branch of an alien insurer and assumes all its liabilities, the domestication of the United States branch is deemed effective; and all the rights, franchises, and interests of the United States branch in and to every species of property and things, in actions thereunder belonging, are deemed as transferred to and vested in the domestic insurer, and simultaneously the domestic insurer is deemed to have assumed all of the liabilities of the United States branch. The domestic insurer is considered as having the age as the oldest of the two parties to the domestication agreement for purposes of laws relating to age of company.

(2) All deposits of the United States branch held by the commissioner, or by state officers, or other state regulatory agencies pursuant to requirements of state laws, are deemed to be held as security for the satisfaction by the domestic insurer of all liabilities to policyholders within the United States assumed from the United States branch; and the deposits are deemed to be assets of the domestic insurer and are reported as such in the annual financial statements and other reports that the domestic insurer may be required to file. Upon the ultimate release by a state officer or agency of a deposit, the securities and cash constituting the released

deposit is delivered and paid over to the domestic insurer as the lawful successor in interest to the United States branch.

(3) Contemporaneously with the consummation of the domestication of the United States branch, the commissioner shall direct the trustee, if any, of the United States branch's trusted assets, as set forth in RCW 48.35.020, to transfer and deliver to the domestic insurer all assets, if any, held by such trustee. [1991 c 268 § 20.]

Chapter 48.36A RCW

FRATERNAL BENEFIT SOCIETIES

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48.36A.901	Effective date—1987 c 366.

48.36A.010 Fraternal benefit society defined. Any incorporated society, order, or supreme lodge, without capital stock, including one exempted under the provisions of RCW

48.36A.370(1)(b) whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society. [1987 c 366 § 1.]

48.36A.020 Lodge system—Lodges for children. (1)

A society is operating on the lodge system if it has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, rules, and ritual. Subordinate lodges shall be required by the laws of the society to hold regular meetings at least once in each month in furtherance of the purposes of the society.

(2) A society may, at its option, organize and operate lodges for children under the minimum age for adult membership. Membership and initiation in local lodges shall not be required of the children, nor shall they have a voice or vote in the management of the society. [1987 c 366 § 2.]

48.36A.030 Representative form of government. A society has a representative form of government when:

(1) It has a supreme governing body constituted in one of the following ways:

(a) The supreme governing body is an assembly composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than two-thirds of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every four years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws; or

(b) The supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed four years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society;

(2) The officers of the society are elected either by the supreme governing body or by the board of directors;

(3) Only benefit members are eligible for election to the supreme governing body and the board of directors; and

(4) Each voting member shall have one vote. No vote may be cast by proxy. [1987 c 366 § 3.]

48.36A.040 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Benefit contract" means the agreement for provision of benefits authorized by RCW 48.36A.160, as that agreement is described in RCW 48.36A.190(1).

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(3) "Certificate" means the document issued as written evidence of the benefit contract.

(4) "Premiums" means premiums, rates, dues or other required contributions by whatever name known, which are payable under the certificate.

(5) "Laws" means the society's articles of incorporation, constitution, and bylaws, however designated.

(6) "Rules" means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

(7) "Society" means fraternal benefit society, unless otherwise indicated.

(8) "Lodge" means subordinate member units of the society, known as camps, courts, councils, branches, or by any other designation. [1987 c 366 § 4.]

48.36A.050 Beneficial operations—Laws and rules.

(1) A society shall operate for the benefit of members and their beneficiaries by:

(a) Providing benefits as specified in RCW 48.36A.160; and

(b) Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others.

These purposes may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(2) Every society may adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It may change, alter, add to, or amend such laws and rules and has such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. [1987 c 366 § 5.]

48.36A.060 Membership classes, rights, grievances.

(1) A society shall specify in its laws or rules:

(a) Eligibility standards for each and every class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age fifteen and not greater than age twenty-one;

(b) The process for admission to membership for each membership class; and

(c) The rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(2) A society may also admit social members who have no voice or vote in the management of the insurance affairs of the society.

(3) Membership rights in the society are personal to the member and are not assignable.

(4) A society may provide in its laws or rules for grievance or complaint procedures for members. [1987 c 366 § 6.]

48.36A.070 Location of office and meetings—Official publications, annual statement.

(1) The principal office of any domestic society shall be located in this state. The meetings of its supreme governing body may be held in any state, district, province, or territory where the society has at least one subordinate lodge, or in such other location as determined by the supreme governing body, and all business transacted at the meetings is as valid in all respects as if the meetings were held in this state. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

(2) (a) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. Required reports, notices, and statements shall be printed conspicuously in the publication. If the records of a society show that two or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(b) Not later than June 1st of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society or, in lieu thereof, the synopsis may be published in the society's official publication. [1987 c 366 § 7.]

48.36A.080 Immunity of officers—Indemnification of person responsible—Insurance for liability.

(1) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

(2) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, the person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which the person served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed (a) in relation to any matter in such action, suit, or proceeding as to which the person shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society; or (b) in relation to any matter in the action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that their conduct was unlawful. The determination whether the conduct of the person met the standard required in order to justify indemnification and reimbursement in relation to any matter

described in (a) or (b) of this subsection may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to the person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which the person may be entitled as a matter of law and shall inure to the benefit of the person's heirs, executors, and administrators.

(3) A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against the person and incurred by the person in any capacity or arising out of the person's status as such, whether or not the society would have the power to indemnify the person against the liability under this section. [1987 c 366 § 8.]

48.36A.090 Nonwaiver provisions. The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws of the society. Such provision shall be binding on the society and every member and beneficiary of a member. [1987 c 366 § 9.]

48.36A.100 Formation of domestic society—Procedures and requirements. A domestic society organized on or after January 1, 1988, shall be formed as follows, but not until it has and continues to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340:

(1) Seven or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;

(b) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes shall not include more liberal powers than are granted by this chapter;

(c) The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all the officers shall be elected by the supreme governing body, which election shall be held not later than one year from the date of issuance of the permanent certificate of authority.

(2) The articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society, and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the commissioner, who may require further information as the commissioner deems necessary. The bond with sureties approved by the commissioner shall be in an amount, not less than three hundred thousand dollars nor more than one million five hundred thousand dollars as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the commissioner shall so certify, retain, and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(3) No preliminary certificate of authority granted under the provisions of this section shall be valid after one year from its date or after a further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the five hundred applicants required by subsection (4) of this section have been secured and the organization has been completed under this chapter. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business under this chapter.

(4) Upon receipt of a preliminary certificate of authority from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount collected. No society shall incur any liability other than for the return of the advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

(a) Actual bona fide applications for benefits have been secured on not less than five hundred applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(b) At least ten subordinate lodges have been established into which the five hundred applicants have been admitted;

(c) There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums therefor; and

(d) It has been shown to the commissioner, by sworn statement of the treasurer, or corresponding officer of the society, that at least five hundred applicants have each paid in cash at least one regular monthly premium and the total amount of collected premiums equals at least one hundred fifty thousand dollars. The advance premiums shall be held in trust during the period of organization and if the society has

not qualified for a certificate of authority within one year, the premiums shall be returned to the applicants.

(5) The commissioner may make such examination and require such further information as the commissioner deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of this chapter, the commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate of authority shall be prima facie evidence of the existence of the society at the date of the certificate. The commissioner shall cause a record of the certificate of authority to be made. A certified copy of the record may be given in evidence with like effect as the original certificate of authority.

(6) Any incorporated society authorized to transact business in this state at the time this chapter becomes effective shall not be required to reincorporate.

(7) The commissioner may, by rule, require domestic fraternal societies to have and maintain a larger amount of surplus than the minimum amount of capital and surplus prescribed under RCW 48.05.340, based upon the type, volume, and nature of insurance business transacted, consistent with the principles of risk-based capital modified to recognize the special characteristics of fraternal benefit societies. [1996 c 236 § 1; 1987 c 366 § 10.]

48.36A.110 Amendment of society's laws. (1) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting thereof or, if its laws so provide, by referendum. The referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six months from the date of submission, a majority of the members voting shall have signified their consent to the amendment by one of the specified methods.

(2) No amendment to the laws of any domestic society shall take effect unless approved by the commissioner. The commissioner shall approve the amendment if the commissioner finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects, and purposes of the society. Unless the commissioner disapproves any amendment within sixty days after the filing of same, the amendment shall be considered approved. The approval or disapproval by the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the commissioner disapproves the amendment, the reasons for the disapproval shall be stated in the written notice.

(3) Within ninety days from the approval by the commissioner, all amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and

mailed, shall be prima facie evidence that the amendments or synopsis thereof, have been furnished to the addressee.

(4) Every foreign or alien society authorized to do business in this state shall file with the commissioner a certified copy of all amendments of, or additions to, its laws within ninety days after their enactment.

(5) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of their legal adoption. [1987 c 366 § 11.]

48.36A.120 Not-for-profit institutions authorized—Funeral homes prohibited. (1) A society may create, maintain, and operate, or establish organizations to operate, not-for-profit institutions to further the purposes permitted by RCW 48.36A.050(1)(b). The institutions may furnish services free or at a reasonable charge. Any real or personal property owned, held or leased by the society for this purpose shall be reported in every annual statement.

(2) No society shall own or operate funeral homes or undertaking establishments. [1987 c 366 § 12.]

48.36A.130 Reinsurance. (1) A domestic society may, by a reinsurance agreement, transfer any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this state, or if not so authorized, one which is approved by the commissioner, but no domestic society may reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on the transferred risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a transferring society for reinsurance made, transferred, renewed, or otherwise becoming effective after January 1, 1988, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the transferring society under the contract or contracts reinsured without diminution because of the insolvency of the transferring society.

(2) Notwithstanding the limitation in subsection (1) of this section, a society may reinsure the risks of another society in a consolidation or merger approved by the commissioner under RCW 48.36A.140. [1987 c 366 § 13.]

48.36A.140 Consolidation and merger. (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the commissioner:

(a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

(b) A sworn statement by the president and secretary or corresponding officers of each society showing their financial condition on a date fixed by the commissioner but not earlier than December 31st next preceding the date of the contract;

(c) A certificate of the officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds vote of the supreme governing body of each society, such vote being conducted at a regular or spe-

cial meeting of each such body, or, if the society's laws so permit, by mail; and

(d) Evidence that at least sixty days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.

(2) If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct, and that the consolidation or merger is just and equitable to the members of each society, the commissioner shall approve the contract and issue a certificate to that effect. Upon approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event, the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval is filed with the commissioner of this state or, if the laws of the state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of insurance of the state or territory and a certificate of such approval is filed with the commissioner of this state.

(3) Upon the consolidation or merger becoming effective, all the rights, franchises, and interests of the consolidated or merged societies in and to every species of property, real, personal, or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after the consolidation or merger.

(4) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that the notice or document has been duly addressed and mailed, shall be prima facie evidence that the notice or document has been furnished to the addressees. [1987 c 366 § 14.]

48.36A.150 Conversion to mutual life insurance company. Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the insurance laws of this state for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of such plan, or if the society is organized under the direct election method pursuant to RCW 48.36A.030(1)(b), the plan of conversion shall be submitted by mail to the benefit members or the plan may be published in the official publication authorized by RCW 48.36A.070(2)(a). The affirmative vote of two-thirds of the benefit members voting thereon shall be necessary for the approval of the plan. No conversion shall take effect unless and until approved by the commissioner who may give

approval if the commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society. [1987 c 366 § 15.]

48.36A.160 Contractual benefits. (1) A society may provide the following contractual benefits in any form:

- (a) Death benefits;
- (b) Endowment benefits;
- (c) Annuity benefits;
- (d) Temporary or permanent disability benefits;
- (e) Hospital, medical, or nursing benefits;
- (f) Monument or tombstone benefits to the memory of deceased members; and
- (g) Such other benefits as authorized for life insurers and which are not inconsistent with this chapter.

(2) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (1) of this section, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person. [1987 c 366 § 16.]

48.36A.170 Designation of beneficiary—Funeral benefits. (1) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(2) A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the portion paid shall not exceed the sum of one thousand dollars.

(3) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of the benefit, except to the extent that funeral benefits may be paid under this section, shall be payable to the personal representative of the deceased insured, provided that if the owner of the certificate is other than the insured, the proceeds shall be payable to the owner. [1987 c 366 § 17.]

48.36A.180 Protection of benefits. No money or other benefit, charity, relief, or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society. [1987 c 366 § 18.]

48.36A.190 Benefit certificates—Impaired reserves.

(1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(2) Except as provided in RCW 48.36A.220, any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though the changes, additions, or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition, or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.

(3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(4) Except as provided in RCW 48.36A.220, a society shall provide in its laws that if its reserves as to all or any class of certificates become impaired, its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board, and that if the payment is not made, either (a) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (b) in lieu of or in combination with (a) of this subsection, the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(5) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(6) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with the commissioner in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one year from January 1, 1988, shall be approved by the commissioner and shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificates shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sec-

tions of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(7) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government, and control of such certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to the transfer shall be specified in the certificate.

(8) A society may specify the terms and conditions on which benefit contracts may be assigned. [1987 c 366 § 19.]

48.36A.200 Paid-up nonforfeiture benefits and cash

surrender values. (1) For certificates issued prior to one year after January 1, 1988, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall comply with the provisions of law applicable immediately prior to January 1, 1988.

(2) For certificates issued on or after one year from January 1, 1988, for which reserves are computed on the commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial table or the commissioner's 1958 standard ordinary mortality table, or the commissioner's 1980 standard mortality table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits based upon such tables.

(3) For annuity certificates issued on or after one year from January 1, 1988, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of this state applicable to life insurers issuing annuities. [1987 c 366 § 20.]

48.36A.210 Authorized investments. A society shall invest its funds only in investments that are authorized by the laws of this state for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this state which invests its funds in accordance with the laws of the state, district, territory, country, or province in which it is incorporated, shall be deemed to have met the requirements of this section for the investment of funds. [1987 c 366 § 21.]

48.36A.220 Assets—Investment and disbursement.

(1) All assets shall be held, invested, and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(2) A society may create, maintain, invest, disburse, and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

(3) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a variable basis, subject to all the provisions of law regulating life insurers establishing such accounts and issuing such contracts, as provided in chapter 48.18A RCW. To the extent the society deems it necessary in order to comply with any applicable federal or state laws, or any rules issued thereunder, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may, for persons having beneficial interests therein, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis to which RCW 48.36A.190 (2) and (4) shall not apply. [1987 c 366 § 22.]

48.36A.230 Chapter exclusive. Societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state unless they are expressly designated therein, or unless it is specifically made applicable by this chapter. [1987 c 366 § 23.]

48.36A.240 Funds tax exempt, exception. Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment. [1987 c 366 § 24.]

48.36A.250 Valuation standards—Reserves. (1) Standards of valuation for certificates issued prior to one year after January 1, 1988, shall be those provided by the laws applicable immediately prior to January 1, 1988.

(2) The minimum standards of valuation for certificates issued on or after one year from January 1, 1988, shall be based on the following tables:

(a) For certificates of life insurance: The commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;

(b) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits, and for noncancellable accident and health benefits: Such tables as are authorized for use by life insurers in this state.

All of the above shall be under valuation methods and standards, including interest assumptions, in accordance with

the laws of this state applicable to life insurers issuing policies containing like benefits.

(3) The commissioner may, in the commissioner's discretion, accept other standards for valuation if the commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in the commissioner's discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.

(4) Any society, with the consent of the commissioner of insurance of the state of domicile of the society and under the conditions, if any, which the commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required by this section, but the contractual rights of any benefit member shall not be affected thereby. [1987 c 366 § 25.]

48.36A.260 Annual financial statement. (1) Every domestic society shall annually, on or before the first day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a fee of ten dollars for filing. The statement shall be in general form and context as approved by the national association of insurance commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

(2) All domestic, foreign, and alien societies transacting business in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement convention blank in electronic form.

(3) As part of the required annual statement, each society shall, on or before the first day of March, file with the commissioner a valuation of its certificates in force on December 31st last preceding, provided the commissioner may, in the commissioner's discretion for cause shown, extend the time for filing the valuation for not more than two calendar months. The valuation shall be done in accordance with the standards specified in RCW 48.36A.250. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(4) A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars for each day during which the neglect continues, and, upon notice by the commissioner, its authority to do business in this state shall cease while the default continues. [2007 c 80 § 4; 1987 c 366 § 26.]

48.36A.263 Filing of financial statements. Every fraternal benefit society holding a certificate of authority shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [1999 c 33 § 2.]

48.36A.270 Licenses and renewals—Fees—Existing societies. A license under this chapter continues in force until suspended, revoked, or not renewed. A license is subject to renewal annually on the first day of July upon payment of the fee for the license. If not so renewed, the certificate expires as of the thirtieth day of June of the same year. Licenses existing on June 9, 1994, continue in force until July 1, 1995, unless revoked or suspended. For each license or renewal the society shall pay the commissioner the fee established pursuant to RCW 48.14.010, subject to the retaliatory provision of RCW 48.14.040. A certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. [1994 c 131 § 1; 1987 c 366 § 27.]

48.36A.272 Notice of intent to suspend, revoke, or refuse to renew a license. The commissioner shall give a society notice of his or her intention to suspend, revoke, or refuse to renew its license not less than ten days before the effective date of the order of suspension, revocation or refusal, except that advance notice of intention is not required where the order results from a domestic society's failure to make good a deficiency of assets as required by the commissioner. [1996 c 236 § 4.]

48.36A.274 Duration of suspension. The commissioner shall not suspend a society's license for a period in excess of one year, and shall state in his or her order of suspension the period during which the order is effective. [1996 c 236 § 5.]

48.36A.276 Reauthorization of license. A society whose license has been suspended, revoked, or refused may not subsequently be authorized unless the grounds for the suspension, revocation, or refusal no longer exist and the society is otherwise fully qualified. [1996 c 236 § 6.]

48.36A.278 Notice to agents of loss of authority. Upon the suspension, revocation, or refusal of a society's license, the commissioner shall give notice to the society and shall suspend, revoke, or refuse the authority of its agents to represent it in this state and give notice to the agents. [1996 c 236 § 7.]

48.36A.280 Examinations. (1) The commissioner, or any person the commissioner may appoint, may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in this state in the same manner as authorized by chapter 48.03 RCW. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(2) The expense of each examination and of each valuation, including the compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued. The payments shall be made upon receipt of statements furnished by the commissioner. [1987 c 366 § 28.]

48.36A.282 Transactions hazardous to certificate holders or creditors—Standards for consideration. The following standards may be considered by the commissioner to determine whether the continued operation of any society transacting an insurance business in this state might be deemed to be hazardous to the certificate holders or creditors. The commissioner may consider:

(1) Adverse findings reported in either a financial condition or market conduct examination report, or both, of a state insurance department that could lead to impairment of surplus;

(2) The national association of insurance commissioners insurance regulatory information system and its related reports;

(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of surplus;

(4) The society's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the society's ability to meet its outstanding obligations as they mature;

(5) The ability of an assuming reinsurer to perform and whether the society's reinsurance program provides sufficient protection for the society's remaining surplus after taking into account the society's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(6) The society's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash refunds paid to members, is greater than fifty percent of the society's remaining surplus as regards certificate holders in excess of the minimum required;

(7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;

(8) Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount that in the opinion of the commissioner may affect the solvency of the society;

(9) The age and collectibility of receivables;

(10) Whether the management of a society, including officers, trustees, directors, or any other person who directly or indirectly controls the operation of the society, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the society in such a position;

(11) Whether management of a society has failed to respond to inquiries relative to the condition of the society or has furnished misleading information concerning an inquiry;

(12) Whether management of a society either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the society;

(13) Whether the society has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

(14) Whether the society has experienced or will experience in the foreseeable future, either cash flow problems or liquidity problems, or both. [1996 c 236 § 8.]

48.36A.284 Determination of financial condition—Hazardous to certificate holders—Commissioner's order—Hearing. (1) For the purpose of making a determination of a society's financial condition, the commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the society's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the society will be called upon to meet the obligation undertaken within the next twelve-month period.

(2) If the commissioner determines that the continued operation of the society authorized to transact business in this state may be hazardous to the certificate holders, then the commissioner may, in conjunction with or in lieu of a notice required or permitted by RCW 48.36A.272, issue an order requiring the society to:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) Reduce, suspend, or limit the volume of business being accepted or renewed;

(c) Reduce general insurance and commission expenses by specified methods;

(d) Increase the society's surplus;

(e) Suspend or limit the declaration and payment of refunds by a society to its members;

(f) File reports in a form acceptable to the commissioner concerning the market value of a society's assets;

(g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) Document the adequacy of premium rates in relation to the risks insured; or

(i) File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or on a format promulgated by the commissioner.

(3) Any society subject to an order under subsection (2) of this section may make a written demand for a hearing, subject to the requirements of RCW 48.04.010, by specifying in what respects it is aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing. [1996 c 236 § 9.]

48.36A.286 Rehabilitation, liquidation, or conservation of society—Same as insurance companies—Priority of distribution of claims. (1) Any rehabilitation, liquidation,

or conservation of a domestic fraternal benefit society is the same as the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a domestic fraternal benefit society upon any one or more of the following grounds: That the domestic fraternal benefit society:

(a) Is insolvent; or

(b) Has ceased transacting insurance business for a period of one year; or

(c) Is insolvent and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(d) Any of the matters set forth in RCW 48.36A.310.

(2) The priority of the distribution of claims from a domestic fraternal benefit society's estate shall be as set forth in RCW 48.31.280. [1996 c 236 § 10.]

48.36A.290 License required—Obtaining. (1) No foreign or alien society shall transact business in this state without a license issued by the commissioner. Any society desiring admission to this state shall comply substantially with the requirements and limitations of this chapter applicable to domestic societies and must have and continue to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340. A society may be licensed to transact business in this state upon filing with the commissioner:

(a) A duly certified copy of its articles of incorporation;

(b) A copy of its bylaws, certified by its secretary or corresponding officer;

(c) A power of attorney to the commissioner as prescribed in RCW 48.36A.410;

(d) A statement of its business under oath by its president and secretary, or corresponding officers, in a form prescribed by the commissioner, verified by an examination made by the supervising insurance official of its home state or other state, territory, province, or country, satisfactory to the commissioner;

(e) Certification from the proper official of its home state, territory, province, or country that the society is legally incorporated and licensed to transact business;

(f) Copies of its certificate forms; and

(g) Such other information as the commissioner may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this chapter.

(2) After June 30, 1997, a foreign or alien society which does not have unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340 may not issue any new policies or certificates until the society has unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340; however, a foreign or alien society may continue to issue new policies or certificates to members of the society who have an existing policy or certificate in force with the society on June 30, 1997. Once

such a foreign or alien society obtains unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340, the society must continue to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340.

(3) After June 30, 1997, a foreign or alien society which had unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340 on December 31, 1996, must continue to maintain unimpaired surplus in the minimum amount of total capital and surplus required by RCW 48.05.340.

(4) The commissioner may, by rule, require foreign or alien fraternal societies to have and maintain a larger amount of surplus than the minimum amount of capital and surplus prescribed under RCW 48.05.340, based upon the type, volume, and nature of insurance business transacted, consistent with the principles of risk-based capital modified to recognize the special characteristics of fraternal benefit societies. [1996 c 236 § 2; 1987 c 366 § 29.]

48.36A.310 Deficiencies, noncompliance by societies—Actions against license. (Effective until July 1, 2009.)

(1) The commissioner may refuse, suspend, or revoke a fraternal benefit society's license, if the society:

- (a) Has exceeded its powers;
- (b) Has failed to comply with any of the provisions of this chapter;
- (c) Is not fulfilling its contracts in good faith;
- (d) Is conducting its business fraudulently;
- (e) Has a membership of less than four hundred after an existence of one year or more;
- (f) Is found by the commissioner to be in such a condition that its further transaction of insurance in this state would be hazardous to certificate holders and the people in this state;
- (g) Refuses to remove or discharge a trustee, director, or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude;
- (h) Refuses to be examined, or if its trustees, directors, officers, employees, or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination;
- (i) Fails to pay any final judgment rendered against it in this state upon any certificate, or undertaking issued by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later;
- (j) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its trustees, directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in fraternal benefit society managerial experience as to make a proposed operation hazardous to its members; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or business relations, with any person or persons whose business operations are or have been found to be in violation of any law or rule, to the detriment of the members of the society or of the public, by

bad faith or by manipulation of the assets, or of accounts, or of reinsurance of the society; or

(k) Does business through agents or other representatives in this state or in any other state who are not properly licensed under applicable laws and rules.

(2) Nothing in this section shall prevent a society from continuing, in good faith, all contracts made in this state during the time the society was legally authorized to transact business herein. [1996 c 236 § 3; 1987 c 366 § 31.]

48.36A.310 Deficiencies, noncompliance by societies—Actions against license. (Effective July 1, 2009.)

(1) The commissioner may refuse, suspend, or revoke a fraternal benefit society's license, if the society:

- (a) Has exceeded its powers;
- (b) Has failed to comply with any of the provisions of this chapter;
- (c) Is not fulfilling its contracts in good faith;
- (d) Is conducting its business fraudulently;
- (e) Has a membership of less than four hundred after an existence of one year or more;
- (f) Is found by the commissioner to be in such a condition that its further transaction of insurance in this state would be hazardous to certificate holders and the people in this state;
- (g) Refuses to remove or discharge a trustee, director, or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude;
- (h) Refuses to be examined, or if its trustees, directors, officers, employees, or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination;
- (i) Fails to pay any final judgment rendered against it in this state upon any certificate, or undertaking issued by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later;
- (j) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its trustees, directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in fraternal benefit society managerial experience as to make a proposed operation hazardous to its members; or that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or business relations, with any person or persons whose business operations are or have been found to be in violation of any law or rule, to the detriment of the members of the society or of the public, by bad faith or by manipulation of the assets, or of accounts, or of reinsurance of the society; or

(k) Does business through insurance producers or other representatives in this state or in any other state who are not properly licensed under applicable laws and rules.

(2) Nothing in this section shall prevent a society from continuing, in good faith, all contracts made in this state during the time the society was legally authorized to transact business herein. [2008 c 217 § 45; 1996 c 236 § 3; 1987 c 366 § 31.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.36A.320 Requirements for injunction. No application or petition for injunction against any domestic, foreign, or alien society, or lodge thereof, shall be maintained in any court of this state unless made by the attorney general upon request of the commissioner. [1987 c 366 § 32.]

48.36A.330 Agents. (Effective until July 1, 2009.) (1) Agents of societies shall be licensed in accordance with the applicable provisions of chapter 48.17 RCW regulating the licensing, revocation, suspension, or termination of licenses of resident and nonresident agents. Persons who are so authorized by a fraternal benefit society for a period of one year immediately prior to June 13, 1963, shall not be required to take and pass an examination as required by RCW 48.17.110.

(2) The following individuals shall not be deemed an agent of a fraternal benefit society within the provisions of subsection (1) of this section:

(a) Any regular salaried officer or employee of a licensed society who devotes substantially all of their services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) Any agent or representative of a society who devotes, or intends to devote, less than fifty percent of their time to the solicitation and procurement of insurance contracts for such society: PROVIDED, That any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars shall be conclusively presumed to be devoting, or intending to devote, fifty percent of the person's time to the solicitation or procurement of insurance contracts for such society. [1987 c 366 § 33.]

48.36A.330 Insurance producers. (Effective July 1, 2009.) (1) Insurance producers of societies shall be licensed in accordance with the applicable provisions of chapter 48.17 RCW regulating the licensing, revocation, suspension, or termination of licenses of resident and nonresident insurance producers.

(2) The following individuals shall not be deemed an insurance producer of a fraternal benefit society within the provisions of subsection (1) of this section:

(a) Any regular salaried officer or employee of a licensed society who devotes substantially all of their services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(b) Any insurance producer or representative of a society who devotes, or intends to devote, less than fifty percent of their time to the solicitation and procurement of insurance contracts for such society: PROVIDED, That any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars shall be conclusively presumed to be devoting, or intending to devote, fifty percent of the person's time to the solicitation or pro-

curement of insurance contracts for such society. [2008 c 217 § 46; 1987 c 366 § 33.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.36A.340 Unfair trade practices. (1) Except as provided in subsection (2) of this section, every society authorized to do business in this state shall be subject to the provisions of chapter 48.30 RCW relating to unfair trade practices.

(2) Nothing in chapter 48.30 RCW shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society. [1987 c 366 § 34.]

48.36A.350 Service of process upon commissioner. (1) Every society authorized to do business in this state shall:

(a) Appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served;

(b) Agree in writing that any lawful process against it which is served on the commissioner shall be of the same legal force and validity as if served upon the society; and

(c) Agree that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original.

(2) Service shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner's office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No service shall require a society to file its answer, pleading, or defense in less than forty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner the fee established pursuant to RCW 48.05.210. [1987 c 366 § 35.]

48.36A.360 Penalties. (1) Any person who wilfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail not less than thirty days nor more than one year, or both.

(2) Any person who wilfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring pay-

ment of a benefit named in the certificate, shall be guilty of false swearing and shall be subject to the penalties under RCW 9A.72.040.

(3) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this state shall be guilty of a misdemeanor and upon conviction be fined not less than fifty dollars nor more than two hundred dollars.

(4) Any person guilty of a wilful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to a fine not exceeding two hundred dollars. [1987 c 366 § 36.]

48.36A.370 Exemptions. (1) Nothing contained in this chapter shall be so construed as to affect or apply to:

(a) Grand or subordinate lodges of Masons, Odd Fellows, Improved Order of Red Men, Fraternal Order of Eagles, Loyal Order of Moose, or Knights of Pythias, exclusive of the insurance department of the Supreme Lodge of Knights of Pythias, the Grand Aerie Fraternal Order of Eagles, and the Junior Order of United American Mechanics, exclusive of the beneficiary degree of insurance branch of the National Council Junior Order [of] United American Mechanics, or similar societies which do not issue insurance certificates;

(b) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(c) Any association of local lodges of a society now doing business in this state which provides death benefits not exceeding three hundred dollars to any one person, or disability benefit not exceeding three hundred dollars in any one year to any one person, or both; or any contracts of reinsurance business on such plan in this state;

(d) Domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation;

(e) Domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred fifty dollars to any one person in any one year: PROVIDED, That any such domestic order or society which has more than five hundred members and provides for death or disability benefits, and any such domestic lodge, order, or society which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this chapter.

The commissioner may require from any society such information as will enable the commissioner to determine whether the society is exempt from the provisions of this chapter.

(2) No society, which is exempt by the provisions of this section from the requirements of this chapter shall give or allow or promise to give or allow to any person any compensation for procuring new members.

(3) Any fraternal benefit society, heretofore organized and incorporated and operating as set forth in RCW 48.36A.010, 48.36A.020, and 48.36A.030, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay other death or sick benefits, may be licensed under the provisions of this chapter, and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society.

(4) The commissioner may require from any society or association, by examination or otherwise, such information as will enable the commissioner to determine whether the society or association is exempt from the provisions of this chapter.

(5) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state. [1987 c 366 § 37.]

48.36A.380 World War I societies. Any corporation, society, order, or voluntary association operating as set forth in RCW 48.36A.010, 48.36A.020, and 48.36A.030, organized during the war in which the United States entered on April 6, 1917, with the purposes of assisting the government of the United States in maintaining and increasing the production of commodities essential for the prosecution of that war, and of developing loyalty to the United States, or whose membership is limited to veterans of that war, may be licensed under the provisions of this chapter and shall have all the privileges and shall be subject to all the provisions and regulations of this chapter, except that the provisions of this chapter requiring death benefits of at least one thousand dollars, medical examinations, and valuations of benefit certificates, shall not apply to such society, but the society may provide benefits in case of death or disability resulting solely from accidents in an amount not exceeding one thousand dollars and may also provide for death or funeral benefits, or both, not exceeding one hundred dollars each, and for sick or disability benefits not exceeding five hundred dollars to any one person, in any one year. Any corporation, society, order, or voluntary association organized under the provisions of this section shall file with the insurance commissioner a copy of all its rates and policy forms. Rates and policy forms must be approved by the insurance commissioner before becoming effective. All rates and forms approved by the commissioner shall be observed by the society until amended rates or forms shall have been filed with and approved by the insurance commissioner. [1987 c 366 § 38.]

48.36A.390 Fraternal mutual insurers. (1) A domestic mutual property insurer which is affiliated with and is comprised exclusively of members of a specified fraternal society that conducts its business and secures its membership on the lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual insurer.

(2) Only fraternal mutual property insurers which were authorized insurers immediately prior to October 1, 1947, may hereafter be so authorized.

(3) A fraternal mutual insurer shall be subject to the applicable provisions of this title governing domestic mutual insurers except only as to the provisions relative to taxes, fees, and licenses. The bylaws of such insurer shall be as adopted or amended by majority vote of its members present at a duly held meeting of its members, and a copy thereof shall be filed with the commissioner. Such an insurer shall pay for its annual license and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner. The payment shall be made upon receipt of statements furnished by the commissioner.

(4) A fraternal mutual insurer may insure corporations, associations, and firms owned by and affiliated with such society and operated for the benefit of its members, and may insure corporations and firms a majority of whose shareholders or members are members of such society.

(5) A fraternal mutual insurer shall participate in and accept its equitable share of insurance to be issued to applicants under any assigned risk plan operating pursuant to RCW 48.22.020, and may participate in and accept its equitable share of insurance to be issued to applicants under any similar plan lawfully existing in any state in which the insurer is authorized to transact insurance, notwithstanding that the applicants are not otherwise qualified for insurance under subsection (4) of this section. Applicants who are not qualified by membership or otherwise for acceptance by the insurer, shall be so assigned to the insurer except to make up the deficiency, if any, between the number of qualified applicants available for assignment and the maximum quota of applicants to be assigned to the insurer within the current period.

(6) A fraternal mutual insurer doing business on the assessment premium plan:

(a) Shall be exempt also from the provisions of this chapter governing financial qualifications;

(b) Shall not be authorized to transact any kind of insurance other than property insurance, nor have authority to accept reinsurance.

(7) A fraternal mutual insurer doing business on the cash premium plan:

(a) May be authorized to transact additional kinds of insurance, other than life or title insurance, subject to the same requirements as to surplus funds and reserves as apply to domestic mutual insurers on the cash premium plan;

(b) May accept reinsurance only of such kinds of insurance as it is authorized to transact direct and only from insurers likewise affiliated with and composed solely of the members of the same designated fraternal society. [1987 c 366 § 39.]

48.36A.400 Fraternal mutual life insurers. (1) A mutual life insurer which is affiliated with and insures exclusively members of a specified fraternal society, which society conducts its business and secures its membership on the lodge system, having ritualistic work and ceremonies, is herein designated as a fraternal mutual life insurer.

(2) Such an insurer shall be subject to the applicable provisions of this title governing mutual life insurers except only as to the provisions relative to annual meeting, taxes, fees, and licenses. Such an insurer shall pay for its annual license

and filing its annual statement, the sum of ten dollars. Such an insurer shall pay the expense of examinations of it by the commissioner, upon statement furnished by the commissioner. [1987 c 366 § 40.]

48.36A.410 Review of commissioner's decisions and findings. All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review as provided in chapter 34.05 RCW. [1987 c 366 § 41.]

48.36A.900 Severability—1987 c 366. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1987 c 366 § 43.]

48.36A.901 Effective date—1987 c 366. This act shall take effect January 1, 1988. [1987 c 366 § 45.]

Chapter 48.37 RCW

MARKET CONDUCT OVERSIGHT

Sections

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48.37.005 Short title. This chapter may be known and cited as the market conduct oversight law. [2007 c 82 § 2.]

48.37.010 Purpose—Intent. (1) The purpose of this chapter is to establish a framework for the commissioner's market conduct actions, including:

(a) Processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants;

(b) Market conduct actions by the commissioner to substantiate such market conduct problems and a means to remedy significant market conduct problems; and

(c) Procedures to communicate and coordinate market conduct actions among state insurance regulators to foster the most efficient and effective use of resources.

(2) It is the intent of the legislature that the market analysis or market conduct process utilize available technology in the least intrusive and most cost-efficient manner to develop a baseline understanding of the marketplace and to identify

insurers or practices that deviate significantly from the norm or that pose a potential risk to the insurance consumer. It is also the intent of the legislature that this process include discretion for the commissioner to use market conduct examinations when the continuum of available market conduct actions have not sufficiently addressed issues concerning insurer activities in Washington, or when the continuum of available market conduct actions are not reasonably expected to address issues concerning insurer activities in Washington.

(3) It is further the intent of the legislature that the commissioner work with the national association of insurance commissioners toward development of an accreditation process for market conduct oversight and an effective process for domestic deference that creates protections for Washington consumers and efficient and effective regulation of the industry. [2007 c 82 § 3.]

48.37.020 Application. This chapter applies to all entities regulated by this title, and to all persons or entities acting as or holding themselves out as insurers in this state, unless otherwise exempted from the provisions of this title. [2007 c 82 § 4.]

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

(1) "Best practices organization" means insurance marketplace standards association or a similar generally recognized organization whose purpose and central mission is the promotion of high ethical standards in the insurance marketplace.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Complaint" means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction.

(4) "Insurer" means every person engaged in the business of making contracts of insurance and includes every such entity regardless of name which is regulated by this title. For purposes of this chapter, health care service contractors defined in chapter 48.44 RCW, health maintenance organizations defined in chapter 48.46 RCW, fraternal benefit societies defined in chapter 48.36A RCW, and self-funded multiple employer welfare arrangements defined in chapter 48.125 RCW are defined as insurers.

(5) "Market analysis" means a process whereby market conduct oversight personnel collect and analyze information from filed schedules, surveys, required reports, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.

(6) "Market conduct action" means any of the full range of activities that the commissioner may initiate to assess and address the market conduct practices of insurers admitted to do business in this state, and entities operating illegally in this state, beginning with market analysis and extending to examinations. The commissioner's activities to resolve an individual consumer complaint or other report of a specific instance

of misconduct are not market conduct actions for purposes of this chapter.

(7) "Market conduct oversight personnel" means those individuals employed or contracted by the commissioner to collect, analyze, review, or act on information on the insurance marketplace that identifies patterns or practices of insurers.

(8) "National association of insurance commissioners" (NAIC) has the same meaning as in RCW 48.02.140.

(9) "NAIC market regulation handbook" means the outline of the elements and objectives of market analysis developed and adopted by the NAIC, and the process by which states can establish and implement market analysis programs, and the set of guidelines developed and adopted by the NAIC that document established practices to be used by market conduct oversight personnel in developing and executing an examination, or a successor product.

(10) "NAIC market conduct uniform examination procedures" means the set of guidelines developed and adopted by the NAIC designed to be used by market conduct oversight personnel in conducting an examination, or a successor product.

(11) "NAIC standard data request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct oversight personnel in market analysis, market conduct examination, or other market conduct actions, or a successor product.

(12) "Qualified contract examiner" means a person under contract to the commissioner, who is qualified by education, experience, and, where applicable, professional designations, to perform market conduct actions.

(13)(a) "Market conduct examination" means the examination of the insurance operations of an insurer licensed to do business in this state and entities operating illegally in this state, in order to evaluate compliance with the applicable laws and regulations of this state. A market conduct examination may be either a comprehensive examination or a targeted examination. A market conduct examination is separate and distinct from a financial examination of any insurer performed pursuant to chapter 48.03, 48.44, or 48.46 RCW, but may be conducted at the same time.

(b) "Comprehensive market conduct examination" means a review of one or more lines of business of an insurer. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

(c) "Targeted examination" means a focused examination conducted for cause, based on the results of market analysis indicating the need to review either a specific line or lines of business, or specific business practices, including but not limited to: (i) Underwriting and rating; (ii) marketing and sales; (iii) complaint handling; (iv) operations and management; (v) advertising; (vi) licensing; (vii) policyholder services; (viii) nonforfeitures; (ix) claims handling; and (x) policy forms and filings. A targeted examination may be conducted by desk examination or by an on-site examination.

(d) "Desk examination" means an examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed at the commissioner's offices with the insurer providing

requested documents by hard copy, microfiche, discs, or other electronic media, for review.

(e) "On-site examination" means an examination conducted at the insurer's home office or the location where the records under review are stored.

(14) "Third-party model or product" means a model or product provided by an entity separate from and not under direct or indirect corporate control of the insurer using the model or product.

(15) "Insurance compliance self-evaluative audit" means a voluntary, internal evaluation, review, assessment, audit, or investigation for the purpose of identifying or preventing noncompliance with, or promoting compliance with laws, regulations, orders, or industry or professional standards, which is conducted by or on behalf of a company licensed or regulated under the insurance laws of this state, or which involves an activity regulated under this title.

(16) "Insurance compliance self-evaluative audit document" means documents prepared as a result of or in connection with an insurance compliance self-evaluative audit. An insurance compliance self-evaluative audit document may include:

(a) A written response to the findings of an insurance compliance self-evaluative audit;

(b) Any supporting information that is collected or developed for the primary purpose and in the course of an insurance compliance self-evaluative audit, including but not limited to field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, exhibits, computer-generated or electronically recorded information, phone records, maps, charts, graphs, and surveys;

(c) Any of the following:

(i) An insurance compliance self-evaluative audit report prepared by an auditor, who may be an employee of the company or an independent contractor, which may include the scope of the audit, the information gained in the audit, conclusions, and recommendations, with exhibits and appendices;

(ii) Memoranda and documents analyzing portions or all of the insurance compliance self-evaluative audit report and discussing potential implementation issues;

(iii) An implementation plan that addresses correcting past noncompliance, improving current compliance, and preventing future noncompliance; or

(iv) Analytic data generated in the course of conducting the insurance compliance self-evaluative audit. [2007 c 82 § 5.]

48.37.040 Market analysis procedures—Commissioner's duties—Rules. (1)(a) The commissioner shall collect and report market data information to the NAIC's market information systems, including the complaint database system, the examination tracking system, the regulatory retrieval system, other successor systems, or to additional systems as the commissioner determines is necessary for market analysis.

(b) Market data and information that is collected and maintained by the commissioner shall be compiled and submitted in a manner that meets the requirements of the NAIC and its systems.

(2)(a) Each entity subject to the provisions of this chapter shall file a market conduct annual statement or successor product, in the general form and context, in the time frame required by, and according to instructions provided by the NAIC, for each line of business written in the state of Washington. If a particular line of business does not have an approved market conduct annual statement form, the company is not required to file a report for that line of business until such time as [the] NAIC adopts an annual statement form for that line of business.

(b) The commissioner may, for good cause, grant an extension of time for filing a market conduct annual statement, if written application for extension is received at least five business days before the filing due date. Any insurer that fails to file its market conduct annual statement when due or by the end of any extension of time for filing, which the commissioner in his or her sole discretion may have granted, is subject to the penalty and enforcement provisions applicable to the insurer as found in the Washington insurance code.

(3)(a) The commissioner shall gather information from data currently available to the commissioner, surveys, required reports, information collected by the NAIC, other sources in both the public or private sectors, and information from within and outside the insurance industry. The commissioner may request insurers to submit data and information that is necessary to conduct market analysis and shall adopt rules that provide for access to records and compliance with the request, that do not cause undue burden or cost to the consumer or insurer.

(b) The information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The commissioner shall use the NAIC market regulation handbook as one resource in performing this analysis.

(c) The commissioner shall adopt by rule a process for verification by an insurer of Washington state-specific complaint information concerning that insurer before using the complaint information for market conduct surveillance purposes or transmitting it to NAIC databases after July 1, 2007.

(4)(a) If the commissioner determines, as a result of market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market actions may be considered before conducting a market conduct examination. The commissioner shall not be required to follow the exact sequence of market conduct actions in the continuum or to use all actions in the continuum. As part of the chosen continuum action, the commissioner must discuss with the insurer the data used to choose the option and provide the insurer with an opportunity for data verification at that time. These actions may include, but are not limited to:

(i) Correspondence with the insurer;

(ii) Insurer interviews;

(iii) Information gathering;

(iv) Policy and procedure reviews;

(v) Interrogatories;

(vi) Review of insurer self-evaluation and compliance programs. This may include consideration of the insurer's membership in a best practices organization, if the commissioner is satisfied that the organization's qualification process

is likely to provide reasonable assurance of compliance with pertinent insurance laws;

- (vii) Desk examinations; and
- (viii) Investigations.

(b) Except in extraordinary circumstances, the commissioner shall select the least intrusive and most cost-effective market conduct action that the commissioner determines will provide the necessary protections for consumers.

(5) The commissioner shall take those steps reasonably necessary to eliminate duplicative inquiries. The commissioner shall not request insurers to submit data or information provided as part of an insurer's annual financial statement, the annual market conduct statement of the NAIC, or other required schedules, surveys, or reports that are regularly submitted to the commissioner, or with data requests made by other states if that information is available to the commissioner, unless the information is state specific. The commissioner shall coordinate market conduct actions and findings with other state insurance regulators.

(6) For purposes of conducting an examination or other market conduct action on an insurer, the commissioner may examine or conduct a market conduct action on any managing general agent or other person, insofar as that examination or market conduct action is, in the sole discretion of the commissioner, necessary or material to the examination or market conduct action of the insurer. [2007 c 82 § 6.]

48.37.050 Protocols for market conduct actions—Rules—Report to the legislature. (1) Market conduct actions shall be taken as a result of market analysis and shall focus on the general business practices and compliance activities of insurers, rather than identifying obviously infrequent or unintentional random errors that do not cause significant consumer harm.

(2)(a) The commissioner is authorized to determine the frequency and timing of such market conduct actions. The timing shall depend upon the specific market conduct action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.

(b) If the commissioner has information that more than one insurer is engaged in common practices that may violate statutes or rules, the commissioner may schedule and coordinate multiple examinations simultaneously.

(3) The insurer shall be given reasonable opportunity to resolve matters that arise as a result of a market analysis to the satisfaction of the commissioner before any additional market conduct actions are taken against the insurer.

(4) The commissioner shall adopt by rule, under chapter 34.05 RCW, procedures and documents that are substantially similar to the NAIC work products defined or referenced in this chapter. Market analysis, market conduct actions, and market conduct examinations shall be performed in accordance with the rule.

(5) At the beginning of the next legislative session after the adoption of the rules adopted under the authority of this section, the commissioner shall report to the appropriate policy committees of the legislature what rules were adopted; what statutory policies these rules were intended to implement; and such other matters as are indicated for the legislature's understanding of the role played by the NAIC in regu-

lation of the insurance industry of Washington. [2007 c 82 § 7.]

48.37.060 Market conduct examinations—Procedures—Final orders—Fees. (1) When the commissioner determines that other market conduct actions identified in RCW 48.37.040(4)(a) have not sufficiently addressed issues raised concerning company activities in Washington state, the commissioner has the discretion to conduct market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market regulation handbook.

(2)(a) In lieu of an examination of an insurer licensed in this state, the commissioner shall accept an examination report of another state, unless the commissioner determines that the other state does not have laws substantially similar to those of this state, or does not have a market oversight system that is comparable to the market conduct oversight system set forth in this law.

(b) The commissioner's determination under (a) of this subsection is discretionary with the commissioner and is not subject to appeal.

(c) If the insurer to be examined is part of an insurance holding company system, the commissioner may also seek to simultaneously examine any affiliates of the insurer under common control and management which are licensed to write the same lines of business in this state.

(3) Before commencement of a market conduct examination, market conduct oversight personnel shall prepare a work plan consisting of the following:

- (a) The name and address of the insurer being examined;
- (b) The name and contact information of the examiner-in-charge;
- (c) The name of all market conduct oversight personnel initially assigned to the market conduct examination;
- (d) The justification for the examination;
- (e) The scope of the examination;
- (f) The date the examination is scheduled to begin;
- (g) Notice of any noninsurance department personnel who will assist in the examination;
- (h) A time estimate for the examination;
- (i) A budget for the examination if the cost of the examination is billed to the insurer; and
- (j) An identification of factors that will be included in the billing if the cost of the examination is billed to the insurer.

(4)(a) Within ten days of the receipt of the information contained in subsection (3) of this section, insurers may request the commissioner's discretionary review of any alleged conflict of interest, pursuant to RCW 48.37.090(2), of market conduct oversight personnel and noninsurance department personnel assigned to a market conduct examination. The request for review shall specifically describe the alleged conflict of interest in the proposed assignment of any person to the examination.

(b) Within five business days of receiving a request for discretionary review of any alleged conflict of interest in the proposed assignment of any person to a market conduct examination, the commissioner or designee shall notify the insurer of any action regarding the assignment of personnel to a market conduct examination based on the insurer's allegation of conflict of interest.

(5) Market conduct examinations shall, to the extent feasible, use desk examinations and data requests before an on-site examination.

(6) Market conduct examinations shall be conducted in accordance with the provisions set forth in the NAIC market regulation handbook and the NAIC market conduct uniform examinations procedures, subject to the precedence of the provisions of chapter 82, Laws of 2007.

(7) The commissioner shall use the NAIC standard data request.

(8) Announcement of the examination shall be sent to the insurer and posted on the NAIC's examination tracking system as soon as possible but in no case later than sixty days before the estimated commencement of the examination, except where the examination is conducted in response to extraordinary circumstances as described in RCW 48.37.050(2)(a). The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.

(9) If an examination is expanded significantly beyond the original reasons provided to the insurer in the notice of the examination required by subsection (3) of this section, the commissioner shall provide written notice to the insurer, explaining the expansion and reasons for the expansion. The commissioner shall provide a revised work plan if the expansion results in significant changes to the items presented in the original work plan required by subsection (3) of this section.

(10) The commissioner shall conduct a preexamination conference with the insurer examination coordinator and key personnel to clarify expectations at least thirty days before commencement of the examination, unless otherwise agreed by the insurer and the commissioner.

(11) Before the conclusion of the field work for market conduct examination, the examiner-in-charge shall review examination findings to date with insurer personnel and schedule an exit conference with the insurer, in accordance with procedures in the NAIC market regulation handbook.

(12)(a) No later than sixty days after completion of each market conduct examination, the commissioner shall make a full written report of each market conduct examination containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts.

(b) The report shall be certified by the commissioner or by the examiner-in-charge of the examination, and shall be filed in the commissioner's office subject to (c) of this subsection.

(c) The commissioner shall furnish a copy of the market conduct examination report to the person examined not less than ten days and, unless the time is extended by the commissioner, not more than thirty days prior to the filing of the report for public inspection in the commissioner's office. If the person so requests in writing within such period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(d) Within thirty days of the end of the period described in (c) of this subsection, unless extended by order of the commissioner, the commissioner shall consider the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order:

(i) Adopting the market conduct examination report as filed or with modification or corrections. If the market conduct examination report reveals that the company is operating in violation of any law, rule, or order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation;

(ii) Rejecting the market conduct examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refile under this subsection; or

(iii) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.

(e) All orders entered under (d) of this subsection must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the market conduct examination report, relevant examiner work papers, and any written submissions or rebuttals. The order is considered a final administrative decision and may be appealed under the administrative procedure act, chapter 34.05 RCW, and must be served upon the company by certified mail or certifiable electronic means, together with a copy of the adopted examination report. A copy of the adopted examination report must be sent by certified mail or certifiable electronic means to each director at the director's residential address or to a personal e-mail account.

(f)(i) Upon the adoption of the market conduct examination report under (d) of this subsection, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of five days except that the order may be disclosed to the person examined. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

(ii) If the commissioner determines that regulatory action is appropriate as a result of any market conduct examination, he or she may initiate any proceedings or actions as provided by law.

(iii) Nothing contained in this subsection requires the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(g) The insurer's response shall be included in the commissioner's order adopting the final report as an exhibit to the order. The insurer is not obligated to submit a response.

(13) The commissioner may withhold from public inspection any examination or investigation report for so long as he or she deems it advisable.

(14)(a) Market conduct examinations within this state of any insurer domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees shall, except as to

fees, mileage, and expense incurred as to witnesses, be at the expense of the state.

(b) Every other examination, whatsoever, or any part of the market conduct examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by the commissioner and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.

(c) When making a market conduct examination under this chapter, the commissioner may contract, in accordance with applicable state contracting procedures, for qualified attorneys, appraisers, independent certified public accountants, contract actuaries, and other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter, as examiners as the commissioner deems necessary for the efficient conduct of a particular examination. The compensation and per diem allowances paid to such contract persons shall be reasonable in the market and time incurred, shall not exceed one hundred twenty-five percent of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the national association of insurance commissioners, unless the commissioner demonstrates that one hundred twenty-five percent is inadequate under the circumstances of the examination, and subject to the provisions of (a) of this subsection.

(d)(i) The person examined and liable shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expenses allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem, salary, and expenses for employees examining insurers domiciled outside the state of Washington shall be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the director of the Washington department of personnel and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.

(ii) The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(iii) Market conduct examination fees subject to being reimbursed by an insurer shall be itemized and bills shall be provided to the insurer on a monthly basis for review prior to submission for payment, or as otherwise provided by state law.

(e) Nothing contained in this chapter limits the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions

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made pursuant to any examination are prima facie evidence in any legal or regulatory action.

(f) The commissioner shall maintain active management and oversight of market conduct examination costs, including costs associated with the commissioner's own examiners, and with retaining qualified contract examiners necessary to perform an examination. Any agreement with a contract examiner shall:

(i) Clearly identify the types of functions to be subject to outsourcing;

(ii) Provide specific timelines for completion of the outsourced review;

(iii) Require disclosure to the insurer of contract examiners' recommendations;

(iv) Establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and

(v) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.

(g) The commissioner, or the commissioner's designee, shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer. [2008 c 100 § 2; 2007 c 82 § 8.]

48.37.070 Access to records and information—Commissioner's authority—Depositions, subpoena, and oaths.

(1) Except as otherwise provided by law, market conduct oversight personnel shall have free, convenient, and full access to all books, records, employees, officers, and directors, as practicable, of the insurer during regular business hours.

(2) An insurer using a third-party model or product for any of the activities under examination shall cause, upon the request of market conduct oversight personnel, the details of such models or products to be made available to such personnel.

(3) Each officer, director, employee, and agent of an insurer shall facilitate and aid in a market conduct action or examination.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner, any employee of the office of the insurance commissioner, or any agent retained by the office of the insurance commissioner to assist in the market conduct examination under this chapter.

(5)(a) The commissioner may take depositions, subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and adjudicative proceedings.

(b) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.

(c) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testi-

mony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(d) Enforcement of subpoenas shall be in accordance with RCW 34.05.588.

(6) In order to assist in the performance of the commissioner's duties, the commissioner may:

(a) Share documents, materials, market conduct examination reports, preliminary market conduct examination reports, and other matters related to such reports, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with other state, federal, and international regulatory agencies and law enforcement authorities, and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and asserts that it has the legal authority to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(b) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing the sharing and use of information consistent with this subsection. [2007 c 82 § 9.]

48.37.080 Confidentiality. (1) All data and documents, including but not limited to working papers, third-party models or products, complaint logs, and copies thereof, created, produced, or obtained by or disclosed to the commissioner, the commissioner's authorized representative, or an examiner appointed by the commissioner in the course of any market conduct actions or examinations made under this chapter, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this chapter, to the extent the documents are in the possession of the commissioner or the NAIC, shall be confidential by law and privileged, shall not be subject to the provisions of chapter 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(2) If the commissioner elects to issue a report of an examination, a preliminary or draft market conduct examination report is confidential and not subject to disclosure by the commissioner nor is it subject to subpoena or discovery. This subsection does not limit the commissioner's authority to use a preliminary or draft market conduct examination report and related information in furtherance of any legal or regulatory action, or to release it in accordance with the provisions of RCW 48.02.065.

(3) An insurance compliance self-evaluative audit document in the possession of the commissioner is confidential by law and privileged, and shall not be:

(a) Made public by the commissioner;

(b) Subject to the provisions of chapter 42.56 RCW;

(c) Subject to subpoena; and

(d) Subject to discovery and admissible in evidence in any private civil action.

(4) Neither the disclosure of any self-evaluative audit document to the commissioner or to the commissioner's designee nor the citation to this document in connection with an agency action shall constitute a waiver of any privilege that may otherwise apply. [2007 c 82 § 10.]

48.37.090 Market conduct oversight personnel. (1) Market conduct oversight personnel shall be qualified by education, experience, and, where applicable, professional designations. The commissioner may supplement the in-house market conduct oversight staff with qualified outside professional assistance if the commissioner determines that the assistance is necessary.

(2) Market conduct oversight personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management of, and have, within five years of any market conduct action, been employed by, or own a pecuniary interest in the insurer, subject to any examination under this chapter. This section shall not be construed to automatically preclude an individual from being:

(a) A policyholder or claimant under an insurance policy;

(b) A grantor of a mortgage or similar instrument on the individual's residence from a regulated entity, if done under customary terms and in the ordinary course of business;

(c) An investment owner in shares of regulated diversified investment companies; or

(d) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed. [2007 c 82 § 11.]

48.37.100 Immunity for the commissioner, market conduct oversight personnel, authorized representatives, and examiners. (1) No cause of action shall arise, nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, market conduct oversight personnel, or an examiner appointed by the commissioner for any statements made, or conduct performed in good faith while carrying out the provisions of this chapter.

(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative, market conduct oversight personnel, or examiner, under an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(3) A person identified in subsection (1) of this section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) If a claim is made or threatened as described in subsection (1) of this section, the commissioner shall provide or pay for the defense of himself or herself, the examiner or representative, and shall pay a judgment or settlement, until it is determined that the person did not act in good faith or did act with fraudulent intent or the intent to deceive.

(5) The immunity, indemnification, and other protections under this section are in addition to those now or hereafter existing under other law.

(6) This section does not abrogate or modify in any way any common law or statutory privilege or immunity, now or hereafter existing under this section or other law, enjoyed by any person identified in subsection (1) of this section. [2007 c 82 § 12.]

48.37.110 Fines and penalties. (1) Fines and penalties, applicable to the insurer as found in the Washington insurance code, levied as a result of a market conduct action or examination shall be consistent, reasonable, and justified.

(2) The commissioner shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best practices organizations, and the extent to which insurers maintain regulatory compliance programs to self-assess, self-report, and remediate problems detected, and may include those considerations in determining the appropriate fines or penalties levied in accordance with subsection (1) of this section.

(3) Commissioner enforcement actions shall not be based solely on violations identified in the insurer self-evaluative audit document, unless the commissioner confirms both that the violations occurred and that the insurer has not taken reasonable action based on the self-evaluative audit document to resolve and remediate the identified violations. [2007 c 82 § 13.]

48.37.120 Dispute resolution—Rules. (1) At any point in the market analysis, the insurer may request a review and resolution of issues by identifying the issues either orally or in writing to the market conduct oversight manager, or deputy insurance commissioner responsible for market conduct oversight. At each level, a response to the insurer shall be provided within five business days.

(2) At any point in the market conduct examination, the insurer may request a review and resolution of issues either orally or in writing to the market conduct oversight manager, or deputy insurance commissioner responsible for market conduct oversight. At each level, a response to the insurer shall be provided within five business days. This authorization for dispute resolution shall be secondary to the specific procedures set forth in RCW 48.37.060.

(3) After the deputy insurance commissioner responsible for market conduct oversight has responded to an insurer's issues, the insurer may request mediation of the issues. The insurance commissioner shall adopt by rule a process to govern mediation of insurer market conduct oversight issues. That rule shall:

(a) Provide for the selection by the commissioner of a panel of preapproved mediators;

(b) Require that insurers, upon notice of the start of a market analysis process or the start of a market conduct

examination, identify from the preapproved list a mediator and an alternative mediator;

(c) Require the party requesting mediation to pay the costs of the mediator; and

(d) Provide for other rule provisions as are reasonably necessary for the efficient operation of a mediation process.

(4) At any point in the dispute resolution process contained in this section, the insurer may commence an adjudicative proceeding under chapters 48.04 and 34.05 RCW. [2007 c 82 § 14.]

48.37.130 Coordination with other state insurance regulators through the NAIC. (1) The commissioner shall share information and coordinate the commissioner's market analysis, market conduct actions, and examination efforts with other state insurance regulators. Such matters will be coordinated in accordance with guidelines adopted by the NAIC.

(2)(a) If a market conduct examination or action performed by another state insurance regulator results in a finding that an insurer should modify a specific practice or procedure, the commissioner shall, in lieu of conducting a market conduct action or examination, accept verification that the insurer made a similar modification in this state, unless the commissioner determines that the other state does not have laws substantially similar to those of this state, or does not have a market conduct oversight system that is comparable to the market conduct oversight system set forth in this chapter.

(b) The commissioner's determination under (a) of this subsection is discretionary with the commissioner and is not subject to appeal. [2007 c 82 § 15.]

48.37.140 Additional duties of the commissioner. (1) The commissioner shall designate a specific person or persons within the commissioner's office whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws or rules by their employers, as defined in this chapter. These persons shall be provided with proper training on the handling of such information. The information shall be confidential and not open to public inspection.

(2) At least once per year, or more frequently if deemed necessary, the commissioner shall make available in an appropriate manner to insurers and other entities subject to the scope of this title, information on new laws and regulations, enforcement actions, and other information the commissioner deems pertinent to ensure compliance with market conduct requirements. [2007 c 82 § 16.]

48.37.900 Captions not law. Captions used in this chapter are not any part of the law. [2007 c 82 § 18.]

Chapter 48.38 RCW

CHARITABLE GIFT ANNUITY BUSINESS

Sections

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| 48.38.010 | Certificate of exemption—Qualification for—Application, contents—Minimum unrestricted net assets—"Qualified actuary" defined. |
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48.38.010 Certificate of exemption—Qualification for—Application, contents—Minimum unrestricted net assets—"Qualified actuary" defined. The commissioner may grant a certificate of exemption to any insurer or educational, religious, charitable, or scientific institution conducting a charitable gift annuity business:

(1) Which is organized and operated exclusively as, or for the purpose of aiding, an educational, religious, charitable, or scientific institution which is organized as a nonprofit organization without profit to any person, firm, partnership, association, corporation, or other entity;

(2) Which possesses a current tax exempt status under the laws of the United States;

(3) Which serves such purpose by issuing charitable gift annuity contracts only for the benefit of such educational, religious, charitable, or scientific institution;

(4) Which appoints the insurance commissioner as its true and lawful attorney upon whom may be served lawful process in any action, suit, or proceeding in any court, which appointment shall be irrevocable, shall bind the insurer or institution or any successor in interest, shall remain in effect as long as there is in force in this state any contract made or issued by the insurer or institution, or any obligation arising therefrom, and shall be processed in accordance with RCW 48.05.210;

(5) Which is fully and legally organized and qualified to do business and has been actively doing business under the laws of the state of its domicile for a period of at least three years prior to its application for a certificate of exemption;

(6) Which has and maintains minimum unrestricted net assets of five hundred thousand dollars. "Unrestricted net assets" means the excess of total assets over total liabilities that are neither permanently restricted nor temporarily restricted by donor-imposed stipulations;

(7) Which files with the insurance commissioner its application for a certificate of exemption showing:

(a) Its name, location, and organization date;

(b) The kinds of charitable annuities it proposes to offer;

(c) A statement of the financial condition, management, and affairs of the organization and any affiliate thereof, as that term is defined in RCW 48.31B.005, on a form satisfactory to, or furnished by the insurance commissioner;

(d) Such other documents, stipulations, or information as the insurance commissioner may reasonably require to evidence compliance with the provisions of this chapter;

(8) Which subjects itself and any affiliate thereof, as that term is defined in RCW 48.31B.005, to periodic examinations conducted under chapter 48.03 RCW as may be deemed necessary by the insurance commissioner;

(9) Which files with the insurance commissioner for the commissioner's advance approval a copy of any policy or

contract form to be offered or issued to residents of this state. The grounds for disapproval of the policy or contract form shall be those set forth in RCW 48.18.110; and

(10) Which:

(a) Files with the insurance commissioner on or before March 1 of each year a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, including the annual statement or other such financial materials as may be requested relating to any affiliate, as that term is defined in RCW 48.31B.005; and

(b) Coincident with the filing of its annual statement, pays an annual filing fee of twenty-five dollars plus five dollars for each charitable gift annuity contract written for residents of this state during the previous calendar year; and

(c) Which includes on or attaches to the first page of the annual statement the statement of a qualified actuary setting forth the actuary's opinion relating to annuity reserves and other actuarial items. "Qualified actuary" as used in this subsection means a member in good standing of the American academy of actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the insurance regulatory official of the domiciliary state. [1998 c 284 § 1; 1979 c 130 § 6.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.012 Minimum unrestricted net assets required.

After June 30, 1998, an insurer or institution which does not have the minimum unrestricted net assets required by RCW 48.38.010(6) may not issue any new charitable gift annuities until the insurer or institution has and maintains the minimum unrestricted net assets required by RCW 48.38.010(6). [1998 c 284 § 7.]

48.38.020 Separate reserve fund—Treatment of assets—Minimum amounts—Revocation of certificate upon violation—Purchase of single premium life annuity.

(1) Upon granting to such insurer or institution under RCW 48.38.010 a certificate of exemption to conduct a charitable gift annuity business, the insurance commissioner shall require it to establish and maintain a separate reserve fund adequate to meet the future payments under its charitable gift annuity contracts.

(2) The assets of the separate reserve fund:

(a) Shall be held legally and physically segregated from the other assets of the certificate of exemption holder;

(b) Shall be invested in the same manner that persons of reasonable prudence, discretion, and intelligence exercise in the management of a like enterprise, not in regard to speculating but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Investments shall be of sufficient value, liquidity, and diversity to assure the insurer or institution's ability to meet its outstanding obligations; and

(c) Shall not be liable for any debts of the insurer or institution holding a certificate of exemption under this chapter, other than those incurred pursuant to the issuance of charitable gift annuities.

(3) The amount of the separate reserve fund shall be:

(a) For contracts issued prior to July 1, 1998, not less than an amount computed in accordance with the standard of valuation based on the 1971 individual annuity mortality table with six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity contracts;

(b) For contracts issued on or after July 1, 1998, in an amount not less than the aggregate reserves calculated according to the standards set forth in RCW 48.74.030 for other annuities with no cash settlement options;

(c) Plus a surplus of ten percent of the combined amounts under (a) and (b) of this subsection.

(4) The general assets of the insurer or institution holding a certificate of exemption under this chapter shall be liable for the payment of annuities to the extent that the separate reserve fund is inadequate.

(5) For any failure on its part to establish and maintain the separate reserve fund, the insurance commissioner shall revoke its certificate of exemption.

(6) If an institution holding a certificate of exemption under RCW 48.38.010 has purchased a single premium life annuity that pays the entire amount stipulated in the gift annuity agreement or agreements from an insurer (a) holding a certificate of authority under chapter 48.05 RCW, (b) licensed in the state in which the institution has its principle office, and (c) licensed in the state in which the single premium life annuity is issued, then in determining the minimum reserve fund that must be maintained under this section, a deduction shall be allowed from the minimum reserve fund in an amount not exceeding the reserve fund amount required for the annuity or annuities for which the single premium life annuity is purchased, subject to the following conditions:

(i) The institution has filed with the commissioner a copy of the single premium life annuity purchased and specifying which charitable gift annuity or annuities are being insured; and

(ii) The institution has entered into a written agreement with the annuitant and the insurer issuing the single premium life annuity providing that if for any reason the institution is unable to continue making the annuity payments required by its annuity agreements, the annuitants shall receive payments directly from the insurer and the insurer shall be credited with all of these direct payments in the accounts between the insurer and the institution. [2002 c 295 § 1; 1998 c 284 § 2; 1979 c 130 § 7.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.030 Charitable annuity contract or policy form—Contents. Each charitable annuity contract or policy form must include the following information:

(1) The value of the property to be transferred;

(2) The amount of the annuity to be paid to the transferor or the transferor's nominee;

(3) The manner in which and the intervals at which payment is to be made;

(4) The age of the person during whose life payment is to be made; and

(5) The reasonable value as of the date of the agreement of the benefits created. This value may not exceed by more than fifteen percent the net single premium for the benefits,

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determined according to the standard of valuation set forth in RCW 48.38.020(3). [2005 c 223 § 24; 1979 c 130 § 8.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.040 Certificate holder exempt from certain title provisions—Chapter 48.31 RCW applies. (1) An insurer or institution holding a certificate of exemption under this chapter shall be exempt from all other provisions of this title except as specifically enumerated in this chapter by reference.

(2) An insurer or institution holding a certificate of exemption under this chapter is subject to chapter 48.31 RCW. [1998 c 284 § 3; 1979 c 130 § 9.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.042 Certificate holder—Variable annuity business prohibited. An insurer or institution holding a certificate of exemption to issue charitable gift annuities under this chapter shall not transact or be authorized to transact a variable annuity business as described in chapter 48.18A RCW. [1998 c 284 § 5.]

48.38.050 Grounds for denial, revocation, or suspension of certificate of exemption—Fine may be levied. (1) The insurance commissioner may refuse to grant, or may revoke or suspend, a certificate of exemption if the insurance commissioner finds that the insurer or institution does not meet the requirements of this chapter or if the insurance commissioner finds that the insurer or institution has violated RCW 48.01.030 or any provisions of chapter 48.30 RCW or is found by the insurance commissioner to be in such condition that its further issuance of charitable gift annuities would be hazardous to annuity contract holders and the people of this state.

(2) After hearing or with the consent of the insurer or institution and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of exemption, the commissioner may levy a fine upon the insurer or institution in an amount not more than ten thousand dollars. The order levying such a fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay such a fine when due the commissioner shall revoke the certificate of exemption of the insurer or institution if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1998 c 284 § 4; 1979 c 130 § 10.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.060 Hearings and appeals provisions inapplicable. For purposes of this chapter, the provisions of chapter 48.04 RCW are applicable. [1979 c 130 § 11.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.070 Enforcement powers and duties. For the purposes of this chapter, the insurance commissioner has the

same powers and duties of enforcement as are provided in RCW 48.02.080. [1979 c 130 § 12.]

Severability—1979 c 130: See note following RCW 28B.10.485.

48.38.075 Rules. The commissioner may adopt rules to implement and administer this chapter. [1998 c 284 § 6.]

Chapter 48.41 RCW

HEALTH INSURANCE COVERAGE ACCESS ACT

Sections

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48.41.010 Short title. This chapter shall be known and may be cited as the "Washington state health insurance coverage access act". [1987 c 431 § 1.]

48.41.020 Intent. It is the purpose and intent of the legislature to provide access to health insurance coverage to all residents of Washington who are denied health insurance. It is the intent of the Washington state health insurance coverage access act to provide a mechanism to ensure the availability of comprehensive health insurance to persons unable to obtain such insurance coverage on either an individual or group basis directly under any health plan. [2000 c 79 § 5; 1987 c 431 § 2.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

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

(1) "Accounting year" means a twelve-month period determined by the board for purposes of record-keeping and accounting. The first accounting year may be more or less than twelve months and, from time to time in subsequent years, the board may order an accounting year of other than

twelve months as may be required for orderly management and accounting of the pool.

(2) "Administrator" means the entity chosen by the board to administer the pool under RCW 48.41.080.

(3) "Board" means the board of directors of the pool.

(4) "Commissioner" means the insurance commissioner.

(5) "Covered person" means any individual resident of this state who is eligible to receive benefits from any member, or other health plan.

(6) "Health care facility" has the same meaning as in RCW 70.38.025.

(7) "Health care provider" means any physician, facility, or health care professional, who is licensed in Washington state and entitled to reimbursement for health care services.

(8) "Health care services" means services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(9) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(10) "Health coverage" means any group or individual disability insurance policy, health care service contract, and health maintenance agreement, except those contracts entered into for the provision of health care services pursuant to Title XVIII of the Social Security Act, 42 U.S.C. Sec. 1395 et seq. The term does not include short-term care, long-term care, dental, vision, accident, fixed indemnity, disability income contracts, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of the worker's compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(11) "Health plan" means any arrangement by which persons, including dependents or spouses, covered or making application to be covered under this pool, have access to hospital and medical benefits or reimbursement including any group or individual disability insurance policy; health care service contract; health maintenance agreement; uninsured arrangements of group or group-type contracts including employer self-insured, cost-plus, or other benefit methodologies not involving insurance or not governed by Title 48 RCW; coverage under group-type contracts which are not available to the general public and can be obtained only because of connection with a particular organization or group; and coverage by medicare or other governmental benefits. This term includes coverage through "health coverage" as defined under this section, and specifically excludes those types of programs excluded under the definition of "health coverage" in subsection (10) of this section.

(12) "Medical assistance" means coverage under Title XIX of the federal Social Security Act (42 U.S.C., Sec. 1396 et seq.) and chapter 74.09 RCW.

(13) "Medicare" means coverage under Title XVIII of the Social Security Act, (42 U.S.C. Sec. 1395 et seq., as amended).

(14) "Member" means any commercial insurer which provides disability insurance or stop loss insurance, any health care service contractor, any health maintenance organization licensed under Title 48 RCW, and any self-funded multiple employer welfare arrangement as defined in RCW

48.125.010. "Member" also means the Washington state health care authority as issuer of the state uniform medical plan. "Member" shall also mean, as soon as authorized by federal law, employers and other entities, including a self-funding entity and employee welfare benefit plans that provide health plan benefits in this state on or after May 18, 1987. "Member" does not include any insurer, health care service contractor, or health maintenance organization whose products are exclusively dental products or those products excluded from the definition of "health coverage" set forth in subsection (10) of this section.

(15) "Network provider" means a health care provider who has contracted in writing with the pool administrator or a health carrier contracting with the pool administrator to offer pool coverage to accept payment from and to look solely to the pool or health carrier according to the terms of the pool health plans.

(16) "Plan of operation" means the pool, including articles, by-laws, and operating rules, adopted by the board pursuant to RCW 48.41.050.

(17) "Point of service plan" means a benefit plan offered by the pool under which a covered person may elect to receive covered services from network providers, or nonnetwork providers at a reduced rate of benefits.

(18) "Pool" means the Washington state health insurance pool as created in RCW 48.41.040. [2004 c 260 § 25; 2001 c 196 § 2; 2000 c 79 § 6; 1997 c 337 § 6; 1997 c 231 § 210; 1989 c 121 § 1; 1987 c 431 § 3.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.037 Washington state health insurance pool account. The Washington state health insurance pool account is created in the custody of the state treasurer. All receipts from moneys specifically appropriated to the account must be deposited in the account. Expenditures from this account shall be used to cover deficits incurred by the Washington state health insurance pool under this chapter in excess of the threshold established in this section. To the extent funds are available in the account, funds shall be expended from the account to offset that portion of the deficit that would otherwise have to be recovered by imposing an assessment on members in excess of a threshold of seventy cents per insured person per month. The commissioner shall authorize expenditures from the account, to the extent that funds are available in the account, upon certification by the pool board that assessments will exceed the threshold level established in this section. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Whether the assessment has reached the threshold of seventy cents per insured person per month shall be determined by dividing the total aggregate amount of assessment by the proportion of total assessed members. Thus, stop loss members shall be counted as one-tenth of a whole member in the denominator given that is the amount they are assessed

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proportionately relative to a fully insured medical member. [2007 c 259 § 29; 2000 c 79 § 36.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.040 Health insurance pool—Creation, membership, organization, operation, rules. (1) There is created a nonprofit entity to be known as the Washington state health insurance pool. All members in this state on or after May 18, 1987, shall be members of the pool. When authorized by federal law, all self-insured employers shall also be members of the pool.

(2) Pursuant to chapter 34.05 RCW the commissioner shall, within ninety days after May 18, 1987, give notice to all members of the time and place for the initial organizational meetings of the pool. A board of directors shall be established, which shall be comprised of ten members. The governor shall select one member of the board from each list of three nominees submitted by statewide organizations representing each of the following: (a) Health care providers; (b) health insurance agents; (c) small employers; and (d) large employers. The governor shall select two members of the board from a list of nominees submitted by statewide organizations representing health care consumers. In making these selections, the governor may request additional names from the statewide organizations representing each of the persons to be selected if the governor chooses not to select a member from the list submitted. The remaining four members of the board shall be selected by election from among the members of the pool. The elected members shall, to the extent possible, include at least one representative of health care service contractors, one representative of health maintenance organizations, and one representative of commercial insurers which provides disability insurance. The members of the board shall elect a chair from the voting members of the board. The insurance commissioner shall be a nonvoting, ex officio member. When self-insured organizations other than the Washington state health care authority become eligible for participation in the pool, the membership of the board shall be increased to eleven and at least one member of the board shall represent the self-insurers.

(3) The original members of the board of directors shall be appointed for intervals of one to three years. Thereafter, all board members shall serve a term of three years. Board members shall receive no compensation, but shall be reimbursed for all travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall submit to the commissioner a plan of operation for the pool and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the pool. The commissioner shall, after notice and hearing pursuant to chapter 34.05 RCW, approve the plan of operation if it is determined to assure the fair, reasonable, and equitable administration of the pool and provides for the sharing of pool losses on an equitable, proportionate basis among the members of the pool. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this chapter must be made available. If the board

fails to submit a plan of operation within one hundred eighty days after the appointment of the board or any time thereafter fails to submit acceptable amendments to the plan, the commissioner shall, within ninety days after notice and hearing pursuant to chapters 34.05 and 48.04 RCW, adopt such rules as are necessary or advisable to effectuate this chapter. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board and approved by the commissioner. [2000 c 80 § 1; 2000 c 79 § 7; 1989 c 121 § 2; 1987 c 431 § 4.]

Board of directors—Dissolved—New members—2000 c 79: "Sixty days from March 23, 2000, the existing board of directors of the Washington state health insurance pool shall be dissolved, and the appointment or election of new members under RCW 48.41.040 shall be effective. For purposes of setting terms, the new members shall be treated as original members." [2000 c 79 § 8.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.050 Operation plan—Contents. The plan of operation submitted by the board to the commissioner shall:

- (1) Establish procedures for the handling and accounting of assets and moneys of the pool;
- (2) Establish regular times and places for meetings of the board of directors;
- (3) Establish procedures for records to be kept of all financial transactions and for an annual fiscal reporting to the commissioner;
- (4) Contain additional provisions necessary and proper for the execution of the powers and duties of the pool;
- (5) Establish procedures for the collection of assessments from all members to provide for claims paid under the plan and for administrative expenses incurred or estimated to be incurred during the period for which the assessment is made;
- (6) Establish the amount of assessment pursuant to RCW 48.41.060, which shall occur after March 1st of each calendar year, and which shall be due and payable within thirty days of the receipt of the assessment notice;
- (7) Select an administrator in accordance with RCW 48.41.080;
- (8) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment, and to maintain public awareness of the plan; and
- (9) Establish procedures under which applicants and participants may have grievances reviewed by an impartial body and reported to the board. [1987 c 431 § 5.]

48.41.060 Board powers and duties. (Effective until July 1, 2009.) (1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or provide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a

system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every eighteen months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assessment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or

(B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance agent licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW. [2005 c 7 § 2; 2004 c 260 § 26; 2000 c 79 § 9; 1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

Effective date—2005 c 7: See note following RCW 48.14.0201.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Report on implementation of 1987 c 431: "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

48.41.060 Board powers and duties. (Effective July 1, 2009.) (1) The board shall have the general powers and authority granted under the laws of this state to insurance companies, health care service contractors, and health maintenance organizations, licensed or registered to offer or pro-

vide the kinds of health coverage defined under this title. In addition thereto, the board shall:

(a) Designate or establish the standard health questionnaire to be used under RCW 48.41.100 and 48.43.018, including the form and content of the standard health questionnaire and the method of its application. The questionnaire must provide for an objective evaluation of an individual's health status by assigning a discreet measure, such as a system of point scoring to each individual. The questionnaire must not contain any questions related to pregnancy, and pregnancy shall not be a basis for coverage by the pool. The questionnaire shall be designed such that it is reasonably expected to identify the eight percent of persons who are the most costly to treat who are under individual coverage in health benefit plans, as defined in RCW 48.43.005, in Washington state or are covered by the pool, if applied to all such persons;

(b) Obtain from a member of the American academy of actuaries, who is independent of the board, a certification that the standard health questionnaire meets the requirements of (a) of this subsection;

(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every eighteen months. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, claim reserve formulas and any other actuarial functions appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience, and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial underwriting practices consistent with Washington state individual plan rating requirements under RCW 48.44.022 and 48.46.064;

(e)(i) Assess members of the pool in accordance with the provisions of this chapter, and make advance interim assessments as may be reasonable and necessary for the organizational or interim operating expenses. Any interim assessments will be credited as offsets against any regular assessments due following the close of the year.

(ii) Self-funded multiple employer welfare arrangements are subject to assessment under this subsection only in the event that assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the commissioner shall initially request an advisory opinion from the United States department of labor or obtain a declaratory ruling from a federal court on the legality of imposing assessments on these arrangements before imposing the assess-

ment. Once the legality of the assessments has been determined, the multiple employer welfare arrangement certified by the insurance commissioner must begin payment of these assessments.

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

(f) Issue policies of health coverage in accordance with the requirements of this chapter;

(g) Establish procedures for the administration of the premium discount provided under RCW 48.41.200(3)(a)(iii);

(h) Contract with the Washington state health care authority for the administration of the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii);

(i) Set a reasonable fee to be paid to an insurance producer licensed in Washington state for submitting an acceptable application for enrollment in the pool; and

(j) Provide certification to the commissioner when assessments will exceed the threshold level established in RCW 48.41.037.

(2) In addition thereto, the board may:

(a) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this chapter including the authority, with the approval of the commissioner, to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Sue or be sued, including taking any legal action as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(c) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the pool, policy, and other contract design, and any other function within the authority of the pool; and

(d) Conduct periodic audits to assure the general accuracy of the financial data submitted to the pool, and the board shall cause the pool to have an annual audit of its operations by an independent certified public accountant.

(3) Nothing in this section shall be construed to require or authorize the adoption of rules under chapter 34.05 RCW. [2008 c 217 § 47; 2005 c 7 § 2; 2004 c 260 § 26; 2000 c 79 § 9; 1997 c 337 § 5; 1997 c 231 § 211; 1989 c 121 § 3; 1987 c 431 § 6.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—2005 c 7: See note following RCW 48.14.0201.

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

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Report on implementation of 1987 c 431: "The board shall report to the commissioner and the appropriate committees of the legislature by April 1, 1990, on the implementation of this act. The report shall include information regarding enrollment, coverage utilization, cost, and any problems with the program and suggest remedies." [1987 c 431 § 26.]

48.41.070 Examination and report. The pool shall be subject to examination by the commissioner as provided under chapter 48.03 RCW. The board of directors shall submit to the commissioner, not later than one hundred twenty days after the end of each accounting year, a financial report for the year in a form approved by the commissioner. [1998 c 245 § 98; 1989 c 121 § 4; 1987 c 431 § 7.]

48.41.080 Pool administrator—Selection, term, duties, pay. The board shall select an administrator through a competitive bidding process to administer the pool.

(1) The board shall evaluate bids based upon criteria established by the board, which shall include:

(a) The administrator's proven ability to handle health coverage;

(b) The efficiency of the administrator's claim-paying procedures;

(c) An estimate of the total charges for administering the plan; and

(d) The administrator's ability to administer the pool in a cost-effective manner.

(2) The administrator shall serve for a period of three years subject to removal for cause. At least six months prior to the expiration of each three-year period of service by the administrator, the board shall invite all interested parties, including the current administrator, to submit bids to serve as the administrator for the succeeding three-year period. Selection of the administrator for this succeeding period shall be made at least three months prior to the end of the current three-year period.

(3) The administrator shall perform such duties as may be assigned by the board including:

(a) Administering eligibility and administrative claim payment functions relating to the pool;

(b) Establishing a premium billing procedure for collection of premiums from covered persons. Billings shall be made on a periodic basis as determined by the board, which shall not be more frequent than a monthly billing;

(c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(i) Making available information relating to the proper manner of submitting a claim for benefits to the pool, and distributing forms upon which submission shall be made;

(ii) Taking steps necessary to offer and administer managed care benefit plans; and

(iii) Evaluating the eligibility of each claim for payment by the pool;

(d) Submission of regular reports to the board regarding the operation of the pool. The frequency, content, and form of the report shall be as determined by the board;

(e) Following the close of each accounting year, determination of net paid and earned premiums, the expense of administration, and the paid and incurred losses for the year

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and reporting this information to the board and the commissioner on a form as prescribed by the commissioner.

(4) The administrator shall be paid as provided in the contract between the board and the administrator for its expenses incurred in the performance of its services. [2000 c 79 § 10; 1997 c 231 § 212; 1989 c 121 § 5; 1987 c 431 § 8.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.090 Financial participation in pool—Computation, deficit assessments. (1) Following the close of each accounting year, the pool administrator shall determine the net premium (premiums less administrative expense allowances), the pool expenses of administration, and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(2)(a) Each member's proportion of participation in the pool shall be determined annually by the board based on annual statements and other reports deemed necessary by the board and filed by the member with the commissioner; and shall be determined by multiplying the total cost of pool operation by a fraction. The numerator of the fraction equals that member's total number of resident insured persons, including spouse and dependents, covered under all health plans in the state by that member during the preceding calendar year. The denominator of the fraction equals the total number of resident insured persons, including spouses and dependents, covered under all health plans in the state by all pool members during the preceding calendar year.

(b) For purposes of calculating the numerator and the denominator under (a) of this subsection:

(i) All health plans in the state by the state health care authority include only the uniform medical plan;

(ii) Each ten resident insured persons, including spouse and dependents, under a stop loss plan or the uniform medical plan shall count as one resident insured person;

(iii) Health plans serving medical care services program clients under RCW 74.09.035 are exempted from the calculation; and

(iv) Health plans established to serve elderly or disabled medicaid clients under chapter 74.09 RCW when the plan has been implemented on a demonstration or pilot project basis are exempted from the calculation until July 1, 2009.

(c) Except as provided in RCW 48.41.037, any deficit incurred by the pool shall be recouped by assessments among members apportioned under this subsection pursuant to the formula set forth by the board among members.

(3) The board may abate or defer, in whole or in part, the assessment of a member if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. If an assessment against a member is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in subsection (2) of this section. The member receiving such abatement or deferment shall remain liable to the pool for the deficiency.

(4) If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest

and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims. [2005 c 405 § 2; 2000 c 79 § 11; 1989 c 121 § 6; 1987 c 431 § 9.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.100 Eligibility for coverage. (Contingent expiration date.) (1) The following persons who are residents of this state are eligible for pool coverage:

(a) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(b) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(c) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; and

(d) Any medicare eligible person upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on a medicare supplemental insurance policy under chapter 48.66 RCW, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than non-payment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out two million dollars in benefits;

(c) Inmates of public institutions and persons whose benefits are duplicated under public programs. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(d) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan

in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(c) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(c) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(c) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a), (b), or (d) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(b) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007. [2007 c 259 § 30; 2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Effective date—2007 c 259 § 30: "Section 30 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 259 § 75.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.100 Eligibility for coverage. (Contingent effective date.) (1) The following persons who are residents of this state are eligible for pool coverage:

(a) Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;

(b) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;

(c) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool; and

(d) Any medicare eligible person upon providing evidence of rejection for medical reasons, a requirement of restrictive riders, an up-rated premium, or a preexisting conditions limitation on a medicare supplemental insurance policy under chapter 48.66 RCW, the effect of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than non-payment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Any person on whose behalf the pool has paid out two million dollars in benefits;

(c) Inmates of public institutions, and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(d) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(d) of this section.

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(c) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(c) of this section, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(c) of this section within thirty days of determining that he or she is no longer eligible;

(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a), (b), or (d) of this section; and

(c) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a

pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; (iii) describe the procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(b) of this section; and (iv) describe the enrollment process for the available options outside of the pool.

(4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007. [2008 c 317 § 4; 2007 c 259 § 30; 2001 c 196 § 3; 2000 c 79 § 12; 1995 c 34 § 5; 1989 c 121 § 7; 1987 c 431 § 10.]

Report—Contingent effective date—2008 c 317: See notes following RCW 74.09.510.

Effective date—2007 c 259 § 30: "Section 30 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2007]." [2007 c 259 § 75.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.110 Policy coverage—Eligible expenses, cost containment, limits—Explanatory brochure. (1) The pool shall offer one or more care management plans of coverage. Such plans may, but are not required to, include point of service features that permit participants to receive in-network benefits or out-of-network benefits subject to differential cost shares. The pool may incorporate managed care features into existing plans.

(2) The administrator shall prepare a brochure outlining the benefits and exclusions of pool policies in plain language. After approval by the board, such brochure shall be made readily available to participants or potential participants.

(3) The health insurance policies issued by the pool shall pay only reasonable amounts for medically necessary eligible health care services rendered or furnished for the diagnosis or treatment of covered illnesses, injuries, and conditions. Eligible expenses are the reasonable amounts for the health care services and items for which benefits are extended under a pool policy.

(4) The pool shall offer at least two policies, one of which will be a comprehensive policy that must comply with RCW 48.41.120 and must at a minimum include the following services or related items:

(a) Hospital services, including charges for the most common semiprivate room, for the most common private room if semiprivate rooms do not exist in the health care facility, or for the private room if medically necessary, including no less than a total of one hundred eighty inpatient days in a calendar year, and no less than thirty days inpatient

care for alcohol, drug, or chemical dependency or abuse per calendar year;

(b) Professional services including surgery for the treatment of injuries, illnesses, or conditions, other than dental, which are rendered by a health care provider, or at the direction of a health care provider, by a staff of registered or licensed practical nurses, or other health care providers;

(c) No less than twenty outpatient professional visits for the diagnosis or treatment of alcohol, drug, or chemical dependency or abuse rendered during a calendar year by a state-certified chemical dependency program approved under chapter 70.96A RCW, or by one or more physicians, psychologists, or community mental health professionals, or, at the direction of a physician, by other qualified licensed health care practitioners;

(d) Drugs and contraceptive devices requiring a prescription;

(e) Services of a skilled nursing facility, excluding custodial and convalescent care, for not less than one hundred days in a calendar year as prescribed by a physician;

(f) Services of a home health agency;

(g) Chemotherapy, radioisotope, radiation, and nuclear medicine therapy;

(h) Oxygen;

(i) Anesthesia services;

(j) Prostheses, other than dental;

(k) Durable medical equipment which has no personal use in the absence of the condition for which prescribed;

(l) Diagnostic x-rays and laboratory tests;

(m) Oral surgery including at least the following: Fractures of facial bones; excisions of mandibular joints, lesions of the mouth, lip, or tongue, tumors, or cysts excluding treatment for temporomandibular joints; incision of accessory sinuses, mouth salivary glands or ducts; dislocations of the jaw; plastic reconstruction or repair of traumatic injuries occurring while covered under the pool; and excision of impacted wisdom teeth;

(n) Maternity care services;

(o) Services of a physical therapist and services of a speech therapist;

(p) Hospice services;

(q) Professional ambulance service to the nearest health care facility qualified to treat the illness or injury;

(r) Mental health services pursuant to RCW 48.41.220; and

(s) Other medical equipment, services, or supplies required by physician's orders and medically necessary and consistent with the diagnosis, treatment, and condition.

(5) The board shall design and employ cost containment measures and requirements such as, but not limited to, care coordination, provider network limitations, preadmission certification, and concurrent inpatient review which may make the pool more cost-effective.

(6) The pool benefit policy may contain benefit limitations, exceptions, and cost shares such as copayments, coinsurance, and deductibles that are consistent with managed care products, except that differential cost shares may be adopted by the board for nonnetwork providers under point of service plans. No limitation, exception, or reduction may be used that would exclude coverage for any disease, illness, or injury.

(7) The pool may not reject an individual for health plan coverage based upon preexisting conditions of the individual or deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that it shall impose a six-month benefit waiting period for preexisting conditions for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months before the effective date of coverage. The preexisting condition waiting period shall not apply to prenatal care services. The pool may not avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. Credit against the waiting period shall be as provided in subsection (8) of this section.

(8)(a) Except as provided in (b) of this subsection, the pool shall credit any preexisting condition waiting period in its plans for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new pool plan. For the person previously enrolled in a group health benefit plan, the pool must credit the aggregate of all periods of preceding coverage not separated by more than sixty-three days toward the waiting period of the new health plan. For the person previously enrolled in an individual health benefit plan other than a catastrophic health plan, the pool must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan.

(b) The pool shall waive any preexisting condition waiting period for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(9) If an application is made for the pool policy as a result of rejection by a carrier, then the date of application to the carrier, rather than to the pool, should govern for purposes of determining preexisting condition credit.

(10) The pool shall contract with organizations that provide care management that has been demonstrated to be effective and shall encourage enrollees who are eligible for care management services to participate. The pool may encourage the use of shared decision making and certified decision aids for preference-sensitive care areas. [2007 c 259 § 26; 2007 c 8 § 5; 2001 c 196 § 4; 2000 c 80 § 2; 2000 c 79 § 13; 1997 c 231 § 213; 1987 c 431 § 11.]

Reviser's note: This section was amended by 2007 c 8 § 5 and by 2007 c 259 § 26, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

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48.41.120 Comprehensive pool policy—Deductibles—Coinsurance—Carryover. (1) Subject to the limitation provided in subsection (3) of this section, the comprehensive pool policy offered under RCW 48.41.110(4) shall impose a deductible as provided in this subsection. Deductibles of five hundred dollars and one thousand dollars on a per person per calendar year basis shall initially be offered. The board may authorize deductibles in other amounts. The deductible shall be applied to the first five hundred dollars, one thousand dollars, or other authorized amount of eligible expenses incurred by the covered person.

(2) Subject to the limitations provided in subsection (3) of this section, a mandatory coinsurance requirement shall be imposed at a rate not to exceed twenty percent of eligible expenses in excess of the mandatory deductible and which supports the efficient delivery of high quality health care services for the medical conditions of pool enrollees.

(3) The maximum aggregate out of pocket payments for eligible expenses by the insured in the form of deductibles and coinsurance under the comprehensive pool policy offered under RCW 48.41.110(4) shall not exceed in a calendar year:

(a) One thousand five hundred dollars per individual, or three thousand dollars per family, per calendar year for the five hundred dollar deductible policy;

(b) Two thousand five hundred dollars per individual, or five thousand dollars per family per calendar year for the one thousand dollar deductible policy; or

(c) An amount authorized by the board for any other deductible policy.

(4) Except for those enrolled in a high deductible health plan qualified under federal law for use with a health savings account, eligible expenses incurred by a covered person in the last three months of a calendar year, and applied toward a deductible, shall also be applied toward the deductible amount in the next calendar year.

(5) The board may modify cost-sharing as an incentive for enrollees to participate in care management services and other cost-effective programs and policies. [2007 c 259 § 31; 2000 c 79 § 14; 1989 c 121 § 8; 1987 c 431 § 12.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.130 Policy forms—Approval required. All policy forms issued by the pool shall conform in substance to prototype forms developed by the pool, and shall in all other respects conform to the requirements of this chapter, and shall be filed with and approved by the commissioner before they are issued. [2000 c 79 § 15; 1997 c 231 § 215; 1987 c 431 § 13.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.140 Coverage for children, unmarried dependents. (1) Coverage shall provide that health insurance benefits are applicable to children of the person in whose name the policy is issued including adopted and newly born natural children. Coverage shall also include necessary care and

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treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium is required to provide coverage for the child, the policy may require that notification of the birth or adoption of a child and payment of the required premium must be furnished to the pool within thirty-one days after the date of birth or adoption in order to have the coverage continued beyond the thirty-one day period. For purposes of this subsection, a child is deemed to be adopted, and benefits are payable, when the child is physically placed for purposes of adoption under the laws of this state with the person in whose name the policy is issued; and, when the person in whose name the policy is issued assumes financial responsibility for the medical expenses of the child. For purposes of this subsection, "newly born" means, and benefits are payable, from the moment of birth.

(2) A pool policy shall provide that coverage of a dependent, unmarried person shall terminate when the person becomes nineteen years of age: PROVIDED, That coverage of such person shall not terminate at age nineteen while he or she is and continues to be both (a) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (b) chiefly dependent upon the person in whose name the policy is issued for support and maintenance, provided proof of such incapacity and dependency is furnished to the pool by the policyholder within thirty-one days of the dependent's attainment of age nineteen and subsequently as may be required by the pool but not more frequently than annually after the two-year period following the dependent's attainment of age nineteen. [2000 c 79 § 16; 1987 c 431 § 14.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.41.150 Medical supplement policy. (1) The board shall offer a medical supplement policy for persons receiving medicare parts A and B. The supplement policy shall provide benefits of one hundred percent of the deductible and copayment required under medicare and eighty percent of the charges for covered services under this chapter that are not paid by medicare. The coverage shall include a limitation of one thousand dollars per person on total annual out-of-pocket expenses for the covered services.

(2) If federal law is adopted that addresses this subject, the board shall offer a policy that is consistent with that federal law. [1989 c 121 § 9; 1987 c 431 § 15.]

48.41.160 Pool policy requirements—Continued coverage—Rate changes—Continuation. (1) On or before December 31, 2007, the pool shall cancel all existing pool policies and replace them with policies that are identical to the existing policies except for the inclusion of a provision providing for a guarantee of the continuity of coverage consistent with this section. As a means to minimize the number of policy changes for enrollees, replacement policies provided under this subsection also may include the plan modifications authorized in RCW 48.41.100, 48.41.110, and 48.41.120.

(2) A pool policy shall contain a guarantee of the individual's right to continued coverage, subject to the provisions of subsections (4) and (5) of this section.

(3) The guarantee of continuity of coverage required by this section shall not prevent the pool from canceling or non-renewing a policy for:

- (a) Nonpayment of premium;
- (b) Violation of published policies of the pool;
- (c) Failure of a covered person who becomes eligible for medicare benefits by reason of age to apply for a pool medical supplement plan, or a medicare supplement plan or other similar plan offered by a carrier pursuant to federal laws and regulations;
- (d) Failure of a covered person to pay any deductible or copayment amount owed to the pool and not the provider of health care services;
- (e) Covered persons committing fraudulent acts as to the pool;
- (f) Covered persons materially breaching the pool policy; or
- (g) Changes adopted to federal or state laws when such changes no longer permit the continued offering of such coverage.

(4)(a) The guarantee of continuity of coverage provided by this section requires that if the pool replaces a plan, it must make the replacement plan available to all individuals in the plan being replaced. The replacement plan must include all of the services covered under the replaced plan, and must not significantly limit access to the kind of services covered under the replacement plan through unreasonable cost-sharing requirements or otherwise. The pool may also allow individuals who are covered by a plan that is being replaced an unrestricted right to transfer to a fully comparable plan.

(b) The guarantee of continuity of coverage provided by this section requires that if the pool discontinues offering a plan: (i) The pool must provide notice to each individual of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the pool must offer to each individual provided coverage under the discontinued plan the option to enroll in any other plan currently offered by the pool for which the individual is otherwise eligible; and (iii) in exercising the option to discontinue a plan and in offering the option of coverage under (b)(ii) of this subsection, the pool must act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage.

(c) The pool cannot replace or discontinue a plan under this subsection (4) until it has completed an evaluation of the impact of replacing the plan upon:

- (i) The cost and quality of care to pool enrollees;
- (ii) Pool financing and enrollment;
- (iii) The board's ability to offer comprehensive and other plans to its enrollees;
- (iv) Other items identified by the board.

In its evaluation, the board must request input from the constituents represented by the board members.

(d) The guarantee of continuity of coverage provided by this section does not apply if the pool has zero enrollment in a plan.

(5) The pool may not change the rates for pool policies except on a class basis, with a clear disclosure in the policy of the pool's right to do so.

(6) A pool policy offered under this chapter shall provide that, upon the death of the individual in whose name the pol-

icy is issued, every other individual then covered under the policy may elect, within a period specified in the policy, to continue coverage under the same or a different policy. [2007 c 259 § 27; 1987 c 431 § 16.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.41.170 Required rule making. The commissioner shall adopt rules pursuant to chapter 34.05 RCW that:

- (1) Provide for disclosure by the member of the availability of insurance coverage from the pool; and
- (2) Implement this chapter. [1987 c 431 § 17.]

48.41.190 Civil and criminal immunity. The pool, members of the pool, board directors of the pool, officers of the pool, employees of the pool, the commissioner, the commissioner's representatives, and the commissioner's employees shall not be civilly or criminally liable and shall not have any penalty or cause of action of any nature arise against them for any action taken or not taken, including any discretionary decision or failure to make a discretionary decision, when the action or inaction is done in good faith and in the performance of the powers and duties under this chapter. Nothing in this section prohibits legal actions against the pool to enforce the pool's statutory or contractual duties or obligations. [2007 c 259 § 33; 1989 c 121 § 10; 1987 c 431 § 19.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.41.200 Rates—Standard risk and maximum. (1) The pool shall determine the standard risk rate by calculating the average individual standard rate charged for coverage comparable to pool coverage by the five largest members, measured in terms of individual market enrollment, offering such coverages in the state. In the event five members do not offer comparable coverage, the standard risk rate shall be established using reasonable actuarial techniques and shall reflect anticipated experience and expenses for such coverage in the individual market.

(2) Subject to subsection (3) of this section, maximum rates for pool coverage shall be as follows:

(a) Maximum rates for a pool indemnity health plan shall be one hundred fifty percent of the rate calculated under subsection (1) of this section;

(b) Maximum rates for a pool care management plan shall be one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(c) Maximum rates for a person eligible for pool coverage pursuant to RCW 48.41.100(1)(a) who was enrolled at any time during the sixty-three day period immediately prior to the date of application for pool coverage in a group health benefit plan or an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005, where such coverage was continuous for at least eighteen months, shall be:

(i) For a pool indemnity health plan, one hundred twenty-five percent of the rate calculated under subsection (1) of this section; and

(ii) For a pool care management plan, one hundred ten percent of the rate calculated under subsection (1) of this section.

(3)(a) Subject to (b) and (c) of this subsection:

(i) The rate for any person whose current gross family income is less than two hundred fifty-one percent of the federal poverty level shall be reduced by thirty percent from what it would otherwise be;

(ii) The rate for any person whose current gross family income is more than two hundred fifty but less than three hundred one percent of the federal poverty level shall be reduced by fifteen percent from what it would otherwise be;

(iii) The rate for any person who has been enrolled in the pool for more than thirty-six months shall be reduced by five percent from what it would otherwise be.

(b) In no event shall the rate for any person be less than one hundred ten percent of the rate calculated under subsection (1) of this section.

(c) Rate reductions under (a)(i) and (ii) of this subsection shall be available only to the extent that funds are specifically appropriated for this purpose in the omnibus appropriations act. [2007 c 259 § 28; 2000 c 79 § 17; 1997 c 231 § 214; 1987 c 431 § 20.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.41.210 Last payor of benefits. It is the express intent of this chapter that the pool be the last payor of benefits whenever any other benefit is available.

(1) Benefits otherwise payable under pool coverage shall be reduced by all amounts paid or payable through any other health insurance, or health benefit plans, including but not limited to self-insured plans and by all hospital and medical expense benefits paid or payable under any worker's compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The administrator or the pool shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not for covered expenses. Benefits due from the pool may be reduced or refused as a set-off against any amount recoverable under this subsection. [1987 c 431 § 21.]

48.41.220 Mental health services—Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psy-

chiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court-ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) Each health insurance policy issued by the pool on or after January 1, 2008, shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the policy. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the policy imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the policy.

(3) Each health insurance policy issued by the pool on or after July 1, 2010, shall provide coverage for:

(a) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the policy. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the policy imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the policy imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(b) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the policy.

(4) In meeting the requirements of this section, a policy may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(5) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(6) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 6.]

Effective date—2007 c 8: See note following RCW 48.20.580.

48.41.900 Federal supremacy. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict

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and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1987 c 431 § 22.]

48.41.910 Severability—1987 c 431. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1987 c 431 § 25.]

Chapter 48.42 RCW

PERSONAL COVERAGE, GENERAL AUTHORITY

(Formerly: Health care coverage, general authority)

Sections

- 48.42.010 Personal coverage, authority of commissioner.
- 48.42.020 Showing regulation by other agency, how done.
- 48.42.030 Examination by commissioner—When required, scope of.
- 48.42.040 Application of this title to otherwise unregulated entities.
- 48.42.050 Notice to purchasers by uninsured production agency—Notice to production agency by administrator of coverage.
- 48.42.090 Prenatal testing—Limitation on changes to coverage.
- 48.42.100 Women's health care services—Duties of health care carriers.

48.42.010 Personal coverage, authority of commissioner. Notwithstanding any other provision of law, and except as provided in this chapter, any person or other entity which provides coverage in this state for life insurance, annuities, loss of time, medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether the coverage is by direct payment, reimbursement, the providing of services, or otherwise, shall be subject to the authority of the state insurance commissioner, unless the person or other entity shows that while providing the services it is subject to the jurisdiction and regulation of another agency of this state, any subdivisions thereof, or the federal government. [1985 c 264 § 15; 1983 c 36 § 1.]

48.42.020 Showing regulation by other agency, how done. A person or entity may show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, by providing to the insurance commissioner the appropriate certificate, license, or other document issued by the other governmental agency which permits or qualifies it to provide the coverage as defined in RCW 48.42.010. [1983 c 36 § 2.]

48.42.030 Examination by commissioner—When required, scope of. Any person or entity which is unable to show under RCW 48.42.020 that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the insurance commissioner to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of this title. [1983 c 36 § 3.]

48.42.040 Application of this title to otherwise unregulated entities. Any person or entity unable to show that it is subject to the jurisdiction and regulation of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of this title regarding the conduct of its business including, but not limited to, RCW 48.43.300 through 48.43.370. [1998 c 241 § 16; 1983 c 36 § 4.]

Severability—1998 c 241: See RCW 48.43.903.

48.42.050 Notice to purchasers by uninsured production agency—Notice to production agency by administrator of coverage. Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in RCW 48.42.010 and which is required to submit to an examination by the insurance commissioner under RCW 48.42.030, shall, if the coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer or health care service contractor or health maintenance organization agreement, advise every purchaser, prospective purchaser, and covered person of the lack of insurance or other coverage.

Any administrator which advertises or administers the coverage in this state described in RCW 48.42.010 and which is subject to an examination by the insurance commissioner under RCW 48.42.030 shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect. [1983 c 36 § 5.]

48.42.090 Prenatal testing—Limitation on changes to coverage. The carrier or provider of any group disability contract, health care services contract or health maintenance agreement shall not cancel, reduce, limit or otherwise alter or change the coverage provided solely on the basis of the result of any prenatal test. [1988 c 276 § 9.]

48.42.100 Women's health care services—Duties of health care carriers. (1) For purposes of this section, health care carriers includes disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, health maintenance organizations regulated under chapter 48.46 RCW, plans operating under the health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated under chapter 48.43 RCW.

(2) For purposes of this section and consistent with their lawful scopes of practice, types of health care practitioners that provide women's health care services shall include, but need not be limited by a health care carrier to, the following: Any generally recognized medical specialty of practitioners licensed under chapter 18.57 or 18.71 RCW who provides women's health care services; practitioners licensed under chapters 18.57A and 18.71A RCW when providing women's health care services; midwives licensed under chapter 18.50 RCW; and advanced registered nurse practitioner specialists in women's health and midwifery under chapter 18.79 RCW.

(3) For purposes of this section, women's health care services shall include, but need not be limited by a health care carrier to, the following: Maternity care; reproductive health

services; gynecological care; general examination; and preventive care as medically appropriate and medically appropriate follow-up visits for the services listed in this subsection.

(4) Health care carriers shall ensure that enrolled female patients have direct access to timely and appropriate covered women's health care services from the type of health care practitioner of their choice in accordance with subsection (5) of this section.

(5)(a) Health care carrier policies, plans, and programs written, amended, or renewed after July 23, 1995, shall provide women patients with direct access to the type of health care practitioner of their choice for appropriate covered women's health care services without the necessity of prior referral from another type of health care practitioner.

(b) Health care carriers may comply with this section by including all the types of health care practitioners listed in this section for women's health care services for women patients.

(c) Nothing in this section shall prevent health care carriers from restricting women patients to seeing only health care practitioners who have signed participating provider agreements with the health care carrier. [2000 c 7 § 1; 1995 c 389 § 1.]

Chapter 48.43 RCW

INSURANCE REFORM

(Formerly: Certified health plans)

Sections

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48.43.005	Definitions.
48.43.008	Enrollment in employer-sponsored health plan—Person eligible for medical assistance.
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48.43.018	Requirement to complete the standard health questionnaire—Exemptions—Results (<i>as amended by 2007 c 80</i>).
48.43.018	Requirement to complete the standard health questionnaire—Exemptions—Results (<i>as amended by 2007 c 259</i>).
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48.43.087	Contracting for services at enrollee's expense—Mental health care practitioner—Conditions—Exception.
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- 48.43.093 Health carrier coverage of emergency medical services—Requirements—Conditions.
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- 48.43.305 Report of RBC levels—Distribution of report—Formula for determination—Commissioner may make adjustments.
- 48.43.310 Company action level event—Required RBC plan—Commissioner's review—Notification—Challenge by carrier.
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- 48.43.340 Powers or duties of commissioner not limited—Rules.
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- 48.43.520 Requirement to maintain a documented utilization review program description and written utilization review criteria—Rules.
- 48.43.525 Prohibition against retrospective denial of health plan coverage—Rules.
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- 48.43.535 Independent review of health care disputes—System for using certified independent review organizations—Rules.
- 48.43.540 Requirement to designate a licensed medical director—Exemption.
- 48.43.545 Standard of care—Liability—Causes of action—Defense—Exception.
- 48.43.550 Delegation of duties—Carrier accountability.
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- 48.43.650 Fixed payment insurance products—Commissioner's annual report.
- 48.43.901 Captions not law—1996 c 312.
- 48.43.902 Effective date—1996 c 312.
- 48.43.903 Severability—1998 c 241.

to adequate information regarding health care services covered by health carriers' health plans, and provided by health care providers and health care facilities. It is only through such disclosure that Washington state citizens can be fully informed as to the extent of health insurance coverage, availability of health care service options, and necessary treatment. With such information, citizens are able to make knowledgeable decisions regarding their health care. [1996 c 312 § 1.]

48.43.005 Definitions. (*Effective until January 1, 2009.*) Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(5) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

(6) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical require-

48.43.001 Intent. It is the intent of the legislature to ensure that all enrollees in managed care settings have access

ments for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(8) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(10) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

(11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(13) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(15) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(16) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(17) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(18) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(19) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(20) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and enti-

ties affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(24) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least two but no more than fifty employees, during the previous calendar year and employed at least two employees on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one on the day prior to June 10, 2004, shall also be considered a "small employer" to the extent that individual or group of one is entitled to have his or her coverage renewed as provided in RCW 48.43.035(6).

(25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs. [2008 c 144 § 1. Prior: 2007 c 296 § 1; 2007 c 259 § 32; 2006 c 25 § 16; 2004 c 244 § 2; prior: 2001 c 196 § 5; 2001 c 147 § 1; 2000 c 79 § 18; prior: 1997 c 231 § 202; 1997 c 55 § 1; 1995 c 265 § 4.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—1997 c 231: "This act shall be known as the consumer assistance and insurance market stabilization act." [1997 c 231 § 402.]

Part headings and captions not law—1997 c 231: "Part headings and section captions used in this act are not part of the law." [1997 c 231 § 403.]

Severability—1997 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 231 § 404.]

Effective dates—1997 c 231: "(1) Sections 104 through 108 and 301 of this act take effect January 1, 1998.

(2) Section 111 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997.

(3) Section 205 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and

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its existing public institutions, and takes effect immediately." [1997 c 231 § 405.]

Effective date—1997 c 55: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 55 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.005 Definitions. (Effective January 1, 2009.)

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(5) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. The adjusted amount shall apply on the following January 1st.

(6) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or

effectiveness under the auspices of the applicable health benefit plan.

(7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(8) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(10) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.

(11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(13) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(15) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(16) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(17) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(18) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(19) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage; and

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(20) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and enti-

ties affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(24) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least two but no more than fifty employees, during the previous calendar year and employed at least two employees on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one on the day prior to June 10, 2004, shall also be considered a "small employer" to the extent that individual or group of one is entitled to have his or her coverage renewed as provided in RCW 48.43.035(6).

(25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs. [2008 c 145 § 20; 2008 c 144 § 1. Prior: 2007 c 296 § 1; 2007 c 259 § 32; 2006 c 25 § 16; 2004 c 244 § 2; prior: 2001 c 196 § 5; 2001 c 147 § 1; 2000 c 79 § 18; prior: 1997 c 231 § 202; 1997 c 55 § 1; 1995 c 265 § 4.]

Reviser's note: This section was amended by 2008 c 144 § 1 and by 2008 c 145 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2008 c 145: See RCW 48.83.900 and 48.83.901.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—1997 c 231: "This act shall be known as the consumer assistance and insurance market stabilization act." [1997 c 231 § 402.]

Part headings and captions not law—1997 c 231: "Part headings and section captions used in this act are not part of the law." [1997 c 231 § 403.]

Severability—1997 c 231: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 231 § 404.]

(2008 Ed.)

Effective dates—1997 c 231: "(1) Sections 104 through 108 and 301 of this act take effect January 1, 1998.

(2) Section 111 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997.

(3) Section 205 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately." [1997 c 231 § 405.]

Effective date—1997 c 55: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 55 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.008 Enrollment in employer-sponsored health plan—Person eligible for medical assistance. When the department of social and health services determines that it is cost-effective to enroll a person eligible for medical assistance under chapter 74.09 RCW in an employer-sponsored health plan, a carrier shall permit the enrollment of the person in the health plan for which he or she is otherwise eligible without regard to any open enrollment period restrictions. [2007 c 259 § 24.]

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.43.012 Individual health benefit plans—Preexisting conditions. (1) No carrier may reject an individual for an individual health benefit plan based upon preexisting conditions of the individual except as provided in RCW 48.43.018.

(2) No carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions except as provided in this section.

(3) For an individual health benefit plan originally issued on or after March 23, 2000, preexisting condition waiting periods imposed upon a person enrolling in an individual health benefit plan shall be no more than nine months for a preexisting condition for which medical advice was given, for which a health care provider recommended or provided treatment, or for which a prudent layperson would have sought advice or treatment, within six months prior to the effective date of the plan. No carrier may impose a preexisting condition waiting period on an individual health benefit plan issued to an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. 300gg-41(b)).

(4) Individual health benefit plan preexisting condition waiting periods shall not apply to prenatal care services.

(5) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals who are higher than average health risks. These provisions apply only to individuals who are Washington residents. [2001 c 196 § 6; 2000 c 79 § 19.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.015 Health benefit plans—Preexisting conditions. (1) For a health benefit plan offered to a group, every health carrier shall reduce any preexisting condition exclusion, limitation, or waiting period in the group health plan in accordance with the provisions of section 2701 of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg).

(2) For a health benefit plan offered to a group other than a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least three months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than three months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by chapter 192, Laws of 2004, and plans of the Washington state health insurance pool.

(3) For a health benefit plan offered to a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least nine months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than nine months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purpose of this subsection, a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by chapter 192, Laws of 2004, and plans of the Washington state health insurance pool.

(4) For a health benefit plan offered to an individual, other than an individual to whom subsection (5) of this section applies, every health carrier shall credit any preexisting condition waiting period in that plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new health plan in a group health benefit plan or an individual health benefit plan, other than a catastrophic health plan, and (a) the benefits under the previous plan provide equivalent or greater

overall benefit coverage than that provided in the health benefit plan the individual seeks to purchase; or (b) the person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, if application for coverage is made within ninety days of relocation; or (c) the person is seeking an individual health benefit plan: (i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and (ii) his or her health care provider is part of another carrier's provider network; and (iii) application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network. The carrier must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection (4), a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by chapter 192, Laws of 2004, and plans of the Washington state health insurance pool.

(5) Every health carrier shall waive any preexisting condition waiting period in its individual plans for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b)).

(6) Subject to the provisions of subsections (1) through (5) of this section, nothing contained in this section requires a health carrier to amend a health plan to provide new benefits in its existing health plans. In addition, nothing in this section requires a carrier to waive benefit limitations not related to an individual or group's preexisting conditions or health history. [2004 c 192 § 5; 2001 c 196 § 7; 2000 c 80 § 3; 2000 c 79 § 20; 1995 c 265 § 5.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.018 Requirement to complete the standard health questionnaire—Exemptions—Results (as amended by 2007 c 80). (1) Except as provided in (a) through ((e)) (d) of this subsection, a health carrier may require any person applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

~~(d) ((If a person is seeking an individual health benefit plan due to his or her receiving notice that his or her coverage under a conversion contract is discontinued, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of discontinuation of eligibility under the conversion contract. A health carrier shall accept an application without a standard health questionnaire from a person currently covered by such conversion contract if application is made within ninety days prior to the date eligibility under the conversion contract would be discontinued and the effective date of the individual coverage applied for is the date eligibility under the conversion contract would be discontinued, or within ninety days thereafter.~~

(e)) If a person is seeking an individual health benefit plan and, but for the number of persons employed by his or her employer, would have qualified for continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of a qualifying event and the effective date of the individual coverage applied for is the date of the qualifying event, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan; and

(b) Within fifteen business days of receipt of a completed application, the carrier shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier shall accept the person for enrollment if he or she resides within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals. [2007 c 80 § 13; 2004 c 244 § 3; 2001 c 196 § 8; 2000 c 80 § 4; 2000 c 79 § 21.]

provided in (a) through (e) of this subsection, a health carrier may require any person applying for an individual health benefit plan and the health care authority shall require any person applying for unsubsidized enrollment in the basic health plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's or a basic health plan managed care system's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage or for basic health plan nonsubsidized enrollment is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

(d) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her receiving notice that his or her coverage under a conversion contract is discontinued, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of discontinuation of eligibility under the conversion contract. A health carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall accept an application without a standard health questionnaire from a person currently covered by such conversion contract if application is made within ninety days prior to the date eligibility under the conversion contract would be discontinued and the effective date of the individual coverage applied for is the date eligibility under the conversion contract would be discontinued, or within ninety days thereafter.

~~(e) If a person is seeking an individual health benefit plan ((and, but for the number of persons employed by his or her employer, would have qualified for)) or enrollment in the basic health plan as a nonsubsidized enrollee following disenrollment from a health plan that is exempt from continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) ((Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii))) The person had at least twenty-four months of continuous group coverage including church plans immediately prior to ((the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if)) disenrollment; (ii) application is made no more than ninety days prior to the date of ((a qualifying event)) disenrollment; and (iii) the effective date of the individual coverage applied for is the date of ((the qualifying event)) disenrollment, or within ninety days thereafter.~~

(f) If a person is seeking an individual health benefit plan, completion of the standard health questionnaire shall not be a condition of coverage if:

(i) The person had at least twenty-four months of continuous basic health plan coverage under chapter 70.47 RCW immediately prior to disenrollment; and (ii) application for coverage is made within ninety days of disenrollment from the basic health plan. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous basic health plan coverage if application is made no more than ninety days prior to the date of disenrollment and the effective

48.43.018 Requirement to complete the standard health questionnaire—Exemptions—Results (as amended by 2007 c 259). (1) Except as

date of the individual coverage applied for is the date of disenrollment, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan and the health care authority, as administrator of basic health plan nonsubsidized coverage, shall not accept the person's application for enrollment as a nonsubsidized enrollee; and

(b) Within fifteen business days of receipt of a completed application, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage, whichever entity administered the standard health questionnaire, shall accept the person for enrollment if he or she resides within the carrier's or the basic health plan's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals. [2007 c 259 § 37; 2004 c 244 § 3; 2001 c 196 § 8; 2000 c 80 § 4; 2000 c 79 § 21.]

Reviser's note: RCW 48.43.018 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.021 Personally identifiable health information—Restrictions on release. Except as otherwise required by statute or rule, a carrier and the Washington state health insurance pool, and persons acting at the direction of or on behalf of a carrier or the pool, who are in receipt of an enrollee's or applicant's personally identifiable health information included in the standard health questionnaire shall not disclose the identifiable health information unless such disclosure is explicitly authorized in writing by the person who is the subject of the information. [2000 c 79 § 22.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.022 Enrollee identification card—Social security number restriction. After December 31, 2005, a health carrier that issues a card identifying a person as an enrollee, and requires the person to present the card to providers for

purposes of claims processing, may not display on the card an identification number that includes more than a four-digit portion of the person's complete social security number. [2004 c 115 § 1.]

48.43.023 Pharmacy identification cards—Rules. (1)

A health carrier that provides coverage for prescription drugs provided on an outpatient basis and issues a card or other technology for claims processing, or an administrator of a health benefit plan including, but not limited to, third-party administrators for self-insured plans, pharmacy benefits managers, and state administered plans, shall issue to its enrollees a pharmacy identification card or other technology containing all information required for proper prescription drug claims adjudication.

(2) Upon renewal of the health benefit plan, information on the pharmacy identification card or other technology shall be made current by the health carrier or other entity that issues the card.

(3) Nothing in this section shall be construed to require any health carrier or administrator of a health benefit plan to issue a pharmacy identification card or other technology separate from another identification card issued to an enrollee under the health benefit plan if the identification card contains all of the information required under subsection (1) of this section.

(4) This section applies to health benefit plans that are delivered, issued for delivery, or renewed on or after July 1, 2003. For the purposes of this section, renewal of a health benefit policy, contract, or plan occurs on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

(5) The insurance commissioner may adopt rules to implement chapter 106, Laws of 2001, taking into consideration any relevant standards developed by the national council for prescription drug programs and the requirements of the federal health insurance portability and accountability act of 1996. [2001 c 106 § 2.]

Intent—2001 c 106: "It is the intent of the legislature to improve care to patients by minimizing confusion, eliminating unnecessary paperwork, decreasing administrative burdens, and streamlining dispensing of prescription products paid for by third-party payors." [2001 c 106 § 1.]

48.43.025 Group health benefit plans—Preexisting conditions. (1) For group health benefit plans for groups other than small groups, no carrier may reject an individual for health plan coverage based upon preexisting conditions of the individual and no carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions; except that a carrier may impose a three-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment within three months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(2) For group health benefit plans for small groups, no carrier may reject an individual for health plan coverage based upon preexisting conditions of the individual and no

carrier may deny, exclude, or otherwise limit coverage for an individual's preexisting health conditions. Except that a carrier may impose a nine-month benefit waiting period for preexisting conditions for which medical advice was given, or for which a health care provider recommended or provided treatment within six months before the effective date of coverage. Any preexisting condition waiting period or limitation relating to pregnancy as a preexisting condition shall be imposed only to the extent allowed in the federal health insurance portability and accountability act of 1996.

(3) No carrier may avoid the requirements of this section through the creation of a new rate classification or the modification of an existing rate classification. A new or changed rate classification will be deemed an attempt to avoid the provisions of this section if the new or changed classification would substantially discourage applications for coverage from individuals or groups who are higher than average health risks. These provisions apply only to individuals who are Washington residents. [2001 c 196 § 9; 2000 c 79 § 23; 1995 c 265 § 6.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.028 Eligibility to purchase certain health benefit plans—Small employers and small groups. To the extent required of the federal health insurance portability and accountability act of 1996, the eligibility of an employer or group to purchase a health benefit plan set forth in RCW 48.21.045(1)(b), 48.44.023(1)(b), and 48.46.066(1)(b) must be extended to all small employers and small groups as defined in RCW 48.43.005. [2001 c 196 § 10.]

Effective date—2001 c 196: See note following RCW 48.20.025.

48.43.035 Group health benefit plans—Guaranteed issue and continuity of coverage—Exceptions—Group of one. For group health benefit plans, the following shall apply:

(1) All health carriers shall accept for enrollment any state resident within the group to whom the plan is offered and within the carrier's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The insurance commissioner may grant a temporary exemption from this subsection, if, upon application by a health carrier the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals.

(2) Except as provided in subsection (5) of this section, all health plans shall contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan. For the purposes of this section, a plan is "renewed" when it is continued beyond the earliest date upon which, at the carrier's sole option, the plan could have been terminated for other than nonpayment of premium. The carrier may consider the

group's anniversary date as the renewal date for purposes of complying with the provisions of this section.

(3) The guarantee of continuity of coverage required in health plans shall not prevent a carrier from canceling or non-renewing a health plan for:

(a) Nonpayment of premium;

(b) Violation of published policies of the carrier approved by the insurance commissioner;

(c) Covered persons entitled to become eligible for medicare benefits by reason of age who fail to apply for a medicare supplement plan or medicare cost, risk, or other plan offered by the carrier pursuant to federal laws and regulations;

(d) Covered persons who fail to pay any deductible or copayment amount owed to the carrier and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the carrier;

(f) Covered persons who materially breach the health plan; or

(g) Change or implementation of federal or state laws that no longer permit the continued offering of such coverage.

(4) The provisions of this section do not apply in the following cases:

(a) A carrier has zero enrollment on a product;

(b) A carrier replaces a product and the replacement product is provided to all covered persons within that class or line of business, includes all of the services covered under the replaced product, and does not significantly limit access to the kind of services covered under the replaced product. The health plan may also allow unrestricted conversion to a fully comparable product;

(c) No sooner than January 1, 2005, a carrier discontinues offering a particular type of health benefit plan offered for groups of up to two hundred if: (i) The carrier provides notice to each group of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the carrier offers to each group provided coverage of this type the option to enroll, with regard to small employer groups, in any other small employer group plan, or with regard to groups of up to two hundred, in any other applicable group plan, currently being offered by the carrier in the applicable group market; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under (c)(ii) of this subsection, the carrier acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage;

(d) A carrier discontinues offering all health coverage in the small group market or for groups of up to two hundred, or both markets, in the state and discontinues coverage under all existing group health benefit plans in the applicable market involved if: (i) The carrier provides notice to the commissioner of its intent to discontinue offering all such coverage in the state and its intent to discontinue coverage under all such existing health benefit plans at least one hundred eighty days prior to the date of the discontinuation of coverage under all such existing health benefit plans; and (ii) the carrier provides notice to each covered group of the intent to discontinue the existing health benefit plan at least one hundred eighty days prior to the date of discontinuation. In the case of

discontinuation under this subsection, the carrier may not issue any group health coverage in this state in the applicable group market involved for a five-year period beginning on the date of the discontinuation of the last health benefit plan not so renewed. This subsection (4) does not require a carrier to provide notice to the commissioner of its intent to discontinue offering a health benefit plan to new applicants when the carrier does not discontinue coverage of existing enrollees under that health benefit plan; or

(e) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the insurance commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded.

(5) The provisions of this section do not apply to health plans deemed by the insurance commissioner to be unique or limited or have a short-term purpose, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(6) Notwithstanding any other provision of this section, the guarantee of continuity of coverage applies to a group of one only if: (a) The carrier continues to offer any other small employer group plan in which the group of one was eligible to enroll on the day prior to June 10, 2004; and (b) the person continues to qualify as a group of one under the criteria in place on the day prior to June 10, 2004. [2004 c 244 § 4; 2000 c 79 § 24; 1995 c 265 § 7.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.038 Individual health plans—Guarantee of continuity of coverage—Exceptions. (1) Except as provided in subsection (4) of this section, all individual health plans shall contain or incorporate by endorsement a guarantee of the continuity of coverage of the plan. For the purposes of this section, a plan is "renewed" when it is continued beyond the earliest date upon which, at the carrier's sole option, the plan could have been terminated for other than nonpayment of premium.

(2) The guarantee of continuity of coverage required in individual health plans shall not prevent a carrier from canceling or nonrenewing a health plan for:

(a) Nonpayment of premium;

(b) Violation of published policies of the carrier approved by the commissioner;

(c) Covered persons entitled to become eligible for medicare benefits by reason of age who fail to apply for a medicare supplement plan or medicare cost, risk, or other plan offered by the carrier pursuant to federal laws and regulations;

(d) Covered persons who fail to pay any deductible or copayment amount owed to the carrier and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the carrier;

(f) Covered persons who materially breach the health plan; or

(g) Change or implementation of federal or state laws that no longer permit the continued offering of such coverage.

(3) This section does not apply in the following cases:

(a) A carrier has zero enrollment on a product;

(b) A carrier is withdrawing from a service area or from a segment of its service area because the carrier has demonstrated to the commissioner that the carrier's clinical, financial, or administrative capacity to serve enrollees would be exceeded;

(c) No sooner than the first day of the month following the expiration of a one hundred eighty-day period beginning on March 23, 2000, a carrier discontinues offering a particular type of health benefit plan offered in the individual market if: (i) The carrier provides notice to each covered individual provided coverage of this type of such discontinuation at least ninety days prior to the date of the discontinuation; (ii) the carrier offers to each individual provided coverage of this type the option, without being subject to the standard health questionnaire, to enroll in any other individual health benefit plan currently being offered by the carrier; and (iii) in exercising the option to discontinue coverage of this type and in offering the option of coverage under (c)(ii) of this subsection, the carrier acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage; or

(d) A carrier discontinues offering all individual health coverage in the state and discontinues coverage under all existing individual health benefit plans if: (i) The carrier provides notice to the commissioner of its intent to discontinue offering all individual health coverage in the state and its intent to discontinue coverage under all existing health benefit plans at least one hundred eighty days prior to the date of the discontinuation of coverage under all existing health benefit plans; and (ii) the carrier provides notice to each covered individual of the intent to discontinue his or her existing health benefit plan at least one hundred eighty days prior to the date of such discontinuation. In the case of discontinuation under this subsection, the carrier may not issue any individual health coverage in this state for a five-year period beginning on the date of the discontinuation of the last health plan not so renewed. Nothing in this subsection (3) shall be construed to require a carrier to provide notice to the commissioner of its intent to discontinue offering a health benefit plan to new applicants where the carrier does not discontinue coverage of existing enrollees under that health benefit plan.

(4) The provisions of this section do not apply to health plans deemed by the commissioner to be unique or limited or have a short-term purpose, after a written request for such classification by the carrier and subsequent written approval by the commissioner. [2000 c 79 § 25.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.43.041 Individual health benefit plans—Mandatory benefits. (1) All individual health benefit plans, other than catastrophic health plans, offered or renewed on or after October 1, 2000, shall include benefits described in this section. Nothing in this section shall be construed to require a carrier to offer an individual health benefit plan.

(a) Maternity services that include, with no enrollee cost-sharing requirements beyond those generally applicable cost-sharing requirements: Diagnosis of pregnancy; prenatal care; delivery; care for complications of pregnancy; physician services; hospital services; operating or other special procedure rooms; radiology and laboratory services; appropriate medications; anesthesia; and services required under RCW 48.43.115; and

(b) Prescription drug benefits with at least a two thousand dollar benefit payable by the carrier annually.

(2) If a carrier offers a health benefit plan that is not a catastrophic health plan to groups, and it chooses to offer a health benefit plan to individuals, it must offer at least one health benefit plan to individuals that is not a catastrophic health plan. [2000 c 79 § 26.]

Effective dates—2000 c 79 §§ 26, 38, and 39: "(1) Section 38 of this act takes effect July 1, 2000.

(2) Section 39 of this act takes effect September 1, 2000.

(3) *Section 26 of this act takes effect on the first day of the month following the expiration of a one hundred eighty-day period beginning on the effective date of section 25 of this act." [2000 c 79 § 50.]

***Reviser's note:** Section 26 of this act takes effect October 1, 2000.

Severability—2000 c 79: See note following RCW 48.04.010.

48.43.043 Colorectal cancer examinations and laboratory tests—Required benefits or coverage. (1) Health plans issued or renewed on or after July 1, 2008, must provide benefits or coverage for colorectal cancer examinations and laboratory tests consistent with the guidelines or recommendations of the United States preventive services task force or the federal centers for disease control and prevention. Benefits or coverage must be provided:

(a) For any of the colorectal screening examinations and tests in the selected guidelines or recommendations, at a frequency identified in such guidelines or recommendations, as deemed appropriate by the patient's physician after consultation with the patient; and

(b) To a covered individual who is:

(i) At least fifty years old; or

(ii) Less than fifty years old and at high risk or very high risk for colorectal cancer according to such guidelines or recommendations.

(2) To encourage colorectal cancer screenings, patients and health care providers must not be required to meet burdensome criteria or overcome significant obstacles to secure such coverage. An individual may not be required to pay an additional deductible or coinsurance for testing that is greater than an annual deductible or coinsurance established for similar benefits. If the health plan does not cover a similar benefit, a deductible or coinsurance may not be set at a level that materially diminishes the value of the colorectal cancer benefit required.

(3)(a) A health carrier is not required under this section to provide for a referral to a nonparticipating health care provider, unless the carrier does not have an appropriate health care provider that is available and accessible to administer the screening exam and that is a participating health care provider with respect to such treatment.

(b) If a health carrier refers an individual to a nonparticipating health care provider pursuant to this section, screening exam services or resulting treatment, if any, must be pro-

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vided at no additional cost to the individual beyond what the individual would otherwise pay for services provided by a participating health care provider. [2007 c 23 § 1.]

48.43.045 Health plan requirements—Annual reports—Exemptions. (1) Every health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 1996, shall:

(a) Permit every category of health care provider to provide health services or care for conditions included in the basic health plan services to the extent that:

(i) The provision of such health services or care is within the health care providers' permitted scope of practice; and

(ii) The providers agree to abide by standards related to:

(A) Provision, utilization review, and cost containment of health services;

(B) Management and administrative procedures; and

(C) Provision of cost-effective and clinically efficacious health services.

(b) Annually report the names and addresses of all officers, directors, or trustees of the health carrier during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals, unless substantially similar information is filed with the commissioner or the national association of insurance commissioners. This requirement does not apply to a foreign or alien insurer regulated under chapter 48.20 or 48.21 RCW that files a supplemental compensation exhibit in its annual statement as required by law.

(2) The requirements of subsection (1)(a) of this section do not apply to a licensed health care profession regulated under Title 18 RCW when the licensing statute for the profession states that such requirements do not apply. [2007 c 253 § 12; 2007 c 98 § 18; 2006 c 25 § 7; 1997 c 231 § 205; 1995 c 265 § 8.]

Severability—Effective date—Implementation—2007 c 253: See RCW 18.250.900 through 18.250.902.

Effective dates—2007 c 98: See RCW 18.74.912.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.049 Health carrier data—Information from annual statement—Format prescribed by commissioner—Public availability. (1) Each health carrier offering a health benefit plan shall submit to the commissioner on or before April 1st of each year as part of the additional data statement or as a supplemental data statement the following information:

(a) The following information for the preceding year that is derived from the carrier's annual statement, including the exhibit of premiums, enrollments, and utilization for its Washington business, and the additional data to the annual statement. The information must be shown for five categories, total, individual contracts, small group contracts, and large group contracts (excluding government contracts), and government contracts:

(i) The total number of members;

(ii) The total amount of revenue;

(iii) The total amount of hospital and medical payments;

(iv) The medical loss ratio, that is computed by dividing the total amount of hospital and medical payments by the total amount of revenues;

(v) The average amount of premiums per member per month; and

(vi) The percentage change in the average premium per member per month, measured from the previous year; and

(b) The following aggregate financial information for the preceding year that is derived from the carrier's annual statement:

(i) The total amount of claim adjustment expenses;

(ii) The total amount of general administrative expenses, including identification of the five largest nonmedical administrative expenses and the assessment against the carrier for the Washington state health insurance pool;

(iii) The total amount of the reserves maintained for unpaid claims;

(iv) The total net underwriting gain or loss;

(v) The carrier's net income after taxes;

(vi) Dividends to stockholders;

(vii) The net change in capital and surplus from the prior year; and

(viii) The total amount of the capital and surplus.

(2) A carrier shall electronically submit the information described in subsection (1) of this section in a format and according to instructions prescribed by the commissioner.

(3) The commissioner shall make the information reported under this section available to the public in a format that allows comparison among carriers through a searchable public web site on the internet.

(4) For the purposes of licensed disability insurers, the commissioner shall work collaboratively with insurers to develop an additional or supplemental data statement that utilizes to the maximum extent possible information from the annual statement forms that are currently filed by these entities. [2006 c 104 § 2.]

Intent—2006 c 104: "Health carriers are currently required to file statutory annual statements with the office of the insurance commissioner or the national association of insurance commissioners. These annual statements are extensive and contain a significant amount of financial information. These annual statements are public documents; however, such financial information can be complex and difficult to read and understand.

It is the intent of this act to provide a method of reporting certain financial data in a user friendly format. It is also the intent of this act, to the extent possible, to utilize existing information from the annual statements when developing the additional or supplemental data statement required by this act, and to the extent possible, avoid imposing additional reporting requirements that have the unintended consequences of unduly increasing administrative costs for carriers required to file such information." [2006 c 104 § 1.]

48.43.055 Procedures for review and adjudication of health care provider complaints—Requirements. Each health carrier as defined under RCW 48.43.005 shall file with the commissioner its procedures for review and adjudication of complaints initiated by health care providers. Procedures filed under this section shall provide a fair review for consideration of complaints. Every health carrier shall provide reasonable means allowing any health care provider aggrieved by actions of the health carrier to be heard after submitting a written request for review. If the health carrier fails to grant or reject a request within thirty days after it is made, the complaining health care provider may proceed as if the complaint had been rejected. A complaint that has been rejected by the

health carrier may be submitted to nonbinding mediation. Mediation shall be conducted under chapter 7.07 RCW, or any other rules of mediation agreed to by the parties. This section is solely for resolution of provider complaints. Complaints by, or on behalf of, a covered person are subject to the grievance processes in RCW 48.43.530. [2005 c 172 § 19; 2002 c 300 § 6; 1995 c 265 § 20.]

Short title—Captions not law—Severability—Effective date—2005 c 172: See RCW 7.07.900 through 7.07.902 and 7.07.904.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.065 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements. (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with plans containing the basic health plan services to receive the full range of services covered under the plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan services. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The insurance commissioner shall establish by rule a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The insurance commissioner shall define by rule the process through which health carriers may offer the basic health plan services to individuals and organizations identi-

fied in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires a health carrier, health care facility, or health care provider to provide any health care services without appropriate payment of premium or fee. [1995 c 265 § 25.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.43.083 Chiropractor services—Participating provider agreement—Health carrier reimbursement. (1) A health carrier must reimburse a chiropractor who has signed a participating provider agreement for services determined by the carrier to be medically necessary if:

(a) The service is:

(i) Covered chiropractic health care, as defined in RCW 48.43.515, by the health plan under which the enrollee received the services; and

(ii) Provided by the chiropractor, or the chiropractor's employee specified in RCW 18.25.190 (2) or (3) who works in the same location as the chiropractor and to whom the chiropractor, pursuant to rules adopted by the Washington state chiropractic quality assurance commission, has delegated the service. The employee must meet the health carrier's reasonable qualifications for all such providers in the relevant class, including but not limited to standards for education and background checks, as applicable; and

(b) The chiropractor complies with the terms and conditions of the participating provider agreement. Violations of the participating provider agreement by an employee of the chiropractor to whom he or she has delegated a service may be deemed by the carrier to have been committed by the chiropractor.

(2) If a health carrier offers a participating provider agreement to a chiropractor within a single practice organized as a sole proprietorship, partnership, or corporation, the carrier must offer the same participating provider agreement to any other chiropractor within that practice providing services at the same location. The agreement may allow either party to terminate it without cause. [2007 c 502 § 1.]

Savings—2007 c 502: "This act does not affect any existing right acquired or liability or obligation incurred prior to January 1, 2008." [2007 c 502 § 3.]

Severability—2007 c 502: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 502 § 4.]

Effective date—2007 c 502: "This act takes effect January 1, 2008." [2007 c 502 § 5.]

48.43.085 Health carrier may not prohibit its enrollees from contracting for services outside the health care plan. Notwithstanding any other provision of law, no health carrier subject to the jurisdiction of the state of Washington may prohibit directly or indirectly its enrollees from freely contracting at any time to obtain any health care services outside the health care plan on any terms or conditions the enrollees choose. Nothing in this section shall be construed to bind a carrier for any services delivered outside the health plan. The provisions of this section shall be disclosed pursuant to *RCW 48.43.095(2). The insurance commissioner is

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prohibited from adopting rules regarding this section. [1996 c 312 § 3.]

*Reviser's note: RCW 48.43.095 was repealed by 2000 c 5 § 29, effective July 1, 2001.

48.43.087 Contracting for services at enrollee's expense—Mental health care practitioner—Conditions—Exception. (1) For purposes of this section:

(a) "Health carrier" includes disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, plans operating under the health care authority under chapter 41.05 RCW, the basic health plan operating under chapter 70.47 RCW, the state health insurance pool operating under chapter 48.41 RCW, insuring entities regulated under this chapter, and health maintenance organizations regulated under chapter 48.46 RCW.

(b) "Intermediary" means a person duly authorized to negotiate and execute provider contracts with health carriers on behalf of mental health care practitioners.

(c) Consistent with their lawful scopes of practice, "mental health care practitioners" includes only the following: Any generally recognized medical specialty of practitioners licensed under chapter 18.57 or 18.71 RCW who provide mental health services, advanced practice psychiatric nurses as authorized by the nursing care quality assurance commission under chapter 18.79 RCW, psychologists licensed under chapter 18.83 RCW, and mental health counselors, marriage and family therapists, and social workers licensed under chapter 18.225 RCW.

(d) "Mental health services" means outpatient services.

(2) Consistent with federal and state law and rule, no contract between a mental health care practitioner and an intermediary or between a mental health care practitioner and a health carrier that is written, amended, or renewed after June 6, 1996, may contain a provision prohibiting a practitioner and an enrollee from agreeing to contract for services solely at the expense of the enrollee as follows:

(a) On the exhaustion of the enrollee's mental health care coverage;

(b) During an appeal or an adverse certification process;

(c) When an enrollee's condition is excluded from coverage; or

(d) For any other clinically appropriate reason at any time.

(3) If a mental health care practitioner provides services to an enrollee during an appeal or adverse certification process, the practitioner must provide to the enrollee written notification that the enrollee is responsible for payment of these services, unless the health carrier elects to pay for services provided.

(4) This section does not apply to a mental health care practitioner who is employed full time on the staff of a health carrier. [2001 c 251 § 33; 1996 c 304 § 1.]

Severability—2001 c 251: See RCW 18.225.900.

48.43.091 Health carrier coverage of outpatient mental health services—Requirements. Every health carrier that provides coverage for any outpatient mental health service shall comply with the following requirements:

(1) In performing a utilization review of mental health services for a specific enrollee, the utilization review is limited to accessing only the specific health care information contained in the enrollee's record.

(2) In performing an audit of a provider that has furnished mental health services to a carrier's enrollees, the audit is limited to accessing only the records of enrollees covered by the specific health carrier for which the audit is being performed, except as otherwise permitted by RCW 70.02.050 and 71.05.630. [1999 c 87 § 1.]

48.43.093 Health carrier coverage of emergency medical services—Requirements—Conditions. (1) When conducting a review of the necessity and appropriateness of emergency services or making a benefit determination for emergency services:

(a) A health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. In addition, a health carrier shall not require prior authorization of such services provided prior to the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a nonparticipating hospital emergency department, a health carrier shall cover emergency services necessary to screen and stabilize a covered person if a prudent layperson would have reasonably believed that use of a participating hospital emergency department would result in a delay that would worsen the emergency, or if a provision of federal, state, or local law requires the use of a specific provider or facility. In addition, a health carrier shall not require prior authorization of such services provided prior to the point of stabilization if a prudent layperson acting reasonably would have believed that an emergency medical condition existed and that use of a participating hospital emergency department would result in a delay that would worsen the emergency.

(b) If an authorized representative of a health carrier authorizes coverage of emergency services, the health carrier shall not subsequently retract its authorization after the emergency services have been provided, or reduce payment for an item or service furnished in reliance on approval, unless the approval was based on a material misrepresentation about the covered person's health condition made by the provider of emergency services.

(c) Coverage of emergency services may be subject to applicable copayments, coinsurance, and deductibles, and a health carrier may impose reasonable differential cost-sharing arrangements for emergency services rendered by nonparticipating providers, if such differential between cost-sharing amounts applied to emergency services rendered by participating provider versus nonparticipating provider does not exceed fifty dollars. Differential cost sharing for emergency services may not be applied when a covered person presents to a nonparticipating hospital emergency department rather than a participating hospital emergency department when the health carrier requires preauthorization for postevaluation or poststabilization emergency services if:

(i) Due to circumstances beyond the covered person's control, the covered person was unable to go to a participat-

ing hospital emergency department in a timely fashion without serious impairment to the covered person's health; or

(ii) A prudent layperson possessing an average knowledge of health and medicine would have reasonably believed that he or she would be unable to go to a participating hospital emergency department in a timely fashion without serious impairment to the covered person's health.

(d) If a health carrier requires preauthorization for postevaluation or poststabilization services, the health carrier shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review. In order for postevaluation or poststabilization services to be covered by the health carrier, the provider or facility must make a documented good faith effort to contact the covered person's health carrier within thirty minutes of stabilization, if the covered person needs to be stabilized. The health carrier's authorized representative is required to respond to a telephone request for preauthorization from a provider or facility within thirty minutes. Failure of the health carrier to respond within thirty minutes constitutes authorization for the provision of immediately required medically necessary postevaluation and poststabilization services, unless the health carrier documents that it made a good faith effort but was unable to reach the provider or facility within thirty minutes after receiving the request.

(e) A health carrier shall immediately arrange for an alternative plan of treatment for the covered person if a nonparticipating emergency provider and health plan cannot reach an agreement on which services are necessary beyond those immediately necessary to stabilize the covered person consistent with state and federal laws.

(2) Nothing in this section is to be construed as prohibiting the health carrier from requiring notification within the time frame specified in the contract for inpatient admission or as soon thereafter as medically possible but no less than twenty-four hours. Nothing in this section is to be construed as preventing the health carrier from reserving the right to require transfer of a hospitalized covered person upon stabilization. Follow-up care that is a direct result of the emergency must be obtained in accordance with the health plan's usual terms and conditions of coverage. All other terms and conditions of coverage may be applied to emergency services. [1997 c 231 § 301.]

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

48.43.097 Filing of financial statements—Every health carrier. Every health carrier holding a registration from the commissioner shall file its financial statements as required by this code and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [1999 c 33 § 3.]

48.43.105 Preparation of documents that compare health carriers—Immunity—Due diligence. (Effective until July 1, 2009.) (1) A public or private entity who exercises due diligence in preparing a document of any kind that compares health carriers of any kind is immune from civil liability from claims based on the document and the contents of the document.

(2)(a) There is absolute immunity to civil liability from claims based on such a comparison document and its contents if the information was provided by the carrier, was substantially accurately presented, and contained the effective date of the information that the carrier supplied, if any.

(b) Where due diligence efforts to obtain accurate information have been taken, there is immunity from claims based on such a comparison document and its contents if the publisher of the comparison document asked for such information from the carrier, was refused, and relied on any usually reliable source for the information including, but not limited to, carrier enrollees, customers, agents, brokers, or providers. The carrier enrollees, customers, agents, brokers, or providers are likewise immune from civil liability on claims based on information they provided if they believed the information to be accurate and had exercised due diligence in their efforts to confirm the accuracy of the information provided.

(3) The immunity from liability contained in this section applies only if the comparison document contains the following in a conspicuous place and in easy to read typeface:

This comparison is based on information believed to be reliable by its publisher, but the accuracy of the information cannot be guaranteed. Caution is suggested to all readers who are encouraged to confirm data of importance to the reader before any purchasing or other decisions are made.

(4) The insurance commissioner is prohibited from adopting rules regarding this section. [1996 c 312 § 5.]

48.43.105 Preparation of documents that compare health carriers—Immunity—Due diligence. (Effective July 1, 2009.) (1) A public or private entity who exercises due diligence in preparing a document of any kind that compares health carriers of any kind is immune from civil liability from claims based on the document and the contents of the document.

(2)(a) There is absolute immunity to civil liability from claims based on such a comparison document and its contents if the information was provided by the carrier, was substantially accurately presented, and contained the effective date of the information that the carrier supplied, if any.

(b) Where due diligence efforts to obtain accurate information have been taken, there is immunity from claims based on such a comparison document and its contents if the publisher of the comparison document asked for such information from the carrier, was refused, and relied on any usually reliable source for the information including, but not limited to, carrier enrollees, customers, insurance producers, or providers. The carrier enrollees, customers, insurance producers, or providers are likewise immune from civil liability on claims based on information they provided if they believed the information to be accurate and had exercised due diligence in their efforts to confirm the accuracy of the information provided.

(3) The immunity from liability contained in this section applies only if the comparison document contains the following in a conspicuous place and in easy to read typeface:

This comparison is based on information believed to be reliable by its publisher, but the accuracy of the

information cannot be guaranteed. Caution is suggested to all readers who are encouraged to confirm data of importance to the reader before any purchasing or other decisions are made.

(4) The insurance commissioner is prohibited from adopting rules regarding this section. [2008 c 217 § 48; 1996 c 312 § 5.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.43.115 Maternity services—Intent—Definitions—Patient preference—Clinical sovereignty of provider—Notice to policyholders—Application. (1) The legislature recognizes the role of health care providers as the appropriate authority to determine and establish the delivery of quality health care services to maternity patients and their newly born children. It is the intent of the legislature to recognize patient preference and the clinical sovereignty of providers as they make determinations regarding services provided and the length of time individual patients may need to remain in a health care facility after giving birth. It is not the intent of the legislature to diminish a carrier's ability to utilize managed care strategies but to ensure the clinical judgment of the provider is not undermined by restrictive carrier contracts or utilization review criteria that fail to recognize individual postpartum needs.

(2) Unless otherwise specifically provided, the following definitions apply throughout this section:

(a) "Attending provider" means a provider who: Has clinical hospital privileges consistent with RCW 70.43.020; is included in a provider network of the carrier that is providing coverage; and is a physician licensed under chapter 18.57 or 18.71 RCW, a certified nurse midwife licensed under chapter 18.79 RCW, a midwife licensed under chapter 18.50 RCW, a physician's assistant licensed under chapter 18.57A or 18.71A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(b) "Health carrier" or "carrier" means disability insurers regulated under chapter 48.20 or 48.21 RCW, health care services contractors regulated under chapter 48.44 RCW, health maintenance organizations regulated under chapter 48.46 RCW, plans operating under the health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated under this chapter.

(3)(a) Every health carrier that provides coverage for maternity services must permit the attending provider, in consultation with the mother, to make decisions on the length of inpatient stay, rather than making such decisions through contracts or agreements between providers, hospitals, and insurers. These decisions must be based on accepted medical practice.

(b) Covered eligible services may not be denied for inpatient, postdelivery care to a mother and her newly born child after a vaginal delivery or a cesarean section delivery for such care as ordered by the attending provider in consultation with the mother.

(c) At the time of discharge, determination of the type and location of follow-up care must be made by the attending provider in consultation with the mother rather than by con-

tract or agreement between the hospital and the insurer. These decisions must be based on accepted medical practice.

(d) Covered eligible services may not be denied for follow-up care, including in-person care, as ordered by the attending provider in consultation with the mother. Coverage for providers of follow-up services must include, but need not be limited to, attending providers as defined in this section, home health agencies licensed under chapter 70.127 RCW, and registered nurses licensed under chapter 18.79 RCW.

(e) This section does not require attending providers to authorize care they believe to be medically unnecessary.

(f) Coverage for the newly born child must be no less than the coverage of the child's mother for no less than three weeks, even if there are separate hospital admissions.

(4) A carrier that provides coverage for maternity services may not deselect, terminate the services of, require additional documentation from, require additional utilization review of, reduce payments to, or otherwise provide financial disincentives to any attending provider or health care facility solely as a result of the attending provider or health care facility ordering care consistent with this section. This section does not prevent any insurer from reimbursing an attending provider or health care facility on a capitated, case rate, or other financial incentive basis.

(5) Every carrier that provides coverage for maternity services must provide notice to policyholders regarding the coverage required under this section. The notice must be in writing and must be transmitted at the earliest of the next mailing to the policyholder, the yearly summary of benefits sent to the policyholder, or January 1 of the year following June 6, 1996.

(6) This section does not establish a standard of medical care.

(7) This section applies to coverage for maternity services under a contract issued or renewed by a health carrier after June 6, 1996, and applies to plans operating under the health care authority under chapter 41.05 RCW beginning January 1, 1998. [2003 c 248 § 14; 1996 c 281 § 1.]

Short title—1996 c 281: "This act shall be known as "the Erin Act."" [1996 c 281 § 3.]

48.43.125 Coverage at a long-term care facility following hospitalization—Definition. (1) A carrier that provides coverage for a person at a long-term care facility following the person's hospitalization shall, upon the request of the person or his or her legal representative as authorized in RCW 7.70.065, provide such coverage at the facility in which the person resided immediately prior to the hospitalization if:

(a) The person's primary care physician determines that the medical care needs of the person can be met at the requested facility;

(b) The requested facility has all applicable licenses and certifications, and is not under a stop placement order that prevents the person's readmission;

(c) The requested facility agrees to accept payment from the carrier for covered services at the rate paid to similar facilities that otherwise contract with the carrier to provide such services; and

(d) The requested facility, with regard to the following, agrees to abide by the standards, terms, and conditions required by the carrier of similar facilities with which the car-

rier otherwise contracts: (i) Utilization review, quality assurance, and peer review; and (ii) management and administrative procedures, including data and financial reporting that may be required by the carrier.

(2) For purposes of this section, "long-term care facility" or "facility" means a nursing facility licensed under chapter 18.51 RCW, continuing care retirement community defined under RCW 70.38.025, boarding home licensed under chapter 18.20 RCW, or assisted living facility. [1999 c 312 § 2.]

Findings—1999 c 312: "The legislature finds that a long-term care facility is home for any individual who resides there, and the individual has the right to receive services in his or her own home and to be cared for by the organization with which he or she has a contractual agreement to provide housing and related services. The legislature further finds that restricting individuals from returning to the long-term care facility in which they were residing prior to hospitalization may detrimentally impact the health and well-being of frail individuals and their families." [1999 c 312 § 1.]

Short title—1999 c 312: "This act may be known and cited as the Kitson act." [1999 c 312 § 3.]

48.43.180 Denturist services. Notwithstanding any provision of any certified health plan covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such plan would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 23 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.43.185 General anesthesia services for dental procedures. (1) Each group health benefit plan that provides coverage for hospital, medical, or ambulatory surgery center services must cover general anesthesia services and related facility charges in conjunction with any dental procedure performed in a hospital or ambulatory surgical center if such anesthesia services and related facility charges are medically necessary because the covered person:

(a) Is under the age of seven, or physically or developmentally disabled, with a dental condition that cannot be safely and effectively treated in a dental office; or

(b) Has a medical condition that the person's physician determines would place the person at undue risk if the dental procedure were performed in a dental office. The procedure must be approved by the person's physician.

(2) Each group health benefit plan or group dental plan that provides coverage for dental services must cover medically necessary general anesthesia services in conjunction with any covered dental procedure performed in a dental office if the general anesthesia services are medically necessary because the covered person is under the age of seven or physically or developmentally disabled.

(3) This section does not prohibit a group health benefit plan or group dental plan from:

(a) Applying cost-sharing requirements, maximum annual benefit limitations, and prior authorization requirements to the services required under this section; or

(b) Covering only those services performed by a health care provider, or in a health care facility, that is part of its pro-

vider network; nor does it limit the health carrier in negotiating rates and contracts with specific providers.

(4) This section does not apply to medicare supplement policies, or supplemental contracts covering a specified disease or other limited benefits.

(5) For the purpose of this section, "general anesthesia services" means services to induce a state of unconsciousness accompanied by a loss of protective reflexes, including the ability to maintain an airway independently and respond purposefully to physical stimulation or verbal command.

(6) This section applies to group health benefit plans and group dental plans issued or renewed on or after January 1, 2002. [2001 c 321 § 2.]

48.43.190 Payment of chiropractic services—Parity. (Expires June 30, 2013.) (1)(a) A health carrier may not pay a chiropractor less for a service or procedure identified under a particular physical medicine and rehabilitation code or evaluation and management code, as listed in a nationally recognized services and procedures code book such as the American medical association current procedural terminology code book, than it pays any other type of provider licensed under Title 18 RCW for a service or procedure under the same code, except as provided in (b) of this subsection. A carrier may not circumvent this requirement by creating a chiropractor-specific code not listed in the nationally recognized code book otherwise used by the carrier for provider payment.

(b) This section does not affect a health carrier's:

(i) Implementation of a health care quality improvement program to promote cost-effective and clinically efficacious health care services, including but not limited to pay-for-performance payment methodologies and other programs fairly applied to all health care providers licensed under Title 18 RCW that are designed to promote evidence-based and research-based practices;

(ii) Health care provider contracting to comply with the network adequacy standards;

(iii) Authority to pay in-network providers differently than out-of-network providers; and

(iv) Authority to pay a chiropractor less than another provider for procedures or services under the same code based upon geographic differences in the cost of maintaining a practice.

(c) This section does not, and may not be construed to:

(i) Require the payment of provider billings that do not meet the definition of a clean claim as set forth in rules adopted by the commissioner;

(ii) Require any health plan to include coverage of any condition; or

(iii) Expand the scope of practice for any health care provider.

(2) This section applies only to payments made on or after January 1, 2009. [2008 c 304 § 1.]

Expiration date—2008 c 304: "This act expires June 30, 2013." [2008 c 304 § 4.]

48.43.200 Disclosure of certain material transactions—Report—Information is confidential. (1) Every certified health plan domiciled in this state shall file a report with the commissioner disclosing material acquisitions and

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dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

(a) Commissioner; and

(b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.43.205 through 48.43.225 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the certified health plan to which it pertains unless the commissioner, after giving the certified health plan that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 7.]

48.43.205 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.43.200 if the acquisitions or dispositions are not material. For purposes of RCW 48.43.200 through 48.43.225, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting certified health plan's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 8.]

48.43.210 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.43.200 through 48.43.225 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting certified health plan or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.43.200 through 48.43.225 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 9.]

48.43.215 Report of a material acquisition or disposition of assets—Information required. (1) The following

information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (a) Date of the transaction;
- (b) Manner of acquisition or disposition;
- (c) Description of the assets involved;
- (d) Nature and amount of the consideration given or received;
- (e) Purpose of or reason for the transaction;
- (f) Manner by which the amount of consideration was determined;
- (g) Gain or loss recognized or realized as a result of the transaction; and
- (h) Names of the persons from whom the assets were acquired or to whom they were disposed.

(2) Certified health plans are required to report material acquisitions and dispositions on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's reserves and such certified health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the certified health plan's net worth. [1995 c 86 § 10.]

48.43.220 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.43.200 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.43.200 through 48.43.225, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a certified health plan's total reserve credit taken for business ceded, on an annualized basis, as indicated in the certified health plan's most recent annual statement;
- (b) More than ten percent of a certified health plan's total cession when it is replaced by one or more unauthorized reinsurers; or
- (c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if the certified health plan's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 11.]

48.43.225 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. (1) The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (a) The effective date of the nonrenewal, cancellation, or revision;
- (b) The description of the transaction with an identification of the initiator;
- (c) The purpose of or reason for the transaction; and
- (d) If applicable, the identity of the replacement reinsurers.

(2) Certified health plans are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the certified health plan is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the certified health plan's reserves and the certified health plan ceded substantially all of its direct and assumed business to the pool. A certified health plan has ceded substantially all of its direct and assumed business to a pool if the certified health plan has less than one million dollars total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the certified health plan's net worth. [1995 c 86 § 12.]

48.43.300 Definitions. The definitions in this section apply throughout RCW 48.43.300 through 48.43.370 unless the context clearly requires otherwise.

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with RCW 48.43.305(4).

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic carrier" means any carrier domiciled in this state, or any person or entity subject to chapter 48.42 RCW domiciled in this state.

(4) "Foreign or alien carrier" means any carrier that is licensed to do business in this state but is not domiciled in this state, or any person or entity subject to chapter 48.42 RCW not domiciled in this state.

(5) "NAIC" means the national association of insurance commissioners.

(6) "Negative trend" means, with respect to a carrier, a negative trend over a period of time, as determined in accordance with the "trend test calculation" included in the RBC instructions.

(7) "RBC" means risk-based capital.

(8) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(9) "RBC level" means a carrier's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, with respect to any carrier, the product of 2.0 and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory control level RBC" means the product of .70 and the authorized control level RBC.

(10) "RBC plan" means a comprehensive financial plan containing the elements specified in RCW 48.43.310(2). If the commissioner rejects the RBC plan, and it is revised by the carrier, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan."

(11) "RBC report" means the report required in RCW 48.43.305.

(12) "Total adjusted capital" means the sum of:

(a) Either a carrier's statutory capital and surplus or net worth, or both, as determined in accordance with statutory accounting applicable to the annual financial statements required to be filed with the commissioner; and

(b) Other items, if any, as the RBC instructions may provide. [1998 c 241 § 1.]

48.43.305 Report of RBC levels—Distribution of report—Formula for determination—Commissioner may make adjustments. (1) Every domestic carrier shall, on or prior to the filing date of March 1st, prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic carrier shall file its RBC report:

(a) With the NAIC in accordance with the RBC instructions; and

(b) With the insurance commissioner in any state in which the carrier is authorized to do business, if the insurance commissioner has notified the carrier of its request in writing, in which case the carrier shall file its RBC report not later than the later of:

(i) Fifteen days from the receipt of notice to file its RBC report with that state; or

(ii) The filing date.

(2) A carrier's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between):

(a) The risk with respect to the carrier's assets;

(b) The risk of adverse insurance experience with respect to the carrier's liabilities and obligations;

(c) The interest rate risk with respect to the carrier's business; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC instructions.

(3) An excess of capital over the amount produced by the risk-based capital requirements contained in RCW 48.43.300 through 48.43.370 and the formulas, schedules, and instructions referenced in RCW 48.43.300 through 48.43.370 is desirable in the business of insurance. Accordingly, carriers should seek to maintain capital above the RBC levels required by RCW 48.43.300 through 48.43.370. Additional capital is used and useful in the insurance business and helps to secure a carrier against various risks inherent in, or affecting, the business of insurance and not accounted for or only

partially measured by the risk-based capital requirements contained in RCW 48.43.300 through 48.43.370.

(4) If a domestic carrier files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the carrier of the adjustment. The notice shall contain a statement of the reason for the adjustment. [1998 c 241 § 2.]

48.43.310 Company action level event—Required RBC plan—Commissioner's review—Notification—Challenge by carrier. (1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by a carrier which indicates that:

(i) The carrier's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or

(ii) The carrier has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 2.5 and has a negative trend;

(b) The notification by the commissioner to the carrier of an adjusted RBC report that indicates an event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330; or

(c) If, under RCW 48.43.330, a carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(2) In the event of a company action level event, the carrier shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the carrier intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the carrier's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, surplus, capital and surplus, and net worth. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the carrier's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the carrier's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the carrier challenges an adjusted RBC report under RCW 48.43.330, within forty-five days after notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(4) Within sixty days after the submission by a carrier of an RBC plan to the commissioner, the commissioner shall notify the carrier whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the carrier shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the carrier shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the carrier challenges the notification from the commissioner under RCW 48.43.330, within forty-five days after a notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(5) In the event of a notification by the commissioner to a carrier that the carrier's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the carrier's rights to a hearing under RCW 48.43.330, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic carrier that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the carrier is authorized to do business if:

(a) Such state has an RBC provision substantially similar to RCW 48.43.335(1); and

(b) The insurance commissioner of that state has notified the carrier of its request for the filing in writing, in which case the carrier shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section. [1998 c 241 § 3.]

48.43.315 Regulatory action level event—Required RBC plan—Commissioner's review—Notification—Challenge by carrier. (1) "Regulatory action level event" means, with respect to any carrier, any of the following events:

(a) The filing of an RBC report by the carrier which indicates that the carrier's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(b) The notification by the commissioner to a carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330;

(c) If, under RCW 48.43.330, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, the notification by the commissioner to the carrier

that the commissioner has, after a hearing, rejected the carrier's challenge;

(d) The failure of the carrier to file an RBC report by the filing date, unless the carrier has provided an explanation for such failure that is satisfactory to the commissioner and has cured the failure within ten days after the filing date;

(e) The failure of the carrier to submit an RBC plan to the commissioner within the time period set forth in RCW 48.43.310(3);

(f) Notification by the commissioner to the carrier that:

(i) The RBC plan or revised RBC plan submitted by the carrier is, in the judgment of the commissioner, unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to the carrier, provided the carrier has not challenged the determination under RCW 48.43.330;

(g) If, under RCW 48.43.330, the carrier challenges a determination by the commissioner under (f) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the carrier that the carrier has failed to adhere to its RBC plan or revised RBC plan, but only if such failure has a substantial adverse effect on the ability of the carrier to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the carrier has not challenged the determination under RCW 48.43.330; or

(i) If, under RCW 48.43.330, the carrier challenges a determination by the commissioner under (h) of this subsection, the notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the carrier to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform the examination or analysis the commissioner deems necessary of the assets, liabilities, and operations of the carrier including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying those corrective actions the commissioner determines are required.

(3) In determining corrective actions, the commissioner may take into account those factors deemed relevant with respect to the carrier based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the carrier, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five days after the occurrence of the regulatory action level event;

(b) If the carrier challenges an adjusted RBC report under RCW 48.43.330 and the challenge is not frivolous in the judgment of the commissioner within forty-five days after the notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge; or

(c) If the carrier challenges a revised RBC plan under RCW 48.43.330 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after

the notification to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(4) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the carrier's RBC plan or revised RBC plan, examine or analyze the assets, liabilities, and operations of the carrier and formulate the corrective order with respect to the carrier. The fees, costs, and expenses relating to consultants shall be borne by the affected carrier or other party as directed by the commissioner. [1998 c 241 § 4.]

48.43.320 Authorized control level event—Commissioner's options. (1) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the carrier which indicates that the carrier's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330;

(c) If, under RCW 48.43.330, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge;

(d) The failure of the carrier to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the carrier has not challenged the corrective order under RCW 48.43.330; or

(e) If the carrier has challenged a corrective order under RCW 48.43.330 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the carrier to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(2) In the event of an authorized control level event with respect to a carrier, the commissioner shall:

(a) Take those actions required under RCW 48.43.315 regarding a carrier with respect to which a regulatory action level event has occurred; or

(b) If the commissioner deems it to be in the best interests of either the policyholders or subscribers, or both, and creditors of the carrier and of the public, take those actions necessary to cause the carrier to be placed under regulatory control under chapter 48.31 RCW. In the event the commissioner takes such actions, the authorized control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner shall have the rights, powers, and duties with respect to the carrier as are set forth in chapter 48.31 RCW. In the event the commissioner takes actions under this subsection (2)(b) pursuant to an adjusted RBC report, the carrier is entitled to those protections afforded to carriers under the provisions of RCW 48.31.121 pertaining to summary proceedings. [1998 c 241 § 5.]

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48.43.325 Mandatory control level event—Commissioner's duty—Regulatory control. (1) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report which indicates that the carrier's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the carrier of an adjusted RBC report that indicates the event in (a) of this subsection, provided the carrier does not challenge the adjusted RBC report under RCW 48.43.330; or

(c) If, under RCW 48.43.330, the carrier challenges an adjusted RBC report that indicates the event in (a) of this subsection, notification by the commissioner to the carrier that the commissioner has, after a hearing, rejected the carrier's challenge.

(2) In the event of a mandatory control level event, with respect to a carrier, the commissioner shall take those actions necessary to place the carrier under regulatory control under chapter 48.31 RCW. In that event, the mandatory control level event is sufficient grounds for the commissioner to take action under chapter 48.31 RCW, and the commissioner shall have the rights, powers, and duties with respect to the carrier as are set forth in chapter 48.31 RCW. If the commissioner takes actions pursuant to an adjusted RBC report, the carrier is entitled to the protections of RCW 48.31.121 pertaining to summary proceedings. However, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period. [1998 c 241 § 6.]

48.43.330 Carrier's right to hearing—Request by carrier—Date set by commissioner. (1) Upon notification to a carrier by the commissioner of any of the following, the carrier shall have the right to a hearing, in accordance with chapters 48.04 and 34.05 RCW, at which the carrier may challenge any determination or action by the commissioner:

(a) Of an adjusted RBC report; or

(b)(i) That the carrier's RBC plan or revised RBC plan is unsatisfactory; and

(ii) The notification constitutes a regulatory action level event with respect to such carrier; or

(c) That the carrier has failed to adhere to its RBC plan or revised RBC plan and that such failure has a substantial adverse effect on the ability of the carrier to eliminate the company action level event with respect to the carrier in accordance with its RBC plan or revised RBC plan; or

(d) Of a corrective order with respect to the carrier.

(2) The carrier shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under this section. Upon receipt of the carrier's request for a hearing, the commissioner shall set a date for the hearing. The date shall be no less than ten nor more than thirty days after the date of the carrier's request. [1998 c 241 § 7.]

48.43.335 Confidentiality of RBC reports and plans—Use of certain comparisons prohibited—Certain information intended solely for use by commissioner. (Effective until July 1, 2009.) (1) All RBC reports, to the extent the information therein is not required to be set forth in

a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of a carrier and any corrective order issued by the commissioner, with respect to any domestic carrier or foreign carrier that are filed with the commissioner constitute information that might be damaging to the carrier if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of a carrier's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the carrier, and is not a means to rank carriers generally. Therefore, except as otherwise required under the provisions of RCW 48.43.300 through 48.43.370, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any carrier, or of any component derived in the calculation, by any carrier, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a carrier's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the carrier's RBC levels is published in any written publication and the carrier is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the carrier may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of carriers and the need for possible corrective action with respect to carriers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a carrier or any affiliate is authorized to write. [1998 c 241 § 8.]

48.43.335 Confidentiality of RBC reports and plans—Use of certain comparisons prohibited—Certain information intended solely for use by commissioner. (Effective July 1, 2009.) (1) All RBC reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and RBC plans, including the results or report of any examination or analysis of a carrier and any corrective order issued by the commissioner, with respect to any domestic carrier or foreign carrier that are filed with the commissioner constitute information that might be damaging to the carrier if made available to its competitors, and therefore shall be kept confidential by the

commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of a carrier's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the carrier, and is not a means to rank carriers generally. Therefore, except as otherwise required under the provisions of RCW 48.43.300 through 48.43.370, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBC levels of any carrier, or of any component derived in the calculation, by any carrier, insurance producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a carrier's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the carrier's RBC levels is published in any written publication and the carrier is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the carrier may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of carriers and the need for possible corrective action with respect to carriers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a carrier or any affiliate is authorized to write. [2008 c 217 § 49; 1998 c 241 § 8.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.43.340 Powers or duties of commissioner not limited—Rules. (1) The provisions of RCW 48.43.300 through 48.43.370 are supplemental to any other provisions of the laws and rules of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws and rules, including, but not limited to, chapter 48.31 RCW.

(2) The commissioner may adopt reasonable rules necessary for the implementation of RCW 48.43.300 through 48.43.370. [1998 c 241 § 9.]

48.43.345 Foreign or alien carriers—Required RBC report—Commissioner may require RBC plan—Mandatory control level event. (1) Any foreign or alien carrier shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended by the later of:

(a) The date an RBC report would be required to be filed by a domestic carrier under RCW 48.43.300 through 48.43.370; or

(b) Fifteen days after the request is received by the foreign or alien carrier. Any foreign or alien carrier shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2) In the event of a company action level event, regulatory action level event, or authorized control level event with respect to any foreign or alien carrier as determined under the RBC statute applicable in the state of domicile of the carrier or, if no RBC statute is in force in that state, under the provisions of RCW 48.43.300 through 48.43.370, if the insurance commissioner of the state of domicile of the foreign or alien carrier fails to require the foreign or alien carrier to file an RBC plan in the manner specified under that state's RBC statute or, if no RBC statute is in force in that state, under RCW 48.43.310, the commissioner may require the foreign or alien carrier to file an RBC plan with the commissioner. In this event, the failure of the foreign or alien carrier to file an RBC plan with the commissioner is grounds to order the carrier to cease and desist from writing new insurance business in this state.

(3) In the event of a mandatory control level event with respect to any foreign or alien carrier, if no domiciliary receiver has been appointed with respect to the foreign or alien carrier under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign or alien carrier, the commissioner may apply for an order under RCW 48.31.080 or 48.31.090 to conserve the assets within this state of foreign or alien carriers, and the occurrence of the mandatory control level event is considered adequate grounds for the application. [1998 c 241 § 10.]

48.43.350 No liability or cause of action against commissioner or department. There is no liability on the part of, and no cause of action shall arise against, the commissioner or insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under RCW 48.43.300 through 48.43.370. [1998 c 241 § 11.]

48.43.355 Notice by commissioner to carrier—When effective. All notices by the commissioner to a carrier that may result in regulatory action are effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission, are effective upon the carrier's receipt of such notice. [1998 c 241 § 12.]

48.43.360 Initial RBC reports—Calculation of initial RBC levels—Subsequent reports. For RBC reports to be filed by carriers commencing operations after June 11, 1998, those carriers shall calculate the initial RBC levels using financial projections, considering managed care arrangements, for its first full year in operation. Such projections, including the risk-based capital requirement, must be included as part of a comprehensive business plan that is submitted as part of the application for registration under RCW 48.44.040 and 48.46.030. The resulting RBC requirement

shall be reported in the first RBC report submitted under RCW 48.43.305. For subsequent reports, the RBC results using actual financial data shall be included. [1998 c 241 § 13.]

48.43.366 Self-funded multiple employer welfare arrangements. A self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, is subject to the same RBC reporting requirements as a domestic carrier under RCW 48.43.300 through 48.43.370. [2004 c 260 § 19.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

48.43.370 RBC standards not applicable to certain carriers. RCW 48.43.300 through 48.43.370 shall not apply to a carrier which is subject to the provisions of RCW 48.05.430 through *48.05.490. [1998 c 241 § 15.]

***Reviser's note:** RCW 48.05.490 was repealed by 2006 c 25 § 11.

48.43.500 Intent—Purpose—2000 c 5. It is the intent of the legislature that enrollees covered by health plans receive quality health care designed to maintain and improve their health. The purpose of chapter 5, Laws of 2000 is to ensure that health plan enrollees:

(1) Have improved access to information regarding their health plans;

(2) Have sufficient and timely access to appropriate health care services, and choice among health care providers;

(3) Are assured that health care decisions are made by appropriate medical personnel;

(4) Have access to a quick and impartial process for appealing plan decisions;

(5) Are protected from unnecessary invasions of health care privacy; and

(6) Are assured that personal health care information will be used only as necessary to obtain and pay for health care or to improve the quality of care. [2000 c 5 § 1.]

Application—2000 c 5: "This act applies to: Health plans as defined in RCW 48.43.005 offered, renewed, or issued by a carrier; medical assistance provided under RCW 74.09.522; the basic health plan offered under chapter 70.47 RCW; and health benefits provided under chapter 41.05 RCW." [2000 c 5 § 19.]

Short title—2000 c 5: "This act may be known and cited as the health care patient bill of rights." [2000 c 5 § 22.]

Captions not law—2000 c 5: "Captions used in this act are not any part of the law." [2000 c 5 § 24.]

Construction—2000 c 5: "To the extent permitted by law, if any provision of this act conflicts with state or federal law, such provision must be construed in a manner most favorable to the enrollee." [2000 c 5 § 26.]

Severability—2000 c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 5 § 27.]

Application to contracts—Effective dates—2000 c 5: "(1) Except as provided in subsections (2) and (3) of this section, this act applies to contracts entered into or renewing after June 30, 2001.

(2) Sections 13, 14, 15, and 16 of this act take effect January 1, 2001.

(3) Section 29 of this act takes effect July 1, 2001." [2000 c 5 § 28.]

48.43.505 Requirement to protect enrollee's right to privacy or confidential services—Rules. (1) Health carriers and insurers shall adopt policies and procedures that conform administrative, business, and operational practices to

protect an enrollee's right to privacy or right to confidential health care services granted under state or federal laws.

(2) The commissioner may adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations and the national association of insurance commissioners, and after considering the effect of those standards on the ability of carriers to undertake enrollee care management and disease management programs. [2000 c 5 § 5.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.510 Carrier required to disclose health plan information—Marketing and advertising restrictions—

Rules. (1) A carrier that offers a health plan may not offer to sell a health plan to an enrollee or to any group representative, agent, employer, or enrollee representative without first offering to provide, and providing upon request, the following information before purchase or selection:

(a) A listing of covered benefits, including prescription drug benefits, if any, a copy of the current formulary, if any is used, definitions of terms such as generic versus brand name, and policies regarding coverage of drugs, such as how they become approved or taken off the formulary, and how consumers may be involved in decisions about benefits;

(b) A listing of exclusions, reductions, and limitations to covered benefits, and any definition of medical necessity or other coverage criteria upon which they may be based;

(c) A statement of the carrier's policies for protecting the confidentiality of health information;

(d) A statement of the cost of premiums and any enrollee cost-sharing requirements;

(e) A summary explanation of the carrier's grievance process;

(f) A statement regarding the availability of a point-of-service option, if any, and how the option operates; and

(g) A convenient means of obtaining lists of participating primary care and specialty care providers, including disclosure of network arrangements that restrict access to providers within any plan network. The offer to provide the information referenced in this subsection (1) must be clearly and prominently displayed on any information provided to any prospective enrollee or to any prospective group representative, agent, employer, or enrollee representative.

(2) Upon the request of any person, including a current enrollee, prospective enrollee, or the insurance commissioner, a carrier must provide written information regarding any health care plan it offers, that includes the following written information:

(a) Any documents, instruments, or other information referred to in the medical coverage agreement;

(b) A full description of the procedures to be followed by an enrollee for consulting a provider other than the primary care provider and whether the enrollee's primary care provider, the carrier's medical director, or another entity must authorize the referral;

(c) Procedures, if any, that an enrollee must first follow for obtaining prior authorization for health care services;

(d) A written description of any reimbursement or payment arrangements, including, but not limited to, capitation

provisions, fee-for-service provisions, and health care delivery efficiency provisions, between a carrier and a provider or network;

(e) Descriptions and justifications for provider compensation programs, including any incentives or penalties that are intended to encourage providers to withhold services or minimize or avoid referrals to specialists;

(f) An annual accounting of all payments made by the carrier which have been counted against any payment limitations, visit limitations, or other overall limitations on a person's coverage under a plan;

(g) A copy of the carrier's grievance process for claim or service denial and for dissatisfaction with care; and

(h) Accreditation status with one or more national managed care accreditation organizations, and whether the carrier tracks its health care effectiveness performance using the health employer data information set (HEDIS), whether it publicly reports its HEDIS data, and how interested persons can access its HEDIS data.

(3) Each carrier shall provide to all enrollees and prospective enrollees a list of available disclosure items.

(4) Nothing in this section requires a carrier or a health care provider to divulge proprietary information to an enrollee, including the specific contractual terms and conditions between a carrier and a provider.

(5) No carrier may advertise or market any health plan to the public as a plan that covers services that help prevent illness or promote the health of enrollees unless it:

(a) Provides all clinical preventive health services provided by the basic health plan, authorized by chapter 70.47 RCW;

(b) Monitors and reports annually to enrollees on standardized measures of health care and satisfaction of all enrollees in the health plan. The state department of health shall recommend appropriate standardized measures for this purpose, after consideration of national standardized measurement systems adopted by national managed care accreditation organizations and state agencies that purchase managed health care services; and

(c) Makes available upon request to enrollees its integrated plan to identify and manage the most prevalent diseases within its enrolled population, including cancer, heart disease, and stroke.

(6) No carrier may preclude or discourage its providers from informing an enrollee of the care he or she requires, including various treatment options, and whether in the providers' view such care is consistent with the plan's health coverage criteria, or otherwise covered by the enrollee's medical coverage agreement with the carrier. No carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of an enrollee with a carrier. Nothing in this section shall be construed to authorize a provider to bind a carrier to pay for any service.

(7) No carrier may preclude or discourage enrollees or those paying for their coverage from discussing the comparative merits of different carriers with their providers. This prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier.

(8) Each carrier must communicate enrollee information required in chapter 5, Laws of 2000 by means that ensure that a substantial portion of the enrollee population can make use of the information.

(9) The commissioner may adopt rules to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services. [2000 c 5 § 6.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.515 Access to appropriate health services—Enrollee options—Rules. (1) Each enrollee in a health plan must have adequate choice among health care providers.

(2) Each carrier must allow an enrollee to choose a primary care provider who is accepting new enrollees from a list of participating providers. Enrollees also must be permitted to change primary care providers at any time with the change becoming effective no later than the beginning of the month following the enrollee's request for the change.

(3) Each carrier must have a process whereby an enrollee with a complex or serious medical or psychiatric condition may receive a standing referral to a participating specialist for an extended period of time.

(4) Each carrier must provide for appropriate and timely referral of enrollees to a choice of specialists within the plan if specialty care is warranted. If the type of medical specialist needed for a specific condition is not represented on the specialty panel, enrollees must have access to nonparticipating specialty health care providers.

(5) Each carrier shall provide enrollees with direct access to the participating chiropractor of the enrollee's choice for covered chiropractic health care without the necessity of prior referral. Nothing in this subsection shall prevent carriers from restricting enrollees to seeing only providers who have signed participating provider agreements or from utilizing other managed care and cost containment techniques and processes. For purposes of this subsection, "covered chiropractic health care" means covered benefits and limitations related to chiropractic health services as stated in the plan's medical coverage agreement, with the exception of any provisions related to prior referral for services.

(6) Each carrier must provide, upon the request of an enrollee, access by the enrollee to a second opinion regarding any medical diagnosis or treatment plan from a qualified participating provider of the enrollee's choice.

(7) Each carrier must cover services of a primary care provider whose contract with the plan or whose contract with a subcontractor is being terminated by the plan or subcontractor without cause under the terms of that contract for at least sixty days following notice of termination to the enrollees or, in group coverage arrangements involving periods of open enrollment, only until the end of the next open enrollment period. The provider's relationship with the carrier or subcontractor must be continued on the same terms and conditions as those of the contract the plan or subcontractor is terminating, except for any provision requiring that the carrier assign new enrollees to the terminated provider.

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(8) Every carrier shall meet the standards set forth in this section and any rules adopted by the commissioner to implement this section. In developing rules to implement this section, the commissioner shall consider relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services. [2000 c 5 § 7.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.517 Enrollment of child participating in medical assistance program—Employer-sponsored health plan. When the department of social and health services has determined that it is cost-effective to enroll a child participating in a medical assistance program under chapter 74.09 RCW in an employer-sponsored health plan, the carrier shall permit the enrollment of the participant who is otherwise eligible for coverage in the health plan without regard to any open enrollment restrictions. The request for special enrollment shall be made by the department or participant within sixty days of the department's determination that the enrollment would be cost-effective. [2007 c 5 § 7.]

48.43.520 Requirement to maintain a documented utilization review program description and written utilization review criteria—Rules. (1) Carriers that offer a health plan shall maintain a documented utilization review program description and written utilization review criteria based on reasonable medical evidence. The program must include a method for reviewing and updating criteria. Carriers shall make clinical protocols, medical management standards, and other review criteria available upon request to participating providers.

(2) The commissioner shall adopt, in rule, standards for this section after considering relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

(3) A carrier shall not be required to use medical evidence or standards in its utilization review of religious non-medical treatment or religious nonmedical nursing care. [2000 c 5 § 8.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.525 Prohibition against retrospective denial of health plan coverage—Rules. (1) A health carrier that offers a health plan shall not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered.

(2) The commissioner shall adopt, in rule, standards for this section after considering relevant standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services. [2000 c 5 § 9.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.530 Requirement for carriers to have a comprehensive grievance process—Carrier’s duties—Procedures—Appeals—Rules. (1) Each carrier that offers a health plan must have a fully operational, comprehensive grievance process that complies with the requirements of this section and any rules adopted by the commissioner to implement this section. For the purposes of this section, the commissioner shall consider grievance process standards adopted by national managed care accreditation organizations and state agencies that purchase managed health care services.

(2) Each carrier must process as a complaint an enrollee’s expression of dissatisfaction about customer service or the quality or availability of a health service. Each carrier must implement procedures for registering and responding to oral and written complaints in a timely and thorough manner.

(3) Each carrier must provide written notice to an enrollee or the enrollee’s designated representative, and the enrollee’s provider, of its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to or continued stay in a health care facility.

(4) Each carrier must process as an appeal an enrollee’s written or oral request that the carrier reconsider: (a) Its resolution of a complaint made by an enrollee; or (b) its decision to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits, including the admission to, or continued stay in, a health care facility. A carrier must not require that an enrollee file a complaint prior to seeking appeal of a decision under (b) of this subsection.

(5) To process an appeal, each carrier must:

(a) Provide written notice to the enrollee when the appeal is received;

(b) Assist the enrollee with the appeal process;

(c) Make its decision regarding the appeal within thirty days of the date the appeal is received. An appeal must be expedited if the enrollee’s provider or the carrier’s medical director reasonably determines that following the appeal process response timelines could seriously jeopardize the enrollee’s life, health, or ability to regain maximum function. The decision regarding an expedited appeal must be made within seventy-two hours of the date the appeal is received;

(d) Cooperate with a representative authorized in writing by the enrollee;

(e) Consider information submitted by the enrollee;

(f) Investigate and resolve the appeal; and

(g) Provide written notice of its resolution of the appeal to the enrollee and, with the permission of the enrollee, to the enrollee’s providers. The written notice must explain the carrier’s decision and the supporting coverage or clinical reasons and the enrollee’s right to request independent review of the carrier’s decision under RCW 48.43.535.

(6) Written notice required by subsection (3) of this section must explain:

(a) The carrier’s decision and the supporting coverage or clinical reasons; and

(b) The carrier’s appeal process, including information, as appropriate, about how to exercise the enrollee’s rights to obtain a second opinion, and how to continue receiving services as provided in this section.

(7) When an enrollee requests that the carrier reconsider its decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving through the health plan and the carrier’s decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide that health service until the appeal is resolved. If the resolution of the appeal or any review sought by the enrollee under RCW 48.43.535 affirms the carrier’s decision, the enrollee may be responsible for the cost of this continued health service.

(8) Each carrier must provide a clear explanation of the grievance process upon request, upon enrollment to new enrollees, and annually to enrollees and subcontractors.

(9) Each carrier must ensure that the grievance process is accessible to enrollees who are limited English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file a grievance.

(10) Each carrier must: Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a log of all appeals; and identify and evaluate trends in appeals. [2000 c 5 § 10.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.535 Independent review of health care disputes—System for using certified independent review organizations—Rules. (1) There is a need for a process for the fair consideration of disputes relating to decisions by carriers that offer a health plan to deny, modify, reduce, or terminate coverage of or payment for health care services for an enrollee.

(2) An enrollee may seek review by a certified independent review organization of a carrier’s decision to deny, modify, reduce, or terminate coverage of or payment for a health care service, after exhausting the carrier’s grievance process and receiving a decision that is unfavorable to the enrollee, or after the carrier has exceeded the timelines for grievances provided in RCW 48.43.530, without good cause and without reaching a decision.

(3) The commissioner must establish and use a rotational registry system for the assignment of a certified independent review organization to each dispute. The system should be flexible enough to ensure that an independent review organization has the expertise necessary to review the particular medical condition or service at issue in the dispute.

(4) Carriers must provide to the appropriate certified independent review organization, not later than the third business day after the date the carrier receives a request for review, a copy of:

(a) Any medical records of the enrollee that are relevant to the review;

(b) Any documents used by the carrier in making the determination to be reviewed by the certified independent review organization;

(c) Any documentation and written information submitted to the carrier in support of the appeal; and

(d) A list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal. Health information or other

confidential or proprietary information in the custody of a carrier may be provided to an independent review organization, subject to rules adopted by the commissioner.

(5) The medical reviewers from a certified independent review organization will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee. The medical reviewers' determinations must be based upon their expert medical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in the state of Washington. Except as provided in this subsection, the certified independent review organization must ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement. Medical reviewers may override the health plan's medical necessity or appropriateness standards if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice.

(6) Once a request for an independent review determination has been made, the independent review organization must proceed to a final determination, unless requested otherwise by both the carrier and the enrollee or the enrollee's representative.

(7) Carriers must timely implement the certified independent review organization's determination, and must pay the certified independent review organization's charges.

(8) When an enrollee requests independent review of a dispute under this section, and the dispute involves a carrier's decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving at the time the request for review is submitted and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide the health service if requested by the enrollee until a determination is made under this section. If the determination affirms the carrier's decision, the enrollee may be responsible for the cost of the continued health service.

(9) A certified independent review organization may notify the office of the insurance commissioner if, based upon its review of disputes under this section, it finds a pattern of substandard or egregious conduct by a carrier.

(10)(a) The commissioner shall adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations.

(b) This section is not intended to supplant any existing authority of the office of the insurance commissioner under this title to oversee and enforce carrier compliance with applicable statutes and rules. [2000 c 5 § 11.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.540 Requirement to designate a licensed medical director—Exemption. Any carrier that offers a health plan and any self-insured health plan subject to the jurisdiction of Washington state shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. However, a naturopathic or complementary alternative health plan, which provides solely complementary alternative health

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care to individuals, groups, or health plans, may have a medical director licensed under chapter 18.36A RCW. A carrier that offers dental only coverage shall designate a dental director who is licensed under chapter 18.32 RCW, or licensed in a state that has been determined by the dental quality assurance commission to have substantially equivalent licensing standards to those of Washington. A health plan or self-insured health plan that offers only religious nonmedical treatment or religious nonmedical nursing care shall not be required to have a medical director. [2002 c 103 § 1; 2000 c 5 § 13.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.545 Standard of care—Liability—Causes of action—Defense—Exception. (1)(a) A health carrier shall adhere to the accepted standard of care for health care providers under chapter 7.70 RCW when arranging for the provision of medically necessary health care services to its enrollees. A health carrier shall be liable for any and all harm proximately caused by its failure to follow that standard of care when the failure resulted in the denial, delay, or modification of the health care service recommended for, or furnished to, an enrollee.

(b) A health carrier is also liable for damages under (a) of this subsection for harm to an enrollee proximately caused by health care treatment decisions that result from a failure to follow the accepted standard of care made by its:

- (i) Employees;
- (ii) Agents; or
- (iii) Ostensible agents who are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control.

(2) The provisions of this section may not be waived, shifted, or modified by contract or agreement and responsibility for the provisions shall be a duty that cannot be delegated. Any effort to waive, modify, delegate, or shift liability for a breach of the duty established by this section, through a contract for indemnification or otherwise, is invalid.

(3) This section does not create any new cause of action, or eliminate any presently existing cause of action, with respect to health care providers and health care facilities that are included in and subject to the provisions of chapter 7.70 RCW.

(4) It is a defense to any action or liability asserted under this section against a health carrier that:

(a) The health care service in question is not a benefit provided under the plan or the service is subject to limitations under the plan that have been exhausted;

(b) Neither the health carrier, nor any employee, agent, or ostensible agent for whose conduct the health carrier is liable under subsection (1)(b) of this section, controlled, influenced, or participated in the health care decision; or

(c) The health carrier did not deny or unreasonably delay payment for treatment prescribed or recommended by a participating health care provider for the enrollee.

(5) This section does not create any liability on the part of an employer, an employer group purchasing organization that purchases coverage or assumes risk on behalf of its employers, or a governmental agency that purchases cover-

age on behalf of individuals and families. The governmental entity established to offer and provide health insurance to public employees, public retirees, and their covered dependents under RCW 41.05.140 is subject to liability under this section.

(6) Nothing in any law of this state prohibiting a health carrier from practicing medicine or being licensed to practice medicine may be asserted as a defense by the health carrier in an action brought against it under this section.

(7)(a) A person may not maintain a cause of action under this section against a health carrier unless:

(i) The affected enrollee has suffered substantial harm. As used in this subsection, "substantial harm" means loss of life, loss or significant impairment of limb, bodily or cognitive function, significant disfigurement, or severe or chronic physical pain; and

(ii) The affected enrollee or the enrollee's representative has exercised the opportunity established in RCW 48.43.535 to seek independent review of the health care treatment decision.

(b) This subsection (7) does not prohibit an enrollee from pursuing other appropriate remedies, including injunctive relief, a declaratory judgment, or other relief available under law, if its requirements place the enrollee's health in serious jeopardy.

(8) In an action against a health carrier, a finding that a health care provider is an employee, agent, or ostensible agent of such a health carrier shall not be based solely on proof that the person's name appears in a listing of approved physicians or health care providers made available to enrollees under a health plan.

(9) Any action under this section shall be commenced within three years of the completion of the independent review process.

(10) This section does not apply to workers' compensation insurance under Title 51 RCW. [2000 c 5 § 17.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.550 Delegation of duties—Carrier accountability. Each carrier is accountable for and must oversee any activities required by chapter 5, Laws of 2000 that it delegates to any subcontractor. No contract with a subcontractor executed by the health carrier or the subcontractor may relieve the health carrier of its obligations to any enrollee for the provision of health care services or of its responsibility for compliance with statutes or rules. [2000 c 5 § 18.]

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

48.43.600 Overpayment recovery—Carrier. (1) Except in the case of fraud, or as provided in subsections (2) and (3) of this section, a carrier may not: (a) Request a refund from a health care provider of a payment previously made to satisfy a claim unless it does so in writing to the provider within twenty-four months after the date that the payment was made; or (b) request that a contested refund be paid any sooner than six months after receipt of the request. Any such request must specify why the carrier believes the provider

owes the refund. If a provider fails to contest the request in writing to the carrier within thirty days of its receipt, the request is deemed accepted and the refund must be paid.

(2) A carrier may not, if doing so for reasons related to coordination of benefits with another carrier or entity responsible for payment of a claim: (a) Request a refund from a health care provider of a payment previously made to satisfy a claim unless it does so in writing to the provider within thirty months after the date that the payment was made; or (b) request that a contested refund be paid any sooner than six months after receipt of the request. Any such request must specify why the carrier believes the provider owes the refund, and include the name and mailing address of the entity that has primary responsibility for payment of the claim. If a provider fails to contest the request in writing to the carrier within thirty days of its receipt, the request is deemed accepted and the refund must be paid.

(3) A carrier may at any time request a refund from a health care provider of a payment previously made to satisfy a claim if: (a) A third party, including a government entity, is found responsible for satisfaction of the claim as a consequence of liability imposed by law, such as tort liability; and (b) the carrier is unable to recover directly from the third party because the third party has either already paid or will pay the provider for the health services covered by the claim.

(4) If a contract between a carrier and a health care provider conflicts with this section, this section shall prevail. However, nothing in this section prohibits a health care provider from choosing at any time to refund to a carrier any payment previously made to satisfy a claim.

(5) For purposes of this section, "refund" means the return, either directly or through an offset to a future claim, of some or all of a payment already received by a health care provider.

(6) This section neither permits nor precludes a carrier from recovering from a subscriber, enrollee, or beneficiary any amounts paid to a health care provider for benefits to which the subscriber, enrollee, or beneficiary was not entitled under the terms and conditions of the health plan, insurance policy, or other benefit agreement.

(7) This section does not apply to claims for health care services provided through dental-only health carriers, health care services provided under Title XVIII (medicare) of the social security act, or medicare supplemental plans regulated under chapter 48.66 RCW. [2005 c 278 § 1.]

Application—2005 c 278: "This act applies to contracts issued or renewed on or after January 1, 2006." [2005 c 278 § 3.]

48.43.605 Overpayment recovery—Health care provider. (1) Except in the case of fraud, or as provided in subsection (2) of this section, a health care provider may not: (a) Request additional payment from a carrier to satisfy a claim unless he or she does so in writing to the carrier within twenty-four months after the date that the claim was denied or payment intended to satisfy the claim was made; or (b) request that the additional payment be made any sooner than six months after receipt of the request. Any such request must specify why the provider believes the carrier owes the additional payment.

(2) A health care provider may not, if doing so for reasons related to coordination of benefits with another carrier

or entity responsible for payment of a claim: (a) Request additional payment from a carrier to satisfy a claim unless he or she does so in writing to the carrier within thirty months after the date the claim was denied or payment intended to satisfy the claim was made; or (b) request that the additional payment be made any sooner than six months after receipt of the request. Any such request must specify why the provider believes the carrier owes the additional payment, and include the name and mailing address of any entity that has disclaimed responsibility for payment of the claim.

(3) If a contract between a carrier and a health care provider conflicts with this section, this section shall prevail. However, nothing in this section prohibits a carrier from choosing at any time to make additional payments to a provider to satisfy a claim.

(4) This section does not apply to claims for health care services provided through dental-only health carriers, health care services provided under Title XVIII (medicare) of the social security act, or medicare supplemental plans regulated under chapter 48.66 RCW. [2005 c 278 § 2.]

Application—2005 c 278: See note following RCW 48.43.600.

48.43.650 Fixed payment insurance products—Commissioner’s annual report. The commissioner shall collect information from insurers offering fixed payment insurance products, and report aggregated data for each calendar year, including the number of groups purchasing the products, the number of enrollees, and the number of consumer complaints filed. The reports shall be provided to the legislature annually to reflect the calendar year experience, and the initial report shall reflect calendar year 2008 and be due no later than June 1, 2009, and each June thereafter. [2007 c 296 § 6.]

48.43.901 Captions not law—1996 c 312. Captions used in this act do not constitute part of the law. [1996 c 312 § 6.]

48.43.902 Effective date—1996 c 312. This act shall take effect July 1, 1996. [1996 c 312 § 8.]

48.43.903 Severability—1998 c 241. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 241 § 17.]

Chapter 48.44 RCW

HEALTH CARE SERVICES

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48.44.010 Definitions. For the purposes of this chapter:

- (1) "Health care services" means and includes medical, surgical, dental, chiropractic, hospital, optometric, podiatric, pharmaceutical, ambulance, custodial, mental health, and other therapeutic services.
- (2) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes health care services and is licensed to furnish such services.
- (3) "Health care service contractor" means any corporation, cooperative group, or association, which is sponsored by or otherwise intimately connected with a provider or group of providers, who or which not otherwise being engaged in the insurance business, accepts prepayment for health care services from or for the benefit of persons or groups of persons as consideration for providing such persons with any health care services. "Health care service contractor" does not include direct patient-provider primary care practices as defined in RCW 48.150.010.
- (4) "Participating provider" means a provider, who or which has contracted in writing with a health care service contractor to accept payment from and to look solely to such contractor according to the terms of the subscriber contract for any health care services rendered to a person who has previously paid, or on whose behalf prepayment has been made, to such contractor for such services.
- (5) "Enrolled participant" means a person or group of persons who have entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered

into with a health care service contractor to receive health care services.

(6) "Commissioner" means the insurance commissioner.

(7) "Uncovered expenditures" means the costs to the health care service contractor for health care services that are the obligation of the health care service contractor for which an enrolled participant would also be liable in the event of the health care service contractor's insolvency and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health care service contractor, or for services that are guaranteed, insured or assumed by a person or organization other than the health care service contractor.

(8) "Copayment" means an amount specified in a group or individual contract which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(9) "Deductible" means the amount an enrolled participant is responsible to pay before the health care service contractor begins to pay the costs associated with treatment.

(10) "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specific group. The group contract may include coverage for dependents.

(11) "Individual contract" means a contract for health care services issued to and covering an individual. An individual contract may include dependents.

(12) "Carrier" means a health maintenance organization, an insurer, a health care service contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual contract.

(13) "Replacement coverage" means the benefits provided by a succeeding carrier.

(14) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

(15) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.44.037(3) and are recorded as equity.

(16) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt. [2007 c 267 § 2; 1990 c 120 § 1; 1986 c 223 § 1. Prior: 1983 c 286 § 3; 1983 c 154 § 3; 1980 c 102 § 10; 1965 c 87 § 1; 1961 c 197 § 1; 1947 c 268 § 1; Rem. Supp. 1947 § 6131-10.]

Severability—1983 c 286: See note following RCW 48.44.309.

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.011 Agent—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (Effective until July 1, 2009.) (1) Agent, as used in this chapter, means any person appointed or authorized by a health care service contractor to solicit applications for health care service contracts on its behalf.

(2) No person shall act as or hold himself out to be an agent of a health care service contractor unless licensed as a disability insurance agent by this state and appointed by the health care service contractor on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance agent.

(4) A person holding a valid license in this state as a health care service contractor agent on July 24, 1983, is not required to requalify by an examination for the renewal of the license.

(5) The commissioner may revoke, suspend, or refuse to issue or renew any agent's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance agent. [1983 c 202 § 1; 1969 c 115 § 7.]

48.44.011 Insurance producer—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (Effective July 1, 2009.) (1) Insurance producer, as used in this chapter, means any person appointed or authorized by a health care service contractor to solicit applications for health care service contracts on its behalf.

(2) No person shall act as or hold himself or herself out to be an appointed insurance producer of a health care service contractor unless licensed as a disability insurance producer by this state and appointed by the health care service contractor on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance producer.

(4) The commissioner may revoke, suspend, or refuse to issue or renew any insurance producer's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance producer. [2008 c 217 § 50; 1983 c 202 § 1; 1969 c 115 § 7.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.44.013 Filings with secretary of state—Copy for commissioner. Health care service contractors and limited health care service contractors shall send a copy specifically for the office of the insurance commissioner to the secretary of state of any corporate document required to be filed in the office of the secretary of state, including articles of incorporation and bylaws, and any amendments thereto. The copy specifically provided for the office of the insurance commissioner shall be in addition to the copies required by the secretary of state and shall clearly indicate on the copy that it is for delivery to the office of the insurance commissioner. [1998 c 23 § 16.]

48.44.015 Registration by health care service contractors required—Penalty. (1) A person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health care service contractor, as defined in RCW 48.44.010 without first being registered with the commissioner.

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(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health care service contractor domiciled in this state other than the memberships and bonds of a nonprofit corporation shall be subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health care service contractors were domestic insurers.

(3) Any person violating any provision of subsection (2) of this section is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars or imprisoned for not more than six months, or both, for each violation. [2003 c 250 § 7; 1983 c 202 § 2; 1969 c 115 § 6.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.016 Unregistered activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health care services contract.

(3) Any person who knowingly violates RCW 48.44.015(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.44.015(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 8.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.017 Schedule of rates for individual contracts—Loss ratio—Remittance of premiums—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health care service contractor of health care services, as defined in RCW 48.43.005, provided to a contract holder or paid to or on behalf of a contract holder in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for a health care service contractor means the percentage of the total number of applicants for individual health benefit plans received by that health care service contractor in the aggregate in the applicable year which are not accepted for enrollment by that health care service contractor based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health care service contractor must file supporting documentation of its method of determining the rates charged for its individual contracts. At a minimum, the health care service contractor must provide the following supporting documentation:

(a) A description of the health care service contractor's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health care service contractor's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201.

(3) By the last day of May each year any health care service contractor issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in this state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health care service contractor.

(c) Any dispute regarding the calculation of the actual loss ratio shall upon written demand of either the commissioner or the health care service contractor be submitted to hearing under chapters 48.04 and 34.05 RCW.

(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (5) of this section, a remittance is due and the following shall apply:

(a) The health care service contractor shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.

(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the health care service contractor's actual declination rate in the preceding year, minus the premium tax rate applicable to the health care service contractor's individual health benefit plans under RCW 48.14.0201.

Actual Declination Rate	Loss Ratio
Under Six Percent (6%)	Seventy-Four Percent (74%)
Six Percent (6%) or more (but less than Seven Percent)	Seventy-Five Percent (75%)
Seven Percent (7%) or more (but less than Eight Percent)	Seventy-Six Percent (76%)
Eight Percent (8%) or more	Seventy-Seven Percent (77%)

[2008 c 303 § 5; 2001 c 196 § 11; 2000 c 79 § 29.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.44.020 Contracts for services—Examination of contract forms by commissioner—Grounds for disapproval—Liability of participant. (Effective until July 1, 2009.) (1) Any health care service contractor may enter into contracts with or for the benefit of persons or groups of persons which require prepayment for health care services by or for such persons in consideration of such health care service contractor providing one or more health care services to such persons and such activity shall not be subject to the laws relating to insurance if the health care services are rendered

by the health care service contractor or by a participating provider.

(2) The commissioner may on examination, subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, disapprove any individual or group contract form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(b) If it has any title, heading, or other indication of its provisions which is misleading; or

(c) If purchase of health care services thereunder is being solicited by deceptive advertising; or

(d) If it contains unreasonable restrictions on the treatment of patients; or

(e) If it violates any provision of this chapter; or

(f) If it fails to conform to minimum provisions or standards required by regulation made by the commissioner pursuant to chapter 34.05 RCW; or

(g) If any contract for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(3) In addition to the grounds listed in subsection (2) of this section, the commissioner may disapprove any contract if the benefits provided therein are unreasonable in relation to the amount charged for the contract. Rates, or any modification of rates effective on or after July 1, 2008, for individual health benefit plans may not be used until sixty days after they are filed with the commissioner. If the commissioner does not disapprove a rate filing within sixty days after the health care service contractor has filed the documents required in RCW 48.44.017(2) and any rules adopted pursuant thereto, the filing shall be deemed approved.

(4)(a) Every contract between a health care service contractor and a participating provider of health care services shall be in writing and shall state that in the event the health care service contractor fails to pay for health care services as provided in the contract, the enrolled participant shall not be liable to the provider for sums owed by the health care service contractor. Every such contract shall provide that this requirement shall survive termination of the contract.

(b) No participating provider, agent, trustee, or assignee may maintain any action against an enrolled participant to collect sums owed by the health care service contractor. [2008 c 303 § 2; 2000 c 79 § 28; 1990 c 120 § 5; 1986 c 223 § 2; 1985 c 283 § 1; 1983 c 286 § 4; 1973 1st ex.s. c 65 § 1; 1969 c 115 § 1; 1961 c 197 § 2; 1947 c 268 § 2; Rem. Supp. 1947 § 6131-11.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.020 Contracts for services—Examination of contract forms by commissioner—Grounds for disapproval—Liability of participant. (Effective July 1, 2009.)

(1) Any health care service contractor may enter into contracts with or for the benefit of persons or groups of persons

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which require prepayment for health care services by or for such persons in consideration of such health care service contractor providing one or more health care services to such persons and such activity shall not be subject to the laws relating to insurance if the health care services are rendered by the health care service contractor or by a participating provider.

(2) The commissioner may on examination, subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, disapprove any individual or group contract form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract; or

(b) If it has any title, heading, or other indication of its provisions which is misleading; or

(c) If purchase of health care services thereunder is being solicited by deceptive advertising; or

(d) If it contains unreasonable restrictions on the treatment of patients; or

(e) If it violates any provision of this chapter; or

(f) If it fails to conform to minimum provisions or standards required by regulation made by the commissioner pursuant to chapter 34.05 RCW; or

(g) If any contract for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(3) In addition to the grounds listed in subsection (2) of this section, the commissioner may disapprove any contract if the benefits provided therein are unreasonable in relation to the amount charged for the contract. Rates, or any modification of rates effective on or after July 1, 2008, for individual health benefit plans may not be used until sixty days after they are filed with the commissioner. If the commissioner does not disapprove a rate filing within sixty days after the health care service contractor has filed the documents required in RCW 48.44.017(2) and any rules adopted pursuant thereto, the filing shall be deemed approved.

(4)(a) Every contract between a health care service contractor and a participating provider of health care services shall be in writing and shall state that in the event the health care service contractor fails to pay for health care services as provided in the contract, the enrolled participant shall not be liable to the provider for sums owed by the health care service contractor. Every such contract shall provide that this requirement shall survive termination of the contract.

(b) No participating provider, insurance producer, trustee, or assignee may maintain any action against an enrolled participant to collect sums owed by the health care service contractor. [2008 c 303 § 2; 2008 c 217 § 51; 2000 c 79 § 28; 1990 c 120 § 5; 1986 c 223 § 2; 1985 c 283 § 1; 1983 c 286 § 4; 1973 1st ex.s. c 65 § 1; 1969 c 115 § 1; 1961 c 197 § 2; 1947 c 268 § 2; Rem. Supp. 1947 § 6131-11.]

Reviser's note: This section was amended by 2008 c 217 § 51 and by 2008 c 303 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.021 Calculation of premiums—Members of a purchasing pool—Adjusted community rating method—Definitions. (1) Premiums for health benefit plans for individuals who purchase the plan as a member of a purchasing pool:

(a) Consisting of five hundred or more individuals affiliated with a particular industry;

(b) To whom care management services are provided as a benefit of pool membership; and

(c) Which allows contributions from more than one employer to be used towards the purchase of an individual's health benefit plan;

shall be calculated using the adjusted community rating method that spreads financial risk across the entire purchasing pool of which the individual is a member. Such rates are subject to the following provisions:

(i) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (A) Geographic area;
- (B) Family size;
- (C) Age;
- (D) Tenure discounts; and
- (E) Wellness activities.

(ii) The adjustment for age in (c)(i)(C) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(iii) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer, and coverage for which medicare is not the primary payer. Both rates are subject to the requirements of this subsection.

(iv) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(v) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(vi) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (A) Changes to the family composition;
- (B) Changes to the health benefit plan requested by the individual; or
- (C) Changes in government requirements affecting the health benefit plan.

(vii) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences

in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(viii) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(3) As used in this section and RCW 48.44.023, "health benefit plan," "small employer," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005. [2006 c 100 § 4.]

Legality of purchasing pools—Federal opinion requested—2006 c 100: See note following RCW 48.20.028.

48.44.022 Calculation of premiums—Adjusted community rate—Definitions. (1) Except for health benefit plans covered under RCW 48.44.021, premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences

in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, except individuals purchasing coverage under RCW 48.44.021, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(3) As used in this section and RCW 48.44.023 "health benefit plan," "small employer," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005. [2006 c 100 § 3; 2004 c 244 § 6; 2000 c 79 § 30; 1997 c 231 § 208; 1995 c 265 § 15.]

Legality of purchasing pools—Federal opinion requested—2006 c 100: See note following RCW 48.20.028.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.44.023 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (1)(a) A health care services contractor offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A contractor offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age; and
- (iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or
- (iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of

actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases,

medical conditions, or services otherwise covered by the plan. [2008 c 143 § 7; 2007 c 260 § 8; 2004 c 244 § 7; 1995 c 265 § 16; 1990 c 187 § 3.]

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.44.024 Requirements for plans offered to small employers—Definitions. (1) A health care service contractor may not offer any health benefit plan to any small employer without complying with RCW 48.44.023(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and the plans are not subject to RCW 48.44.023(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2003 c 248 § 15; 1995 c 265 § 23.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.44.026 Payment for certain health care services.

Checks in payment for claims pursuant to any health care service contract for health care services provided by persons licensed or regulated under chapters 18.25, 18.29, 18.30, 18.32, 18.53, 18.57, 18.64, 18.71, 18.73, 18.74, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners, where the provider is not a participating provider under a contract with the health care service contractor, shall be made out to both the provider and the enrolled participant with the provider as the first named payee, jointly, to require endorsement by each: PROVIDED, That payment shall be made in the single name of the enrolled participant if the enrolled participant as part of his or her claim furnishes evidence of prepayment to the health care service provider: AND PROVIDED FURTHER, That nothing in this section shall preclude a health care service contractor from voluntarily issuing payment in the single name of the provider. [1999 c 130 § 1; 1994 sp.s. c 9 § 732; 1990 c 120 § 6; 1989 c 122 § 1; 1984 c 283 § 1; 1982 c 168 § 1.]

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

48.44.030 Underwriting of indemnity by insurance policy, bond, securities, or cash deposit.

If any of the health care services which are promised in any such agreement are not to be performed by the health care service contractor, or by a participating provider, such activity shall not be subject to the laws relating to insurance, provided provision is made for reimbursement or indemnity of the persons who have previously paid, or on whose behalf prepayment has been made, for such services. Such reimbursement or indemnity shall either be underwritten by an insurance company authorized to write accident, health and disability insurance in the state or guaranteed by a surety company authorized to do business in this state, or guaranteed by a deposit of cash or securities eligible for investment by insurers pursuant

to chapter 48.13 RCW, with the insurance commissioner, as hereinafter provided. If the reimbursement or indemnity is underwritten by an insurance company, the contract or policy of insurance may designate the health care service contractor as the named insured, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. If the reimbursement or indemnity is guaranteed by a surety company, the surety bond shall designate the state of Washington as the named obligee, but shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services, and shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. A copy of such insurance policy or surety bond, as the case may be, and any modification thereof, shall be filed with the insurance commissioner. If the reimbursement or indemnity is guaranteed by a deposit of cash or securities, such deposit shall be in such amount as the insurance commissioner shall direct, but in no event in a sum greater than the amount of one hundred fifty thousand dollars or the amount necessary to cover incurred but unpaid reimbursement or indemnity benefits as reported in the last annual statement filed with the insurance commissioner, and adjusted to reflect known or anticipated increases or decreases during the ensuing year, plus an amount of unearned prepayments applicable to reimbursement or indemnity benefits satisfactory to the insurance commissioner, whichever amount is greater. Such cash or security deposit shall be held in trust by the insurance commissioner and shall be for the benefit of the persons who have previously paid, or on whose behalf prepayment has been made, for such health care services. [1990 c 120 § 7; 1986 c 223 § 3; 1981 c 339 § 22; 1969 c 115 § 2; 1961 c 197 § 3; 1947 c 268 § 3; Rem. Supp. 1947 § 6131-12.]

48.44.033 Financial failure—Supervision of commissioner—Priority of distribution of assets. (1) Any rehabilitation, liquidation, or conservation of a health care service contractor shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health care service contractor upon any one or more grounds set out in RCW 48.31.030, 48.31.050, and 48.31.080.

(2) For purpose of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries shall have the same priority as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services pro-

vided pursuant to and covered by the health care plan, that liability shall have the status of an enrolled participant claim for distribution of general assets.

(3) Any provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan shall have a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries as described herein, and immediately preceding the priority of distribution described in chapter 48.31 RCW. [1990 c 120 § 2.]

48.44.035 Limited health care service—Uncovered expenditures—Minimum net worth requirements. (1) For purposes of this section only, "limited health care service" means dental care services, vision care services, mental health services, chemical dependency services, pharmaceutical services, podiatric care services, and such other services as may be determined by the commissioner to be limited health services, but does not include hospital, medical, surgical, emergency, or out-of-area services except as those services are provided incidentally to the limited health services set forth in this subsection.

(2) For purposes of this section only, a "limited health care service contractor" means a health care service contractor that offers one and only one limited health care service.

(3) Except as provided in subsection (4) of this section, every limited health care service contractor must have and maintain a minimum net worth of three hundred thousand dollars.

(4) A limited health care service contractor registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (3) of this section must continue to have and maintain the minimum net worth required by subsection (3) of this section. A limited health care service contractor registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (3) of this section must have and maintain a minimum net worth of:

(a) Thirty-five percent of the amount required by subsection (3) of this section by December 31, 1997;

(b) Seventy percent of the amount required by subsection (3) of this section by December 31, 1998; and

(c) One hundred percent of the amount required by subsection (3) of this section by December 31, 1999.

(5) For all limited health care service contractors that have had a certificate of registration for less than three years, their uncovered expenditures shall be either insured or guaranteed by a foreign or domestic carrier admitted in the state of Washington or by another carrier acceptable to the commissioner. All such contractors shall also deposit with the commissioner one-half of one percent of their projected premium for the next year in cash, approved surety bond, securities, or other form acceptable to the commissioner.

(6) For all limited health care service contractors that have had a certificate of registration for three years or more, their uncovered expenditures shall be assured by depositing with the insurance commissioner twenty-five percent of their last year's uncovered expenditures as reported to the commissioner and adjusted to reflect any anticipated increases or decreases during the ensuing year plus an amount for

unearned prepayments; in cash, approved surety bond, securities, or other form acceptable to the commissioner. Compliance with subsection (5) of this section shall also constitute compliance with this requirement.

(7) Limited health service contractors need not comply with RCW 48.44.030 or 48.44.037. [1997 c 212 § 1; 1990 c 120 § 3.]

48.44.037 Minimum net worth—Requirement to maintain—Determination of amount. (1) Except as provided in subsection (2) of this section, every health care service contractor must have and maintain a minimum net worth equal to the greater of:

(a) Three million dollars; or

(b) Two percent of the annual premium earned, as reported on the most recent annual financial statement filed with the commissioner, on the first one hundred fifty million dollars of premium and one percent of the annual premium on the premium in excess of one hundred fifty million dollars.

(2) A health care service contractor registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (1) of this section must continue to have and maintain the minimum net worth required by subsection (1) of this section. A health care service contractor registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (1) of this section must have and maintain a minimum net worth of:

(a) The amount required immediately prior to July 27, 1997, until December 31, 1997;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1997;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1998; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1999.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health care service contractor shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of the claims.

Liabilities shall be computed in accordance with regulations adopted by the commissioner upon reasonable consideration of the ascertained experience and character of the health care service contractor.

(5) All income from reserves on deposit with the commissioner shall belong to the depositing health care service contractor and shall be paid to it as it becomes available.

(6) Any funded reserve required by this chapter shall be considered an asset of the health care service contractor in determining the organization's net worth.

(7) A health care service contractor that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part thereof after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [1997 c 212 § 2; 1990 c 120 § 4.]

48.44.039 Minimum net worth—Domestic or foreign health care service contractor. (1) For purposes of this section:

(a) "Domestic health care service contractor" means a health care service contractor formed under the laws of this state; and

(b) "Foreign health care service contractor" means a health care service contractor formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(2) If the minimum net worth of a domestic health care service contractor falls below the minimum net worth required by this chapter, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the domestic health care service contractor to cure the deficiency within ninety days after that service of notice.

(3) If the deficiency is not cured, and proof thereof filed with the commissioner within the ninety-day period, the domestic health care service contractor shall be declared insolvent and shall be proceeded against as authorized by this code, or the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the registration of the domestic health care service contractor as being hazardous to its subscribers and the people in this state.

(4) If the deficiency is not cured the domestic health care service contractor shall not issue or deliver any individual or group contract after the expiration of the ninety-day period.

(5) If the minimum net worth of a foreign health care service contractor falls below the minimum net worth required by this chapter, the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the foreign health care service contractor's registration as being hazardous to its subscribers or the people in this state. [1997 c 212 § 3.]

48.44.040 Registration with commissioner—Fee. Every health care service contractor who or which enters into agreements which require prepayment for health care services shall register with the insurance commissioner on forms to be prescribed and provided by him. Such registrants shall state their name, address, type of organization, area of operation, type or types of health care services provided, and such other information as may reasonably be required by the insurance commissioner and shall file with such registration a

copy of all contracts being offered and a schedule of all rates charged. No registrant shall change any rates, modify any contract, or offer any new contract, until he has filed a copy of the changed rate schedule, modified contract, or new contract with the insurance commissioner. The insurance commissioner shall charge a fee of ten dollars for the filing of each original registration statement and may require each registrant to file a current reregistration statement annually thereafter. [1947 c 268 § 4; Rem. Supp. 1947 § 6131-13.]

48.44.050 Rules and regulations. The insurance commissioner shall make reasonable regulations in aid of the administration of this chapter which may include, but shall not be limited to regulations concerning the maintenance of adequate insurance, bonds, or cash deposits, information required of registrants, and methods of expediting speedy and fair payments to claimants. [1947 c 268 § 5; Rem. Supp. 1947 § 6131-14.]

48.44.055 Plan for handling insolvency—Commissioner's review. Each health care service contractor shall have a plan for handling insolvency that allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. The commissioner shall approve such a plan if it includes:

- (1) Insurance to cover the expenses to be paid for continued benefits after insolvency;
- (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health care service contractor's insolvency for which premium payment has been made and until the enrolled participants are discharged from inpatient facilities;
- (3) Use of insolvency reserves established under RCW 48.44.030;
- (4) Acceptable letters of credit or approved surety bonds; or
- (5) Any other arrangements the commissioner and the organization mutually agree are appropriate to assure that the benefits are continued. [1990 c 120 § 11.]

48.44.057 Insolvency—Commissioner's duties—Participants' options—Allocation of coverage. (1)(a) In the event of insolvency of a health services contractor or health maintenance organization and upon order of the commissioner, all other carriers then having active enrolled participants under a group plan with the affected agreement holder that participated in the enrollment process with the insolvent health services contractor or health maintenance organization at a group's last regular enrollment period shall offer the eligible enrolled participants of the insolvent health services contractor or health maintenance organization the opportunity to enroll in an existing group plan without medical underwriting during a thirty-day open enrollment period, commencing on the date of the insolvency. Eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent

carrier's group plan. An open enrollment shall not be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule, unless the plan administrator and agreement holder voluntarily agree to offer a simultaneous open enrollment and extend coverage under the same enrollment terms and conditions as are applicable to carriers under this title and rules adopted under this title. If an exempt plan was offered during the last regular open enrollment period, then the carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(b) For purposes of this subsection only, the term "carrier" means a health maintenance organization or a health care services contractor. In the event of insolvency of a carrier and if no other carrier has active enrolled participants under a group plan with the affected agreement holder, or if the commissioner determines that the other carriers lack sufficient health care delivery resources to assure that health services will be available or accessible to all of the group enrollees of the insolvent carrier, then the commissioner shall allocate equitably the insolvent carrier's group agreements for these groups among all carriers that operate within a portion of the insolvent carrier's area, taking into consideration the health care delivery resources of each carrier. Each carrier to which a group or groups are allocated shall offer the agreement holder, without medical underwriting, the carrier's existing coverage that is most similar to each group's coverage with the insolvent carrier at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. No offering by a carrier shall be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule. The carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(2) The commissioner shall also allocate equitably the insolvent carrier's nongroup enrolled participants who are unable to obtain coverage among all carriers that operate within a portion of the insolvent carrier's service area, taking into consideration the health care delivery resources of the carrier. Each carrier to which nongroup enrolled participants are allocated shall offer the nongroup enrolled participants the carrier's existing comprehensive conversion plan, without additional medical underwriting, at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's plan.

(3) Any agreements covering participants allocated pursuant to subsections (1)(b) and (2) of this section to carriers pursuant to this section may be rerated after ninety days of coverage.

(4) A limited health care service contractor shall not be required to offer services other than its one limited health care service to any enrolled participant of an insolvent carrier. [1990 c 120 § 8.]

48.44.060 Penalty. Except as otherwise provided in this chapter, any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor. [2003 c 250 § 9; 1947 c 268 § 6; Rem. Supp. 1947 § 6131-15.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.44.070 Contracts to be filed with commissioner.

(1) Forms of contracts between health care service contractors and participating providers shall be filed with the insurance commissioner prior to use.

(2) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(3) Subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW. [1990 c 120 § 9; 1965 c 87 § 2; 1961 c 197 § 4.]

48.44.080 Master lists of contractor's participating providers—Filing with commissioner—Notice of termination or participation. Every health care service contractor shall file with its annual statement with the insurance commissioner a master list of the participating providers with whom or with which such health care service contractor has executed contracts of participation, certifying that each such participating provider has executed such contract of participation. The health care service contractor shall on the first day of each month notify the insurance commissioner in writing in case of the termination of any such contract, and of any participating provider who has entered into a participating contract during the preceding month. [1990 c 120 § 10; 1986 c 223 § 4; 1965 c 87 § 3; 1961 c 197 § 5.]

48.44.090 Refusal to register corporate, etc., contractor if name confusing with existing contractor or insurance company. The insurance commissioner shall refuse to accept the registration of any corporation, cooperative group, or association seeking to act as a health care service contractor if, in his discretion, the insurance commissioner deems that the name of the corporation, cooperative group, or association would be confused with the name of an existing registered health care service contractor or authorized insurance company. [1961 c 197 § 6.]

48.44.095 Annual financial statement—Filings—Contents—Fee—Penalty for failure to file. (1) Every domestic health care service contractor shall annually, on or before the first day of March, file with the commissioner a

statement verified by at least two of the principal officers of the health care service contractor showing its financial condition as of the last day of the preceding calendar year. The statement shall be in such form as is furnished or prescribed by the commissioner. The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(2) In addition to the requirements of subsection (1) of this section, every health care service contractor that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(3) Coincident with the filing of its annual statement and other schedules, each health care service contractor shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(4) Foreign health care service contractors that are domiciled in a state that has a law substantially similar to subsection (2) of this section are considered to be in compliance with this section.

(5) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(6) The commissioner may suspend or revoke the certificate of registration of any health care service contractor failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant. [2006 c 25 § 8; 1997 c 212 § 4; 1993 c 492 § 295; 1983 c 202 § 3; 1969 c 115 § 5.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.44.100 Filing inaccurate financial statement prohibited. No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health care service contractor which does not accurately state the health care service contractor's financial condition. [1961 c 197 § 7.]

48.44.110 False representation, advertising. No person shall knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a health care service contractor, or relative to the business of a health care service contractor or to any person engaged therein. [1961 c 197 § 8.]

48.44.120 Misrepresentations of contract terms, benefits, etc. No person shall knowingly make, issue, or circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any contract, or the benefits or advantages promised thereby, or use the name or title of any contract or class of contract misrepresenting the nature thereof. [1961 c 197 § 9.]

48.44.130 Future dividends or refunds—When permissible. No health care service contractor nor any individual acting on behalf thereof shall guarantee or agree to the payment of future dividends or future refunds of unused charges or savings in any specific or approximate amounts or percentages in respect to any contract being offered to the public, except in a group contract containing an experience refund provision. [1961 c 197 § 10.]

48.44.140 Misleading comparisons to terminate or retain contract. No health care service contractor nor any person representing a health care service contractor shall by misrepresentation or misleading comparisons induce or attempt to induce any member of any health care service contractor to terminate or retain a contract or membership. [1961 c 197 § 11.]

48.44.145 Examination of contractors—Duties of contractor, powers of commissioner—Independent audit reports. (1) The commissioner may make an examination of the operations of any health care service contractor as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health care service contractor shall submit its books and records relating to its operation for financial condition and market conduct examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health care service contractor.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health care service contractor in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination.

(4) Whenever any health care service contractor applies for initial admission, the commissioner may make, or cause to be made, an examination of the applicant's business and affairs. Whenever such an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this chapter shall be applicable. In lieu of making an examination himself the commissioner may, in the case of a foreign health care service contractor, accept an examination report of the

applicant by the regulatory official in its state of domicile. [1986 c 296 § 8; 1983 c 63 § 1; 1969 c 115 § 12.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.44.150 Certificate of registration not an endorsement—Display in solicitation prohibited. The granting of a certificate of registration to a health care service contractor is permissive only, and shall not constitute an endorsement by the insurance commissioner of any person or thing related to the health care service contractor, and no person shall advertise or display a certificate of registration for use as an inducement in any solicitation. [1961 c 197 § 12.]

48.44.160 Revocation, suspension, refusal of registration—Hearing—Cease and desist orders, injunctive action—Grounds. The insurance commissioner may, subject to a hearing if one is demanded pursuant to chapters 48.04 and 34.05 RCW, revoke, suspend, or refuse to accept or renew registration from any health care service contractor, or he may issue a cease and desist order, or bring an action in any court of competent jurisdiction to enjoin a health care service contractor from doing further business in this state, if such health care service contractor:

(1) Fails to comply with any provision of chapter 48.44 RCW or any proper order or regulation of the commissioner.

(2) Is found by the commissioner to be in such financial condition that its further transaction of business in this state would jeopardize the payment of claims and refunds to subscribers.

(3) Has refused to remove or discharge a director or officer who has been convicted of any crime involving fraud, dishonesty, or like moral turpitude, after written request by the commissioner for such removal, and expiration of a reasonable time therefor as specified in such request.

(4) Usually compels claimants under contracts either to accept less than the amount due them or to bring suit against it to secure full payment of the amount due.

(5) Is affiliated with and under the same general management, or interlocking directorate, or ownership as another health care contractor which operates in this state without having registered therefor, except as is permitted by this chapter.

(6) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination or to produce its accounts, records, and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination.

(7) Fails to pay any final judgment rendered against it in this state upon any contract, bond, recognizance, or undertaking issued or guaranteed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later.

(8) Is found by the commissioner, after investigation or upon receipt of reliable information, to be managed by persons, whether by its directors, officers, or by any other means, who are incompetent or untrustworthy or so lacking in health care contracting or related managerial experience as to make the operation hazardous to the subscribing public; or

that there is good reason to believe it is affiliated directly or indirectly through ownership, control, or other business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders or stockholders, or investors or creditors or subscribers or of the public, by bad faith or by manipulation of assets, or of accounts, or of reinsurance. [1988 c 248 § 19; 1973 1st ex.s. c 65 § 2; 1969 c 115 § 3; 1961 c 197 § 13.]

48.44.164 Notice of suspension, revocation, or refusal to be given contractor—Authority of agents. (*Effective until July 1, 2009.*) Upon the suspension, revocation or refusal of a health care service contractor's registration, the commissioner shall give notice thereof to such contractor and shall likewise suspend, revoke or refuse the authority of its agents to represent it in this state and give notice thereof to the agents. [1969 c 115 § 10.]

48.44.164 Notice of suspension, revocation, or refusal to be given contractor—Authority of insurance producers. (*Effective July 1, 2009.*) Upon the suspension, revocation or refusal of a health care service contractor's registration, the commissioner shall give notice thereof to such contractor and shall likewise suspend, revoke, or refuse the authority of its appointed insurance producers to represent it in this state and give notice thereof to the appointed insurance producers. [2008 c 217 § 52; 1969 c 115 § 10.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.44.166 Fine in addition to or in lieu of suspension, revocation, or refusal. After hearing or upon stipulation by the registrant and in addition to or in lieu of the suspension, revocation or refusal to renew any registration of a health care service contractor the commissioner may levy a fine against the party involved for each offense in an amount not less than fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration of the registrant, if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1983 c 202 § 4; 1969 c 115 § 11.]

48.44.170 Hearings and appeals. For the purposes of this chapter, the insurance commissioner shall be subject to and may avail himself of the provisions of chapter 48.04 RCW, which relate to hearings and appeals. [1961 c 197 § 14.]

48.44.180 Enforcement. For the purposes of this chapter, the insurance commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080. [1961 c 197 § 15.]

48.44.200 Individual health care service plan contracts—Coverage of dependent child not to terminate because of developmental disability or physical handicap.

An individual health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the subscriber within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 33; 1969 ex.s. c 128 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.44.210 Group health care service plan contracts—Coverage of dependent child not to terminate because of developmental disability or physical handicap.

A group health care service plan contract, delivered or issued for delivery in this state more than one hundred twenty days after August 11, 1969, which provides that coverage of a dependent child of an employee or other member of the covered group shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of developmental disability or physical handicap and (2) chiefly dependent upon the employee or member for support and maintenance, provided proof of such incapacity and dependency is furnished to the health care service plan corporation by the employee or member within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by the corporation, but not more frequently than annually after the two year period following the child's attainment of the limiting age. [1977 ex.s. c 80 § 34; 1969 ex.s. c 128 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

48.44.212 Coverage of dependent children to include newborn infants and congenital anomalies from moment of birth—Notification period.

(1) Any health care service plan contract under this chapter delivered or issued for delivery in this state more than one hundred twenty days after February 16, 1974, which provides coverage for dependent children of the insured or covered group member, shall provide coverage for newborn infants of the insured or covered group member from and after the moment of birth. Coverage provided in accord with this section shall include, but not be limited to, coverage for congenital anomalies of such infant children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of birth of a newly born child and payment of the required premium must be furnished to the contractor. The notification period shall be no less than sixty days from the date of birth. This subsection applies to policies issued or renewed on or after January 1, 1984. [1984 c 4 § 1; 1983 c 202 § 5; 1974 ex.s. c 139 § 3.]

48.44.215 Option to cover dependents under age twenty-five. (Effective January 1, 2009.) (1) Any individual health care service plan contract that provides coverage for a subscriber's dependent must offer the option of covering any unmarried dependent under the age of twenty-five.

(2) Any group health care service plan contract that provides coverage for a participating member's dependent must offer each participating member the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 21.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.44.220 Discrimination prohibited. No health care service contractor shall deny coverage to any person solely on account of race, religion, national origin, or the presence of any sensory, mental, or physical handicap. Nothing in this section shall be construed as limiting a health care service contractor's authority to deny or otherwise limit coverage to a person when the person because of a medical condition does not meet the essential eligibility requirements established by the health care service contractor for purposes of determining coverage for any person.

No health care service contractor shall refuse to provide reimbursement or indemnity to any person for covered health care services for reasons that the health care services were provided by a holder of a license under chapter 18.22 RCW. [1983 c 154 § 4; 1979 c 127 § 1; 1969 c 115 § 4.]

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.225 Podiatric physicians and surgeons not excluded. A health care service contractor which provides foot care services shall not exclude any individual doctor who is licensed to perform podiatric health care services from being a participant for reason that the doctor is licensed under chapter 18.22 RCW. Rejections of requests by doctors to be participants must be in writing stating the cause for the rejection. [1983 c 154 § 5.]

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.230 Individual health service plan contract—Return within ten days of delivery—Refunds—Void from beginning—Notice required. (Effective until July 1, 2009.) Every subscriber of an individual health care service plan contract issued after September 1, 1973, may return the contract to the health care service contractor or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the contract, he is not satisfied with it for any reason, and the health care ser-

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vice contractor shall refund promptly any fee paid for such contract. Upon such return of the contract it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. Notice of the substance of this section shall be printed on the face of each such contract or be attached thereto. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. [1983 1st ex.s. c 32 § 11; 1973 1st ex.s. c 65 § 4.]

48.44.230 Individual health service plan contract—Return within ten days of delivery—Refunds—Void from beginning—Notice required. (Effective July 1, 2009.)

Every subscriber of an individual health care service plan contract issued after September 1, 1973, may return the contract to the health care service contractor or the insurance producer through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the contract, he or she is not satisfied with it for any reason, and the health care service contractor shall refund promptly any fee paid for such contract. Upon such return of the contract it shall be void from the beginning and the parties shall be in the same position as if no policy had been issued. Notice of the substance of this section shall be printed on the face of each such contract or be attached thereto. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or insurance producer. [2008 c 217 § 53; 1983 1st ex.s. c 32 § 11; 1973 1st ex.s. c 65 § 4.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.44.240 Chemical dependency benefits—Provisions of group contracts delivered or renewed after January 1, 1988. Each group contract for health care services that is delivered or issued for delivery or renewed, on or after January 1, 1988, must contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider that is an "approved treatment program" under RCW 70.96A.020(3). [2005 c 223 § 25; 1990 1st ex.s. c 3 § 12; 1987 c 458 § 16; 1975 1st ex.s. c 266 § 14; 1974 ex.s. c 119 § 4.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Severability—1975 1st ex.s. c 266: See note following RCW 48.01.010.

Legislative declaration—1974 ex.s. c 119: See RCW 48.21.160.

Chemical dependency benefits, rules: RCW 48.21.197.

48.44.241 Chemical dependency benefits—RCW 48.21.160 through 48.21.190, 48.44.240 inapplicable, when. See RCW 48.21.190.

48.44.245 "Chemical dependency" defined. For the purposes of RCW 48.44.240, "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops

symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 17.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.44.250 Payment of premium by employee in event of suspension of compensation due to labor dispute. Any employee whose compensation includes a health care services contract providing health care services expenses, the premiums for which are paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the premiums as they become due directly to the contract holder whenever the employee's compensation is suspended or terminated directly or indirectly as the result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the health care services contract provides. During that period of time such contract may not be altered or changed. Nothing in this section shall be deemed to impair the right of the health care service contractor to make normal decreases or increases of the premium rate upon expiration and renewal of the contract, in accordance with the provisions of the contract. Thereafter, if such health care services coverage is no longer available, then the employee shall be given the opportunity to purchase an individual health care services contract at a rate consistent with rates filed by the health care service contractor with the commissioner. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the contract holder in writing, by mail addressed to the address last of record with the contract holder, that the employee may pay the premiums to the contract holder as they become due as provided in this section.

Payment of the premiums must be made when due or the coverage may be terminated by the health care service contractor.

The provisions of any health care services contract contrary to provisions of this section are void and unenforceable after May 29, 1975. [1982 c 149 § 1; 1975 1st ex.s. c 117 § 3.]

Severability—1975 1st ex.s. c 117: See note following RCW 48.21.075.

48.44.260 Notice of reason for cancellation, denial, or refusal to renew contract. Every authorized health care service contractor, upon canceling, denying, or refusing to renew any individual health care service contract, shall, upon written request, directly notify in writing the applicant or subscriber, as the case may be, of the reasons for the action by the health care service contractor. Any benefits, terms, rates, or conditions of such a contract which are restricted, excluded, modified, increased, or reduced shall, upon written request, be set forth in writing and supplied to the subscriber. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1993 c 492 § 290; 1979 c 133 § 3.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.44.270 Immunity from libel or slander. With respect to health care service contracts as defined in RCW 48.44.260, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any health care service contractor, its authorized representative, its agents, its employees, furnishing to the health care service contractor information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1979 c 133 § 4.]

48.44.290 Registered nurses or advanced registered nurses. Notwithstanding any provision of this chapter, for any health care service contract thereunder which is entered into or renewed after July 26, 1981, benefits shall not be denied under such contract for any health care service performed by a holder of a license for registered nursing practice or advanced registered nursing practice issued pursuant to chapter 18.79 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a holder of a license issued pursuant to chapter 18.71 RCW: PROVIDED, HOWEVER, That no provision of chapter 18.71 RCW shall be asserted to deny benefits under this section.

The provisions of this section are intended to be remedial and procedural to the extent that they do not impair the obligation of any existing contract. [1994 sp.s. c 9 § 733; 1986 c 223 § 6; 1981 c 175 § 1.]

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

48.44.299 Legislative finding. The legislature finds and declares that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired by prepaid agreements which provide benefits, reimbursement, or indemnity by health care service contractors, whether for profit or for nonprofit, which do not provide parity of reimbursement among licensed health care providers performing the same health care services. It is further the intent of the legislature not to mandate the providing of any health care benefit, but rather to require parity of reimbursement for the same health care services performed by all licensees who perform such services within the scope of their respective licenses thereby assuring the people of the state access to health care services of their choice. [1983 c 154 § 1.]

Severability—1983 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 154 § 6.]

48.44.300 Podiatric medicine and surgery—Benefits not to be denied. Benefits shall not be denied under a contract for any health care service performed by a holder of a license issued under chapter 18.22 RCW if (1) the service performed was within the lawful scope of the person's license, and (2) the contract would have provided benefits if the service had been performed by a holder of a license issued under chapter 18.71 RCW. There shall not be imposed upon one class of doctors providing health care services as defined by this chapter any requirement that is not imposed upon all other doctors providing the same or similar health care services within the scope of their license.

The provisions of this section are intended to be procedural to the extent that they do not impair the obligation of any existing contract. [1986 c 223 § 7; 1983 c 154 § 2.]

Severability—1983 c 154: See note following RCW 48.44.299.

48.44.305 When injury caused by intoxication or use of narcotics. A health care service contractor may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the enrolled participant's being intoxicated or under the influence of a narcotic. [2004 c 112 § 4.]

Finding—Application—2004 c 112: See notes following RCW 48.20.385.

48.44.309 Legislative finding. The legislature finds and declares that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired. The legislature further finds that there is a heavy reliance by the public upon prepaid health care service agreements and insurance, whether profit or nonprofit, as the only effective manner in which the large majority of the people can obtain access to quality health care. Further, the legislature finds that health care service agreements may be anti-competitive because of the exclusion of other licensed forms of health care and that because of the high costs of health care, there is a need for competition to reduce these costs. It is, therefore, declared to be in the public interest that these contracts as a form of insurance be regulated under the police power of the state to assure that all the people have the greatest access to health care services. [1983 c 286 § 1.]

Severability—1983 c 286: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 286 § 5.]

48.44.310 Chiropractic care, coverage required, exceptions. (1) Each group contract for comprehensive health care service which is entered into, or renewed, on or after September 8, 1983, between a health care service contractor and the person or persons to receive such care shall offer coverage for chiropractic care on the same basis as any other care.

(2) A patient of a chiropractor shall not be denied benefits under a contract because the practitioner is not licensed under chapter 18.57 or 18.71 RCW.

(3) This section shall not apply to a group contract for comprehensive health care services entered into in accordance with a collective bargaining agreement between management and labor representatives. Benefits for chiropractic

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care shall be offered by the employer in good faith on the same basis as any other care as a subject for collective bargaining for group contracts for health care services. [1986 c 223 § 8; 1983 c 286 § 2.]

Severability—1983 c 286: See note following RCW 48.44.309.

48.44.315 Diabetes coverage—Definitions. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All health benefit plans offered by health care service contractors, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For health benefit plans that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all health benefit plans, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the health care services contractor from restricting patients to seeing only health care providers who have signed participating provider agreements with the health care services contractor or an insuring entity under contract with the health care services contractor.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The health care service contractor need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to man-

dated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plans that provide benefits identical to the schedule of services covered by the basic health plan. [2004 c 244 § 12; 1997 c 276 § 4.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—1997 c 276: See note following RCW 41.05.185.

48.44.320 Home health care, hospice care, optional coverage required—Standards, limitations, restrictions—Rules—Medicare supplemental contracts excluded. (1) Every health care service contractor entering into or renewing a group health care service contract governed by this chapter shall offer optional coverage for home health care and hospice care for persons who are homebound and would otherwise require hospitalization. Such optional coverage need only be offered in conjunction with a policy that provides payment for hospitalization as a part of health care coverage.

(2) Home health care and hospice care coverage offered under subsection (1) of this section shall conform to the following standards, limitations, and restrictions in addition to those set forth in chapters 70.126 and 70.127 RCW:

(a) The coverage may include reasonable deductibles, coinsurance provisions, and internal maximums;

(b) The coverage should be structured to create incentives for the use of home health care and hospice care as an alternative to hospitalization;

(c) The coverage may contain provisions for utilization review and quality assurance;

(d) The coverage may require that home health agencies and hospices have written treatment plans approved by a physician licensed under chapter 18.57 or 18.71 RCW, and may require such treatment plans to be reviewed at designated intervals;

(e) The coverage shall provide benefits for, and restrict benefits to, services rendered by home health and hospice agencies licensed under chapter 70.127 RCW;

(f) Hospice care coverage shall provide benefits for terminally ill patients for an initial period of care of not less than six months and may provide benefits for an additional six months of care in cases where the patient is facing imminent death or is entering remission if certified in writing by the attending physician;

(g) Home health care coverage shall provide benefits for a minimum of one hundred thirty health care visits per calendar year. However, a visit of any duration by an employee of a home health agency for the purpose of providing services under the plan of treatment constitutes one visit;

(h) The coverage may be structured so that services or supplies included in the primary contract are not duplicated in the optional home health and hospice coverage.

(3) The insurance commissioner shall adopt any rules necessary to implement this section.

(4) The requirements of this section shall not apply to contracts or policies governed by chapter 48.66 RCW.

(5) An insurer, as a condition of reimbursement, may require compliance with home health and hospice certification regulations established by the United States department

of health and human services. [1989 1st ex.s. c 9 § 222; 1988 c 245 § 33; 1984 c 22 § 3; 1983 c 249 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

Home health care, hospice care, rules: Chapter 70.126 RCW.

48.44.325 Mammograms—Insurance coverage.

Each health care service contract issued or renewed after January 1, 1990, that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard contract provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of a contractor to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 734; 1989 c 338 § 3.]

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

48.44.327 Prostate cancer screening. (1) Each health care service contract issued or renewed after December 31, 2006, that provides coverage for hospital or medical expenses shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of a contractor to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [2006 c 367 § 4.]

48.44.330 Reconstructive breast surgery. (1) Each contract for health care entered into or renewed after July 24, 1983, between a health care services contractor and the person or persons to receive the care shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Each contract for health care entered into or renewed after January 1, 1986, between a health care services contractor and the person or persons to receive the care shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the

diseased breast has been performed. [1985 c 54 § 7; 1983 c 113 § 3.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.44.335 Mastectomy, lumpectomy. No health care service contractor under this chapter may refuse to issue any contract or cancel or decline to renew the contract solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 3.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.44.341 Mental health services—Health plans—

Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health care service contractor's medical director or designee determines the treatment to be medically necessary.

(2) All health service contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the

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copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans delivered, issued for delivery, or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 3; 2006 c 74 § 2; 2005 c 6 § 4.]

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2006 c 74: See note following RCW 48.21.241.

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

48.44.342 Mental health treatment—Waiver of preauthorization for persons involuntarily committed. A health care service contractor providing hospital or medical services or benefits in this state shall waive a preauthorization from the contractor before an insured or an insured's covered dependents receive mental health treatment rendered by a state hospital as defined in RCW 72.23.010 if the insured or the insured's covered dependents are involuntarily com-

mitted to a state hospital as defined in RCW 72.23.010. [1993 c 272 § 4.]

Savings—Severability—1993 c 272: See notes following RCW 48.20B.347.

48.44.344 Benefits for prenatal diagnosis of congenital disorders—Contracts entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group health care services contract entered into or renewed that covers hospital, medical, or surgical expenses on a group basis, and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the health care service contractor in accord with standards set in rule by the board of health. Every group health care services contractor shall communicate the availability of such coverage to all group health care service contract holders and to all groups with whom they are negotiating. [1988 c 276 § 7.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

48.44.350 Financial interests of health care service contractors, restricted—Exceptions, regulations. (1) No person having any authority in the investment or disposition of the funds of a health care service contractor and no officer or director of a health care service contractor shall accept, except for the health care service contractor, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of health care service agreements or any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the health care service contractor, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the health care service contractor directly upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the health care service contractor's funds under this title.

(2) The commissioner may, by regulations, from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the health care service contractor, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the health care service contractor in the ordinary course of the health care service contractor's business and in the usual private professional or business capacity of the director or the corporation or firm. [1986 c 223 § 9; 1983 c 202 § 6.]

48.44.360 Continuation option to be offered. Every health care service contractor that issues group contracts providing group coverage for hospital or medical expense shall offer the contract holder an option to include a contract provision granting a person who becomes ineligible for coverage under the group contract, the right to continue the group benefits for a period of time and at a rate agreed upon. The contract provision shall provide that when such coverage termi-

nates, the covered person may convert to a contract as provided in RCW 48.44.370. [1984 c 190 § 5.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

Application—1984 c 190 §§ 2, 5, and 8: See note following RCW 48.21.250.

48.44.370 Conversion contract to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group health care service contract entered into or renewed on or after January 1, 1985, that provides benefits for hospital or medical expenses shall contain a provision granting a person covered by the group contract the right to obtain a conversion contract from the contractor upon termination of the person's eligibility for coverage under the group contract.

(2) A contractor need not offer a conversion contract to:

(a) A person whose coverage under the group contract ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion contract, a person must submit a written application and the first premium payment for the conversion contract not later than thirty-one days after the date the person's eligibility for group coverage terminates. The conversion contract shall become effective, without lapse of coverage, immediately following termination of coverage under the group contract.

(4) If a health care service contractor or group contract holder does not renew, cancels, or otherwise terminates the group contract, the health care service contractor shall offer a conversion contract to any person who was covered under the terminated contract unless the person is eligible to obtain group hospital or medical expense coverage within thirty-one days after such nonrenewal, cancellation, or termination of the group contract.

(5) The health care service contractor shall determine the premium for the conversion contract in accordance with the contractor's table of premium rates applicable to the age and class of risk of each person to be covered under the contract and the type and amount of benefits provided. [1984 c 190 § 6.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.44.380 Conversion contract—Restrictions and requirements. (1) A health care service contractor shall not require proof of insurability as a condition for issuance of the conversion contract.

(2) A conversion contract may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group contract.

(3) A health care service contractor must offer at least three contract benefit plans that comply with the following:

(a) A major medical plan with a five thousand dollar deductible and a lifetime benefit maximum of two hundred fifty thousand dollars per person;

(b) A comprehensive medical plan with a five hundred dollar deductible and a lifetime benefit maximum of five hundred thousand dollars per person; and

(c) A basic medical plan with a one thousand dollar deductible and a lifetime maximum of seventy-five thousand dollars per person.

(4) The insurance commissioner may revise the deductibles and lifetime benefit amounts in subsection (3) of this section from time to time to reflect changing health care costs.

(5) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion contracts.

(6) The commissioner shall adopt rules to establish specific standards for conversion contract provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [1984 c 190 § 7.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.44.390 Modification of basis of agreement, endorsement required. If an individual health care service agreement is issued on any basis other than as applied for, an endorsement setting forth such modification must accompany and be attached to the agreement. No agreement shall be effective unless the endorsement is signed by the applicant, and a signed copy thereof returned to the health care service contractor. [1986 c 223 § 10.]

48.44.400 Continuance provisions for former family members. After July 1, 1986, or on the next renewal date of the agreement, whichever is later, every health care service agreement issued, amended, or renewed for an individual and his or her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that any cease to be a qualified family member by reason of termination of marriage or death of the principal enrollee, shall have the right to continue the health care service agreement without a physical examination, statement of health, or other proof of insurability. [1986 c 223 § 11.]

48.44.420 Coverage for adopted children. (1) Any health care service contract under this chapter delivered or issued for delivery in this state, which provides coverage for dependent children, as defined in the contract of the subscriber, shall cover adoptive children placed with the subscriber on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the contract may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the health care services contractor. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 4.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.44.430 Cancellation of rider. Upon application by a subscriber, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the subscriber during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the subscriber from that condition, such agreement not to be unreasonably withheld. The option of the subscriber to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 3.]

48.44.440 Phenylketonuria. (1) The legislature finds that:

(a) Phenylketonuria is a rare inherited genetic disorder.

(b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.

(c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.

(d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.

(e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any contract for health care services delivered or issued for delivery or renewed in this state on or after September 1, 1988, shall provide coverage for the formulas necessary for the treatment of phenylketonuria. [1988 c 173 § 3.]

48.44.450 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group contract for comprehensive health care service which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall prohibit a health care service contractor from

requiring that covered services be delivered by a provider who participates by contract with the health care service contractor unless no participating provider is available to deliver covered services. Nothing in this section shall prohibit a health care service contractor from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the health care service contractor. Benefits shall be payable for services for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive group coverage including the benefits required by this section, together with the health care service contractor, retain authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing coverage and the health care service contractor. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available or may limit the number of services delivered as agreed by the employer purchasing coverage and the health care service contractor. [1989 c 345 § 1.]

48.44.460 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a group health care service contract entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Health care service contractors offering medical coverage only may limit benefits in such coverages to medical services related to treatment of temporomandibular joint disorders. Health care service contractors offering dental coverage only may limit benefits in such coverage to dental services related to treatment of temporomandibular joint disorders. No health care service contractor offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature, and no health care service contractor offering dental coverage only may define all temporomandibular joint disorders as purely medical in nature.

(b) Health care contractors offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) A contractor need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 3.]

Legislative finding—Effective date—1989 c 331: See notes following RCW 48.21.320.

48.44.465 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Health care service contractors who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 4.]

Findings—Effective date—1993 c 253: See notes following RCW 48.20.525.

48.44.470 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health care service contractor providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health care service contractors shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health care service contractor the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 314; 1991 c 87 § 9.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—1991 c 87: See note following RCW 18.64.350.

48.44.500 Denturist services. Notwithstanding any provision of any health care service contract covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service per-

formed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such contract would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 24 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.44.530 Disclosure of certain material transactions—Report—Information is confidential. (1) Every health care service contractor domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.44.535 through 48.44.555 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health care service contractor to which it pertains unless the commissioner, after giving the health care service contractor that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 13.]

48.44.535 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.44.530 if the acquisitions or dispositions are not material. For purposes of RCW 48.44.530 through 48.44.555, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health care service contractor's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 14.]

48.44.540 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.44.530 through

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48.44.555 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting health care service contractor or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.44.530 through 48.44.555 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandonment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 15.]

48.44.545 Report of a material acquisition or disposition of assets—Information required. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed. [1995 c 86 § 16.]

48.44.550 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.44.530 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.44.530 through 48.44.555, a material nonrenewal, cancellation, or revision is one that affects:

- (a) More than fifty percent of a health care service contractor's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health care service contractor's most recent annual statement;
- (b) More than ten percent of a health care service contractor's total cession when it is replaced by one or more unauthorized reinsurers; or
- (c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if a health care service contractor's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 17.]

48.44.555 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (1) The effective date of the nonrenewal, cancellation, or revision;

- (2) The description of the transaction with an identification of the initiator;
- (3) The purpose of or reason for the transaction; and
- (4) If applicable, the identity of the replacement reinsurers. [1995 c 86 § 18.]

Chapter 48.45 RCW RURAL HEALTH CARE

Sections

48.45.005	Findings.
48.45.010	Definitions.
48.45.020	Rural health care service arrangements.
48.45.030	Rule making.

48.45.005 Findings. The legislature finds that the residents of rural communities are having difficulties in locating and purchasing affordable health insurance. The legislature further finds that many rural communities have sufficient funds to pay for needed services, but those funds are being expended elsewhere causing insufficient funding of local health services. As part of the solution to this problem, rural communities need to be able to structure the financing of local health services to better serve local residents. The legislature further finds that as rural communities need well financed and organized health care, it is in the interest of residents of rural communities that existing unauthorized entities comply with appropriate fiscal solvency standards and consumer safeguards, and that those entities be given an opportunity to come into compliance with existing state laws. [1990 c 271 § 20.]

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

(1) "Rural community" means any grouping of consumers, seventy-five percent of whom reside in areas outside of a standard metropolitan statistical area as defined by the United States bureau of census.

(2) "Consumer" means any person enrolled and eligible to receive benefits in the rural health care arrangement.

(3) "Rural health care service arrangement" or "arrangement" means any arrangement which is established or maintained for the purpose of offering or providing through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits in the event of sickness, accident, or disability in a rural community, as defined in this section, that is subject to the jurisdiction of the insurance commissioner but is not now a currently authorized carrier. [1990 c 271 § 22.]

48.45.020 Rural health care service arrangements. Rural health care service arrangements existing on March 29, 1990, may continue in full operation only so long as they comply with all of the following:

(1) Within ten days following March 29, 1990, all rural health care service arrangements shall inform the insurance commissioner of their intent to apply for approval to operate as an entity authorized under chapter 48.44 RCW or intend to merge with an entity authorized under Title 48 RCW or merge with an entity defined in this section;

(2) The arrangement submits an application for approval as an entity authorized under chapter 48.44 RCW by May 1, 1990;

(3) The arrangement has one hundred thousand dollars on deposit with the insurance commissioner by July 1, 1990;

(4) The arrangement has one hundred fifty thousand dollars on deposit with the insurance commissioner by September 1, 1990; and

(5) The arrangement complies with all reasonable requirements of the insurance commissioner excluding the deposit requirement, except as outlined in this section.

If such rural health care service arrangements fail to comply with any of the above requirements, or if during the application process an entity engages in any activities which the insurance commissioner reasonably determines may cause imminent harm to consumers, the entity may be subject to appropriate legal action by the insurance commissioner pursuant to the authority provided in Title 48 RCW.

A rural health care service arrangement which comes into compliance with Title 48 RCW through the method outlined in this chapter shall be subject to all applicable requirements of Title 48 RCW except that the deposit requirements shall not be increased until May 1, 1991. [1990 c 271 § 23.]

48.45.030 Rule making. The insurance commissioner, pursuant to chapter 34.05 RCW, may promulgate rules to implement RCW 48.45.010 and 48.45.020. [1990 c 271 § 24.]

Chapter 48.46 RCW HEALTH MAINTENANCE ORGANIZATIONS

Sections

48.46.010	Legislative declaration—Purpose.
48.46.012	Filings with secretary of state—Copy for commissioner.
48.46.020	Definitions.
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- 48.46.900 Liberal construction.
- 48.46.910 Severability—1975 1st ex.s. c 290.
- 48.46.920 Short title.

Agents of health maintenance organizations, additional regulations applicable: RCW 48.17.065.

Health care assistants: Chapter 18.135 RCW.

48.46.010 Legislative declaration—Purpose. In affirmation of the declared principle that health care is a right of every citizen of the state, the legislature expresses its concern that the present high costs of health care in Washington may be preventing or inhibiting a large segment of the people from obtaining access to quality health care services.

The legislature declares that the establishment of qualified prepaid group and individual practice health care delivery systems should be encouraged in order to provide all citizens of the state with the freedom of choice between competitive, alternative health care delivery systems necessary to realize their right to health. It is the purpose and policy of this chapter to provide for the development and registration of prepaid group and individual practice health care plans as health maintenance organizations, which the legislature declares to be in the interest of the health, safety and welfare of the people. [1975 1st ex.s. c 290 § 2.]

48.46.012 Filings with secretary of state—Copy for commissioner. Health maintenance organizations shall send a copy specifically for the office of the insurance commissioner to the secretary of state of any corporate document required to be filed in the office of the secretary of state, including articles of incorporation and bylaws, and any amendments thereto. The copy specifically provided for the office of the insurance commissioner shall be in addition to the copies required by the secretary of state and shall clearly indicate on the copy that it is for delivery to the office of the insurance commissioner. [1998 c 23 § 17.]

48.46.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context indicates otherwise.

(1) "Health maintenance organization" means any organization receiving a certificate of registration by the commissioner under this chapter which provides comprehensive health care services to enrolled participants of such organization on a group practice per capita prepayment basis or on a prepaid individual practice plan, except for an enrolled participant's responsibility for copayments and/or deductibles, either directly or through contractual or other arrangements with other institutions, entities, or persons, and which qualifies as a health maintenance organization pursuant to RCW 48.46.030 and 48.46.040.

(2) "Comprehensive health care services" means basic consultative, diagnostic, and therapeutic services rendered by licensed health professionals together with emergency and

preventive care, inpatient hospital, outpatient and physician care, at a minimum, and any additional health care services offered by the health maintenance organization.

(3) "Enrolled participant" means a person who or group of persons which has entered into a contractual arrangement or on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(4) "Health professionals" means health care practitioners who are regulated by the state of Washington.

(5) "Health maintenance agreement" means an agreement for services between a health maintenance organization which is registered pursuant to the provisions of this chapter and enrolled participants of such organization which provides enrolled participants with comprehensive health services rendered to enrolled participants by health professionals, groups, facilities, and other personnel associated with the health maintenance organization.

(6) "Consumer" means any member, subscriber, enrollee, beneficiary, or other person entitled to health care services under terms of a health maintenance agreement, but not including health professionals, employees of health maintenance organizations, partners, or shareholders of stock corporations licensed as health maintenance organizations.

(7) "Meaningful role in policy making" means a procedure approved by the commissioner which provides consumers or elected representatives of consumers a means of submitting the views and recommendations of such consumers to the governing board of such organization coupled with reasonable assurance that the board will give regard to such views and recommendations.

(8) "Meaningful grievance procedure" means a procedure for investigation of consumer grievances in a timely manner aimed at mutual agreement for settlement according to procedures approved by the commissioner, and which may include arbitration procedures.

(9) "Provider" means any health professional, hospital, or other institution, organization, or person that furnishes any health care services and is licensed or otherwise authorized to furnish such services.

(10) "Department" means the state department of social and health services.

(11) "Commissioner" means the insurance commissioner.

(12) "Group practice" means a partnership, association, corporation, or other group of health professionals:

(a) The members of which may be individual health professionals, clinics, or both individuals and clinics who engage in the coordinated practice of their profession; and

(b) The members of which are compensated by a prearranged salary, or by capitation payment or drawing account that is based on the number of enrolled participants.

(13) "Individual practice health care plan" means an association of health professionals in private practice who associate for the purpose of providing prepaid comprehensive health care services on a fee-for-service or capitation basis.

(14) "Uncovered expenditures" means the costs to the health maintenance organization of health care services that are the obligation of the health maintenance organization for which an enrolled participant would also be liable in the event of the health maintenance organization's insolvency

and for which no alternative arrangements have been made as provided herein. The term does not include expenditures for covered services when a provider has agreed not to bill the enrolled participant even though the provider is not paid by the health maintenance organization, or for services that are guaranteed, insured, or assumed by a person or organization other than the health maintenance organization.

(15) "Copayment" means an amount specified in a subscriber agreement which is an obligation of an enrolled participant for a specific service which is not fully prepaid.

(16) "Deductible" means the amount an enrolled participant is responsible to pay out-of-pocket before the health maintenance organization begins to pay the costs associated with treatment.

(17) "Fully subordinated debt" means those debts that meet the requirements of RCW 48.46.235(3) and are recorded as equity.

(18) "Net worth" means the excess of total admitted assets as defined in RCW 48.12.010 over total liabilities but the liabilities shall not include fully subordinated debt.

(19) "Participating provider" means a provider as defined in subsection (9) of this section who contracts with the health maintenance organization or with its contractor or subcontractor and has agreed to provide health care services to enrolled participants with an expectation of receiving payment, other than copayment or deductible, directly or indirectly, from the health maintenance organization.

(20) "Carrier" means a health maintenance organization, an insurer, a health care services contractor, or other entity responsible for the payment of benefits or provision of services under a group or individual agreement.

(21) "Replacement coverage" means the benefits provided by a succeeding carrier.

(22) "Insolvent" or "insolvency" means that the organization has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction. [1990 c 119 § 1; 1983 c 106 § 1; 1982 c 151 § 1; 1975 1st ex.s. c 290 § 3.]

Effective date—1982 c 151: "This act shall take effect on January 1, 1983." [1982 c 151 § 5.]

48.46.023 Agent—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (Effective until July 1, 2009.) (1) Agent, as used in this chapter, means any person appointed or authorized by a health maintenance organization to solicit applications for health care service agreements on its behalf.

(2) No person shall act as or hold himself out to be an agent of a health maintenance organization unless licensed as a disability insurance agent by this state and appointed or authorized by the health maintenance organization on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance agent.

(4) A person holding a valid license in this state as a health maintenance organization agent on July 24, 1983, is not required to requalify by an examination for the renewal of the license.

(5) The commissioner may revoke, suspend, or refuse to issue or renew any agent's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance agent. [1983 c 202 § 8.]

48.46.023 Insurance producer—Definition—License required—Application, issuance, renewal, fees—Penalties involving license. (Effective July 1, 2009.) (1) Insurance producer, as used in this chapter, means any person appointed or authorized by a health maintenance organization to solicit applications for health care service agreements on its behalf.

(2) No person shall act as or hold himself or herself out to be an appointed insurance producer of a health maintenance organization unless licensed as a disability insurance producer by this state and appointed or authorized by the health maintenance organization on whose behalf solicitations are to be made.

(3) Applications, appointments, and qualifications for licenses, the renewal thereof, the fees and issuance of a license, and the renewal thereof shall be in accordance with the provisions of chapter 48.17 RCW that are applicable to a disability insurance producer.

(4) The commissioner may revoke, suspend, or refuse to issue or renew any insurance producer's license, or levy a fine upon the licensee, in accordance with those provisions of chapter 48.17 RCW that are applicable to a disability insurance producer. [2008 c 217 § 54; 1983 c 202 § 8.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.46.027 Registration, required—Issuance of securities—Penalty. (1) A person may not in this state, by mail or otherwise, act as or hold himself or herself out to be a health maintenance organization as defined in RCW 48.46.020 without first being registered with the commissioner.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation is subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits the same as if health maintenance organizations were domestic insurers.

(3) Any person violating any provision of subsection (2) of this section is guilty of a gross misdemeanor and will, upon conviction, be fined not more than one thousand dollars, or imprisoned for not more than six months, or both, for each violation. [2003 c 250 § 10; 1983 c 202 § 9.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.030 Eligibility requirements for certificate of registration—Application requirements, information. Any corporation, cooperative group, partnership, individual, association, or groups of health professionals licensed by the state of Washington, public hospital district, or public institutions of higher education shall be entitled to a certificate of registration from the insurance commissioner as a health maintenance organization if it:

(1) Provides comprehensive health care services to enrolled participants on a group practice per capita prepayment basis or on a prepaid individual practice plan and provides such health services either directly or through arrangements with institutions, entities, and persons which its enrolled population might reasonably require as determined by the health maintenance organization in order to be maintained in good health; and

(2) Is governed by a board elected by enrolled participants, or otherwise provides its enrolled participants with a meaningful role in policy making procedures of such organization, as defined in RCW 48.46.020(7), and 48.46.070; and

(3) Affords enrolled participants with a meaningful grievance procedure aimed at settlement of disputes between such persons and such health maintenance organization, as defined in RCW 48.46.020(8) and 48.46.100; and

(4) Provides enrolled participants, or makes available for inspection at least annually, financial statements pertaining to health maintenance agreements, disclosing income and expenses, assets and liabilities, and the bases for proposed rate adjustments for health maintenance agreements relating to its activity as a health maintenance organization; and

(5) Demonstrates to the satisfaction of the commissioner that its facilities and personnel are reasonably adequate to provide comprehensive health care services to enrolled participants and that it is financially capable of providing such members with, or has made adequate contractual arrangements through insurance or otherwise to provide such members with, such health services; and

(6) Substantially complies with administrative rules and regulations of the commissioner for purposes of this chapter; and

(7) Submits an application for a certificate of registration which shall be verified by an officer or authorized representative of the applicant, being in form as the commissioner prescribes, and setting forth:

(a) A copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) A copy of the bylaws, rules and regulations, or similar documents, if any, which regulate the conduct of the internal affairs of the applicant, and all amendments thereto;

(c) A list of the names, addresses, members of the board of directors, board of trustees, executive committee, or other governing board or committee and the principal officers, partners, or members;

(d) A full and complete disclosure of any financial interests held by any officer, or director in any provider associated with the applicant or any provider of the applicant;

(e) A description of the health maintenance organization, its facilities and its personnel, and the applicant's most recent financial statement showing such organization's assets, liabilities, income, and other sources of financial support;

(f) A description of the geographic areas and the population groups to be served and the size and composition of the anticipated enrollee population;

(g) A copy of each type of health maintenance agreement to be issued to enrolled participants;

(h) A schedule of all proposed rates of reimbursement to contracting health care facilities or providers, if any, and a

schedule of the proposed charges for enrollee coverage for health care services, accompanied by data relevant to the formulation of such schedules;

(i) A description of the proposed method and schedule for soliciting enrollment in the applicant health maintenance organization and the basis of compensation for such solicitation services;

(j) A copy of the solicitation document to be distributed to all prospective enrolled participants in connection with any solicitation;

(k) A financial projection which sets forth the anticipated results during the initial two years of operation of such organization, accompanied by a summary of the assumptions and relevant data upon which the projection is based. The projection should include the projected expenses, enrollment trends, income, enrollee utilization patterns, and sources of working capital;

(l) A detailed description of the enrollee complaint system as provided by RCW 48.46.100;

(m) A detailed description of the procedures and programs to be implemented to assure that the health care services delivered to enrolled participants will be of professional quality;

(n) A detailed description of procedures to be implemented to meet the requirements to protect against insolvency in RCW 48.46.245;

(o) Documentation that the health maintenance organization has an initial net worth of one million dollars and shall thereafter maintain the minimum net worth required under RCW 48.46.235; and

(p) Such other information as the commissioner shall require by rule or regulation which is reasonably necessary to carry out the provisions of this section.

A health maintenance organization shall, unless otherwise provided for in this chapter, file a notice describing any modification of any of the information required by subsection (7) of this section. Such notice shall be filed with the commissioner. [1990 c 119 § 2; 1985 c 320 § 1; 1983 c 106 § 2; 1975 1st ex.s. c 290 § 4.]

48.46.033 Unregistered activities—Acts committed in this state—Sanctions. (1) As used in this section, "person" has the same meaning as in RCW 48.01.070.

(2) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within the state and relates to or involves a health maintenance agreement.

(3) Any person who knowingly violates RCW 48.46.027(1) is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(5)(a) If the commissioner has cause to believe that any person has violated the provisions of RCW 48.46.027(1), the commissioner may:

(i) Issue and enforce a cease and desist order in accordance with the provisions of RCW 48.02.080; and/or

(ii) Assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and

an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(b) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund. [2003 c 250 § 11.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.040 Certificate of registration—Issuance—Grounds for refusal—Name restrictions—Inspection and review of facilities. The commissioner shall issue a certificate of registration to the applicant within sixty days of such filing unless he notifies the applicant within such time that such application is not complete and the reasons therefor; or that he is not satisfied that:

(1) The basic organizational document of the applicant permits the applicant to conduct business as a health maintenance organization;

(2) The organization has demonstrated the intent and ability to assure that comprehensive health care services will be provided in a manner to assure both their availability and accessibility;

(3) The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination, the commissioner shall consider among other relevant factors:

(a) Any agreements with an insurer, a medical or hospital service bureau, a government agency or any other organization paying or insuring payment for health care services;

(b) Any agreements with providers for the provision of health care services;

(c) Any arrangements for liability and malpractice insurance coverage; and

(d) Adequate procedures to be implemented to meet the protection against insolvency requirements in RCW 48.46.245.

(4) The procedures for offering health care services and offering or terminating contracts with enrolled participants are reasonable and equitable in comparison with prevailing health insurance subscription practices and health maintenance organization enrollment procedures; and, that

(5) Procedures have been established to:

(a) Monitor the quality of care provided by such organization, including, as a minimum, procedures for internal peer review;

(b) Resolve complaints and grievances initiated by enrolled participants in accordance with RCW 48.46.010 and 48.46.100;

(c) Offer enrolled participants an opportunity to participate in matters of policy and operation in accordance with RCW 48.46.020(7) and 48.46.070.

No person to whom a certificate of registration has not been issued, except a health maintenance organization certified by the secretary of the department of health and human services, pursuant to Public Law 93-222 or its successor, shall use the words "health maintenance organization" or the initials "HMO" in its name, contracts, or literature. Persons who are contracting with, operating in association with, recruiting enrolled participants for, or otherwise authorized

by a health maintenance organization possessing a certificate of registration to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their relationship to such health maintenance organization.

The department of health, at the request of the insurance commissioner, shall inspect and review the facilities of every applicant health maintenance organization to determine that such facilities are reasonably adequate to provide the health care services offered in their contracts. If the commissioner has information to indicate that such facilities fail to continue to be adequate to provide the health care services offered, the department of health, upon request of the insurance commissioner, shall reinspect and review the facilities and report to the insurance commissioner as to their adequacy or inadequacy. [1990 c 119 § 3; 1989 1st ex.s. c 9 § 223; 1983 c 106 § 3; 1975 1st ex.s. c 290 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

48.46.045 Catastrophic health plans permitted. Notwithstanding the provisions of this chapter, a health maintenance organization may offer catastrophic health plans as defined in RCW 48.43.005. [2000 c 79 § 27.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.46.060 Prepayment agreements—Standards for forms and documents—Grounds for disapproval—Cancellation or failure to renew—Filing of agreement forms.

(1) Any health maintenance organization may enter into agreements with or for the benefit of persons or groups of persons, which require prepayment for health care services by or for such persons in consideration of the health maintenance organization providing health care services to such persons. Such activity is not subject to the laws relating to insurance if the health care services are rendered directly by the health maintenance organization or by any provider which has a contract or other arrangement with the health maintenance organization to render health services to enrolled participants.

(2) All forms of health maintenance agreements issued by the organization to enrolled participants or other marketing documents purporting to describe the organization's comprehensive health care services shall comply with such minimum standards as the commissioner deems reasonable and necessary in order to carry out the purposes and provisions of this chapter, and which fully inform enrolled participants of the health care services to which they are entitled, including any limitations or exclusions thereof, and such other rights, responsibilities and duties required of the contracting health maintenance organization.

(3) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove an individual or group agreement form for any of the following grounds:

(a) If it contains or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions or conditions which unreasonably or deceptively affect the risk

purported to be assumed in the general coverage of the agreement;

(b) If it has any title, heading, or other indication which is misleading;

(c) If purchase of health care services thereunder is being solicited by deceptive advertising;

(d) If it contains unreasonable restrictions on the treatment of patients;

(e) If it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW; or

(f) If any agreement for health care services with any state agency, division, subdivision, board, or commission or with any political subdivision, municipal corporation, or quasi-municipal corporation fails to comply with state law.

(4) In addition to the grounds listed in subsection (2) of this section, the commissioner may disapprove any agreement if the benefits provided therein are unreasonable in relation to the amount charged for the agreement. Rates, or any modification of rates effective on or after July 1, 2008, for individual health benefit plans may not be used until sixty days after they are filed with the commissioner. If the commissioner does not disapprove a rate filing within sixty days after the health maintenance organization has filed the documents required in RCW 48.46.062(2) and any rules adopted pursuant thereto, the filing shall be deemed approved.

(5) No health maintenance organization authorized under this chapter shall cancel or fail to renew the enrollment on any basis of an enrolled participant or refuse to transfer an enrolled participant from a group to an individual basis for reasons relating solely to age, sex, race, or health status. Nothing contained herein shall prevent cancellation of an agreement with enrolled participants (a) who violate any published policies of the organization which have been approved by the commissioner, or (b) who are entitled to become eligible for medicare benefits and fail to enroll for a medicare supplement plan offered by the health maintenance organization and approved by the commissioner, or (c) for failure of such enrolled participant to pay the approved charge, including cost-sharing, required under such contract, or (d) for a material breach of the health maintenance agreement.

(6) No agreement form or amendment to an approved agreement form shall be used unless it is first filed with the commissioner. [2008 c 303 § 3; 2000 c 79 § 31; 1989 c 10 § 10. Prior: 1985 c 320 § 2; 1985 c 283 § 2; 1983 c 106 § 4; 1975 1st ex.s. c 290 § 7.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.46.062 Schedule of rates for individual agreements—Loss ratio—Remittance of premiums—Definitions. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Claims" means the cost to the health maintenance organization of health care services, as defined in RCW 48.43.005, provided to an enrollee or paid to or on behalf of the enrollee in accordance with the terms of a health benefit plan, as defined in RCW 48.43.005. This includes capitation payments or other similar payments made to providers for the purpose of paying for health care services for an enrollee.

(b) "Claims reserves" means: (i) The liability for claims which have been reported but not paid; (ii) the liability for claims which have not been reported but which may reasonably be expected; (iii) active life reserves; and (iv) additional claims reserves whether for a specific liability purpose or not.

(c) "Declination rate" for a health maintenance organization means the percentage of the total number of applicants for individual health benefit plans received by that health maintenance organization in the aggregate in the applicable year which are not accepted for enrollment by that health maintenance organization based on the results of the standard health questionnaire administered pursuant to RCW 48.43.018(2)(a).

(d) "Earned premiums" means premiums, as defined in RCW 48.43.005, plus any rate credits or recoupments less any refunds, for the applicable period, whether received before, during, or after the applicable period.

(e) "Incurred claims expense" means claims paid during the applicable period plus any increase, or less any decrease, in the claims reserves.

(f) "Loss ratio" means incurred claims expense as a percentage of earned premiums.

(g) "Reserves" means: (i) Active life reserves; and (ii) additional reserves whether for a specific liability purpose or not.

(2) A health maintenance organization must file supporting documentation of its method of determining the rates charged for its individual agreements. At a minimum, the health maintenance organization must provide the following supporting documentation:

(a) A description of the health maintenance organization's rate-making methodology;

(b) An actuarially determined estimate of incurred claims which includes the experience data, assumptions, and justifications of the health maintenance organization's projection;

(c) The percentage of premium attributable in aggregate for nonclaims expenses used to determine the adjusted community rates charged; and

(d) A certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the adjusted community rate charged can be reasonably expected to result in a loss ratio that meets or exceeds the loss ratio standard of seventy-four percent, minus the premium tax rate applicable to the carrier's individual health benefit plans under RCW 48.14.0201.

(3) By the last day of May each year any health maintenance organization issuing or renewing individual health benefit plans in this state during the preceding calendar year shall file for review by the commissioner supporting documentation of its actual loss ratio and its actual declination rate for its individual health benefit plans offered or renewed in the state in aggregate for the preceding calendar year. The filing shall include aggregate earned premiums, aggregate incurred claims, and a certification by a member of the American academy of actuaries, or other person approved by the commissioner, that the actual loss ratio has been calculated in accordance with accepted actuarial principles.

(a) At the expiration of a thirty-day period beginning with the date the filing is received by the commissioner, the

filing shall be deemed approved unless prior thereto the commissioner contests the calculation of the actual loss ratio.

(b) If the commissioner contests the calculation of the actual loss ratio, the commissioner shall state in writing the grounds for contesting the calculation to the health maintenance organization.

(c) Any dispute regarding the calculation of the actual loss ratio shall, upon written demand of either the commissioner or the health maintenance organization, be submitted to hearing under chapters 48.04 and 34.05 RCW.

(4) If the actual loss ratio for the preceding calendar year is less than the loss ratio standard established in subsection (5) of this section, a remittance is due and the following shall apply:

(a) The health maintenance organization shall calculate a percentage of premium to be remitted to the Washington state health insurance pool by subtracting the actual loss ratio for the preceding year from the loss ratio established in subsection (5) of this section.

(b) The remittance to the Washington state health insurance pool is the percentage calculated in (a) of this subsection, multiplied by the premium earned from each enrollee in the previous calendar year. Interest shall be added to the remittance due at a five percent annual rate calculated from the end of the calendar year for which the remittance is due to the date the remittance is made.

(c) All remittances shall be aggregated and such amounts shall be remitted to the Washington state high risk pool to be used as directed by the pool board of directors.

(d) Any remittance required to be issued under this section shall be issued within thirty days after the actual loss ratio is deemed approved under subsection (3)(a) of this section or the determination by an administrative law judge under subsection (3)(c) of this section.

(5) The loss ratio applicable to this section shall be the percentage set forth in the following schedule that correlates to the health maintenance organization's actual declination rate in the preceding year, minus the premium tax rate applicable to the health maintenance organization's individual health benefit plans under RCW 48.14.0201.

Actual Declination Rate	Loss Ratio
Under Six Percent (6%)	Seventy-Four Percent (74%)
Six Percent (6%) or more (but less than Seven Percent)	Seventy-Five Percent (75%)
Seven Percent (7%) or more (but less than Eight Percent)	Seventy-Six Percent (76%)
Eight Percent (8%) or more	Seventy-Seven Percent (77%)

[2008 c 303 § 6; 2001 c 196 § 12; 2000 c 79 § 32.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

48.46.063 Calculation of premiums—Members of a purchasing pool—Adjusted community rating method—Definitions. (1) Premiums for health benefit plans for individuals who purchase the plan as a member of a purchasing pool:

(a) Consisting of five hundred or more individuals affiliated with a particular industry;

(b) To whom care management services are provided as a benefit of pool membership; and

(c) Which allows contributions from more than one employer to be used towards the purchase of an individual's health benefit plan;

shall be calculated using the adjusted community rating method that spreads financial risk across the entire purchasing pool of which the individual is a member. Such rates are subject to the following provisions:

(i) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (A) Geographic area;
- (B) Family size;
- (C) Age;
- (D) Tenure discounts; and
- (E) Wellness activities.

(ii) The adjustment for age in (c)(i)(C) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(iii) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer, and coverage for which medicare is not the primary payer. Both rates are subject to the requirements of this subsection.

(iv) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(v) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(vi) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (A) Changes to the family composition;
- (B) Changes to the health benefit plan requested by the individual; or
- (C) Changes in government requirements affecting the health benefit plan.

(vii) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(viii) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(3) As used in this section and RCW 48.46.066, "health benefit plan," "adjusted community rates," "small employer," and "wellness activities" mean the same as defined in RCW 48.43.005. [2006 c 100 § 6.]

Legality of purchasing pools—Federal opinion requested—2006 c 100: See note following RCW 48.20.028.

48.46.064 Calculation of premiums—Adjusted community rate—Definitions. (1) Except for health benefit plans covered under RCW 48.46.063, premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, except individuals purchasing coverage under *RCW 48.46.063, and shall not be required to be

pooled with the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(3) As used in this section and RCW 48.46.066, "health benefit plan," "adjusted community rate," "small employer," and "wellness activities" mean the same as defined in RCW 48.43.005. [2006 c 100 § 5; 2004 c 244 § 8; 2000 c 79 § 33; 1997 c 231 § 209; 1995 c 265 § 17.]

***Reviser's note:** The reference in 2006 c 100 § 5 to "section 5 of this act" was erroneous. Section 6 of this act, codified as RCW 48.46.063, was apparently intended.

Legality of purchasing pools—Federal opinion requested—2006 c 100: See note following RCW 48.20.028.

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.46.066 Health plan benefits for small employers—Coverage—Exemption from statutory requirements—Premium rates—Requirements for providing coverage for small employers. (1)(a) A health maintenance organization offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A health maintenance organization offering a health benefit plan under this subsection shall clearly disclose all the covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the enrollment of the small employer;
- (ii) Changes to the family composition of the employee;
- (iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days

of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan. [2008 c 143 § 8; 2007 c 260 § 9; 2004 c 244 § 9; 1995 c 265 § 18; 1990 c 187 § 4.]

Application—2004 c 244: See note following RCW 48.21.045.

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

(2008 Ed.)

Finding—Intent—Severability—1990 c 187: See notes following RCW 48.21.045.

48.46.068 Requirements for plans offered to small employers—Definitions. (1) A health maintenance organization may not offer any health benefit plan to any small employer without complying with RCW 48.46.066(3).

(2) Employers purchasing health plans provided through associations or through member-governed groups formed specifically for the purpose of purchasing health care are not small employers and are not subject to RCW 48.46.066(3).

(3) For purposes of this section, "health benefit plan," "health plan," and "small employer" mean the same as defined in RCW 48.43.005. [2003 c 248 § 16; 1995 c 265 § 24.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.46.070 Governing body. (1) The members of the governing body of a health maintenance organization shall be nominated by the voting members or by the enrolled participants and providers, and shall be elected by the enrolled participants or voting members pursuant to the provisions of their bylaws, which shall not be restricted to providers. At least one-third of such body shall consist of consumers who are substantially representative of the enrolled population of such organization: PROVIDED, HOWEVER, That any organization that is a qualified health maintenance organization under P.L. 93-222 (Title XIII, section 1310(d) of the public health services act) is deemed to have satisfied these governing body requirements and the requirements of RCW 48.46.030(2).

(2) For health maintenance organizations formed by public institutions of higher education or public hospital districts, the governing body shall be advised by an advisory board consisting of at least two-thirds consumers who are elected by the voting members or the enrolled participants and are substantially representative of the enrolled population. [1985 c 320 § 3; 1983 c 106 § 5; 1975 1st ex.s. c 290 § 8.]

48.46.080 Annual statement—Filings—Contents—Fee—Penalty for failure to file—Accuracy required. (1) Every domestic health maintenance organization shall annually, on or before the first day of March, file with the commissioner a statement verified by at least two of the principal officers of the health maintenance organization showing its financial condition as of the last day of the preceding calendar year.

(2) Such annual report shall be in such form as the commissioner shall prescribe and shall include:

(a) A financial statement of such organization, including its balance sheet and receipts and disbursements for the preceding year, which reflects at a minimum;

(i) All prepayments and other payments received for health care services rendered pursuant to health maintenance agreements;

(ii) Expenditures to all categories of health care facilities, providers, insurance companies, or hospital or medical service plan corporations with which such organization has contracted to fulfill obligations to enrolled participants aris-

ing out of its health maintenance agreements, together with all other direct expenses including depreciation, enrollment, and commission; and

(iii) Expenditures for capital improvements, or additions thereto, including but not limited to construction, renovation, or purchase of facilities and capital equipment;

(b) The number of participants enrolled and terminated during the report period. Every employer offering health care benefits to their employees through a group contract with a health maintenance organization shall furnish said health maintenance organization with a list of their employees enrolled under such plan;

(c) The number of doctors by type of practice who, under contract with or as an employee of the health maintenance organization, furnished health care services to consumers during the past year;

(d) A report of the names and addresses of all officers, directors, or trustees of the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals for services to such organization. For partnership and professional service corporations, a report shall be made for partners or shareholders as to any compensation or expense reimbursement received by them for services, other than for services and expenses relating directly for patient care;

(e) Such other information relating to the performance of the health maintenance organization or the health care facilities or providers with which it has contracted as reasonably necessary to the proper and effective administration of this chapter, in accordance with rules and regulations; and

(f) Disclosure of any financial interests held by officers and directors in any providers associated with the health maintenance organization or any provider of the health maintenance organization.

(3) The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(4) In addition to the requirements of subsections (1) and (2) of this section, every health maintenance organization that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(5) Coincident with the filing of its annual statement and other schedules, each health maintenance organization shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(6) Foreign health maintenance organizations that are domiciled in a state that has a law substantially similar to subsection (4) of this section are considered to be in compliance with this section.

(7) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(8) The commissioner may suspend or revoke the certificate of registration of any health maintenance organization failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant.

(9) No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health maintenance organization which does not accurately state the health maintenance organization's financial condition. [2006 c 25 § 9; 1997 c 212 § 5; 1993 c 492 § 296. Prior: 1983 c 202 § 10; 1983 c 106 § 6; 1975 1st ex.s. c 290 § 9.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.46.090 Standard of services provided. A health maintenance organization, and the health care facilities and providers with which such organization has entered into contracts to provide health care services to its enrolled participants, shall provide such services in a manner consistent with the dignity of each enrolled participant as a human being. [1975 1st ex.s. c 290 § 10.]

48.46.100 Grievance procedure. A health maintenance organization shall establish and maintain a grievance procedure, approved by the commissioner, to provide reasonable and effective resolution of complaints initiated by enrolled participants concerning any matter relating to the interpretation of any provision of such enrolled participants' health maintenance contracts, including, but not limited to, claims regarding the scope of coverage for health care services; denials, cancellations, or nonrenewals of enrolled participants' coverage; and the quality of the health care services rendered, and which may include procedures for arbitration. [1975 1st ex.s. c 290 § 11.]

48.46.110 Name restrictions—Discrimination—Recovery of costs of health care services participant not entitled to. (1) No health maintenance organization may refer to itself in its name or advertising with any of the words: "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business, or deceptively similar to the name or description of any insurance or surety corporation or health care service contractor or other health maintenance organization doing business in this state.

(2) No health maintenance organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall discriminate against any person from whom or on whose behalf, payment to meet the required charge is available, with regard to enrollment, disenrollment, or the provision of health care services, on the basis of such person's race, color, sex, religion, place of residence if there is reasonable access to the facility of the health maintenance organization, socioeconomic status, or status as a recipient of medicare under Title XVIII of the Social Security Act, 42 U.S.C. section 1396, et seq.

(3) Where a health maintenance organization determines that an enrolled participant has received health care services to which such enrolled participant is not entitled under the terms of his health maintenance agreement, neither such organization, nor any health care facility or provider with which such organization has contracted to provide health care services, shall have recourse against such enrolled participant for any amount above the actual cost of providing such service, if any, specified in such agreement, unless the enrolled participant or a member of his family has given or withheld information to the health maintenance organization, the effect of which is to mislead or misinform the health maintenance organization as to the enrolled participant's right to receive such services. [1983 c 202 § 11; 1975 1st ex.s. c 290 § 12.]

48.46.120 Examination of health maintenance organizations—Duties of organizations, powers of commissioner—Independent audit reports. (1) The commissioner may make an examination of the operations of any health maintenance organization as often as he deems necessary in order to carry out the purposes of this chapter.

(2) Every health maintenance organization shall submit its books and records relating its operation for financial condition and market conduct examinations and in every way facilitate them. The quality or appropriateness of medical services or systems shall not be examined except to the extent that such items are incidental to an examination of the financial condition or the market conduct of a health maintenance organization. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the health maintenance organization and the principals of such providers concerning their business.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the health maintenance organization in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his report of the examination. [2007 c 468 § 2; 1987 c 83 § 1; 1986 c 296 § 9; 1985 c 7 § 115; 1983 c 63 § 2; 1975 1st ex.s. c 290 § 13.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

48.46.130 Investigation of violations—Hearing—Findings—Penalties—Order requiring compliance, etc.—Suspension or revocation of certificate, effect—Application to courts. (1) The commissioner may, consistent with the provisions of the administrative procedure act,

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chapter 34.05 RCW, initiate proceedings to determine whether a health maintenance organization has:

(a) Operated in a manner that materially violates its organizational documents;

(b) Materially breached its obligation to furnish the health care services specified in its contracts with enrolled participants;

(c) Violated any provision of this chapter, or any rules and regulations promulgated thereunder;

(d) Made any false statement with respect to any report or statement required by this chapter or by the commissioner under this chapter;

(e) Advertised or marketed, or attempted to market, its services in such a manner as to misrepresent its services or capacity for services, or engaged in deceptive, misleading, or unfair practices with respect to advertising or marketing;

(f) Prevented the commissioner from the performance of any duty imposed by this chapter; or

(g) Fraudulently procured or attempted to procure any benefit under this chapter.

(2) After providing written notice and an opportunity for a hearing to be scheduled no sooner than ten days following such notice, the commissioner shall make administrative findings and may, as appropriate:

(a) Impose a penalty of not more than ten thousand dollars for each and every unlawful act committed which materially affects the health services offered or furnished;

(b) Issue an administrative order requiring the health maintenance organization to:

(i) Cease or modify inappropriate conduct or practices by it or any of the personnel employed or associated with it;

(ii) Fulfill its contractual obligations;

(iii) Provide a service which has been improperly denied;

(iv) Take steps to provide or arrange for any service which it has agreed to make available; or

(v) Abide by the terms of an arbitration proceeding, if any;

(c) Suspend or revoke the certificate of authority of the health maintenance organization:

(i) If its certificate of authority is suspended, the organization shall not, during the period of such suspension, enroll any additional participants except newborn children or other newly acquired dependents of existing enrolled participants, and shall not engage in any advertising or solicitation whatsoever;

(ii) If its certificate of authority is revoked, the organization shall proceed under the supervision of the commissioner immediately following the effective date of the order of revocation to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of such affairs: PROVIDED, That the commissioner may, by written order, permit such further operation of the organization as it may find to be in the best interest of enrolled participants, to the end that such enrolled participants will be afforded the greatest practical opportunity to obtain continuing health care coverage: PROVIDED, FURTHER, That if the organization is qualified to operate as a health care service contractor under chapter 48.44 RCW, it may continue to operate as such when it obtains the appropriate license.

(3) The commissioner may apply to any court for such legal or equitable relief as it deems necessary to effectively

carry out the purposes of this chapter, including, but not limited to, an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. [1975 1st ex.s. c 290 § 14.]

48.46.135 Fine in addition to or in lieu of suspension, revocation, or refusal. After hearing or upon stipulation by the registrant and in addition to or in lieu of the suspension, revocation, or refusal to renew any registration of a health maintenance organization, the commissioner may levy a fine against the party involved for each offense in an amount not less than fifty dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the commissioner shall revoke the registration of the registrant, if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund. [1983 c 202 § 15.]

48.46.140 Fees. Every organization subject to this chapter shall pay to the commissioner the following fees:

(1) For filing a copy of its application for a certificate of registration or amendment thereto, one hundred dollars;

(2) For filing each annual report pursuant to RCW 48.46.080, ten dollars. [1975 1st ex.s. c 290 § 15.]

48.46.170 Effect of chapter as to other laws—Construction. (*Effective until July 1, 2009.*) (1) Solicitation of enrolled participants by a health maintenance organization granted a certificate of registration, or its agents or representatives, does not violate any provision of law relating to solicitation or advertising by health professionals.

(2) Any health maintenance organization authorized under this chapter is not violating any law prohibiting the practice by unlicensed persons of podiatric medicine and surgery, chiropractic, dental hygiene, opticianry, dentistry, optometry, osteopathic medicine and surgery, pharmacy, medicine and surgery, physical therapy, nursing, or psychology. This subsection does not expand a health professional's scope of practice or allow employees of a health maintenance organization to practice as a health professional unless licensed.

(3) This chapter does not alter any statutory obligation, or rule adopted thereunder, in chapter 70.38 RCW.

(4) Any health maintenance organization receiving a certificate of registration pursuant to this chapter is exempt from chapter 48.05 RCW. [2003 c 248 § 17; 1996 c 178 § 13; 1983 c 106 § 7; 1975 1st ex.s. c 290 § 18.]

Effective date—1996 c 178: See note following RCW 18.35.110.

48.46.170 Effect of chapter as to other laws—Construction. (*Effective July 1, 2009.*) (1) Solicitation of enrolled participants by a health maintenance organization granted a certificate of registration, or its appointed insurance producers or representatives, does not violate any provision of law relating to solicitation or advertising by health professionals.

(2) Any health maintenance organization authorized under this chapter is not violating any law prohibiting the practice by unlicensed persons of podiatric medicine and surgery, chiropractic, dental hygiene, opticianry, dentistry, optometry, osteopathic medicine and surgery, pharmacy, medicine and surgery, physical therapy, nursing, or psychology. This subsection does not expand a health professional's scope of practice or allow employees of a health maintenance organization to practice as a health professional unless licensed.

(3) This chapter does not alter any statutory obligation, or rule adopted thereunder, in chapter 70.38 RCW.

(4) Any health maintenance organization receiving a certificate of registration pursuant to this chapter is exempt from chapter 48.05 RCW. [2008 c 217 § 55; 2003 c 248 § 17; 1996 c 178 § 13; 1983 c 106 § 7; 1975 1st ex.s. c 290 § 18.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Effective date—1996 c 178: See note following RCW 18.35.110.

48.46.180 Duty of employer to inform and make available to employees option of enrolling in health maintenance organization. (1) The state government, or any political subdivision thereof, which offers its employees a health benefits plan shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which such employees or members reside.

(2) Each employer, public or private, having more than fifty employees in this state which offers its employees a health benefits plan, and each employee benefits fund in this state having more than fifty members which offers its members any form of health benefits shall make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which a substantial number of such employees or members reside: PROVIDED, That unless at least twenty-five employees agree to participate in a health maintenance organization the employer need not provide such an option: PROVIDED FURTHER, That where such employees are members of a bona fide bargaining unit covered by a labor-management collective bargaining agreement, the selection of the options required by this section may be specified in such agreement: AND PROVIDED FURTHER, That the provisions of this section shall not be mandatory where such members are covered by a Taft-Hartley health care trust, except that the labor-management trustees may contract with a health maintenance organization if a feasibility study determines it is to the advantage of the members to so contract.

(3) Subsections (1) and (2) of this section shall impose no responsibilities or duties upon state government or any

political subdivision thereof or any other employer, either public or private, to provide health maintenance organization coverage when no health maintenance organization exists for the purpose of providing health care services in the geographic areas in which the employees or members reside.

(4) No employer in this state shall in any way be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract of obligation for the provision of health benefits between such employer and its employees. [1975 1st ex.s. c 290 § 19.]

48.46.190 Payroll deductions for capitation payments to health maintenance organizations. See RCW 41.04.233.

48.46.200 Rules and regulations. The commissioner may, in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, promulgate rules and regulations as necessary or proper to carry out the provisions of this chapter. Nothing in this chapter shall be construed to prohibit the commissioner from requiring changes in procedures previously approved by him. [1975 1st ex.s. c 290 § 21.]

48.46.210 Compliance with federal funding requirements—Construction. Nothing in this chapter shall prohibit any health maintenance organization from meeting the requirements of any federal law which would authorize such health maintenance organization to receive federal financial assistance or enroll beneficiaries assisted by federal funds. [1975 1st ex.s. c 290 § 22.]

48.46.220 Review of administrative action. Any party aggrieved by a decision, order, or regulation made under this chapter by the commissioner shall have the right to have such reviewed pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW. [1975 1st ex.s. c 290 § 23.]

48.46.225 Financial failure—Supervision of commissioner—Priority of distribution of assets. (1) Any rehabilitation, liquidation, or conservation of a health maintenance organization is the same as the rehabilitation, liquidation, or conservation of an insurance company and must be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing the commissioner to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in RCW 48.31.030, 48.31.050, and 48.31.080. Enrolled participants have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(2) For purposes of determining the priority of distribution of general assets, claims of enrolled participants and enrolled participants' beneficiaries have the same priority as established by RCW 48.31.280 for policyholders and beneficiaries of insureds of insurance companies. If an enrolled participant is liable to any provider for services provided pursuant to and covered by the health maintenance agreement,

that liability has the status of an enrolled participant claim for distribution of general assets.

(3) A provider who is obligated by statute or agreement to hold enrolled participants harmless from liability for services provided pursuant to and covered by a health care plan has a priority of distribution of the general assets immediately following that of enrolled participants and enrolled participants' beneficiaries under this section. [2003 c 248 § 18; 1990 c 119 § 4.]

48.46.235 Minimum net worth—Requirement to maintain—Determination of amount. (1) Except as provided in subsection (2) of this section, every health maintenance organization must have and maintain a minimum net worth equal to the greater of:

(a) Three million dollars; or

(b) Two percent of annual premium earned as reported on the most recent annual financial statement filed with the commissioner on the first one hundred fifty million dollars of premium and one percent of annual premium on the premium in excess of one hundred fifty million dollars; or

(c) An amount equal to the sum of three months' uncovered expenditures as reported on the most recent financial statement filed with the commissioner.

(2) A health maintenance organization registered before July 27, 1997, that, on July 27, 1997, has a minimum net worth equal to or greater than that required by subsection (1) of this section must continue to have and maintain the minimum net worth required by subsection (1) of this section. A health maintenance organization registered before July 27, 1997, that, on July 27, 1997, does not have the minimum net worth required by subsection (1) of this section must have and maintain a minimum net worth of:

(a) The amount required immediately prior to July 27, 1997, until December 31, 1997;

(b) Fifty percent of the amount required by subsection (1) of this section by December 31, 1997;

(c) Seventy-five percent of the amount required by subsection (1) of this section by December 31, 1998; and

(d) One hundred percent of the amount required by subsection (1) of this section by December 31, 1999.

(3)(a) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. An interest obligation relating to the repayment of a subordinated debt must be similarly subordinated.

(b) The interest expenses relating to the repayment of a fully subordinated debt shall not be considered uncovered expenditures.

(c) A subordinated debt incurred by a note meeting the requirement of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(4) Every health maintenance organization shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, which are unpaid and for which such organization is or may be liable, and to provide for the expense of adjustment or settlement of such claims.

Such liabilities shall be computed in accordance with rules promulgated by the commissioner upon reasonable consideration of the ascertained experience and character of the health maintenance organization. [1997 c 212 § 6; 1990 c 119 § 5.]

48.46.237 Minimum net worth—Domestic or foreign health maintenance organization. (1) For purposes of this section:

(a) "Domestic health maintenance organization" means a health maintenance organization formed under the laws of this state; and

(b) "Foreign health maintenance organization" means a health maintenance organization formed under the laws of the United States, of a state or territory of the United States other than this state, or of the District of Columbia.

(2) If the minimum net worth of a domestic health maintenance organization falls below the minimum net worth required by this chapter, the commissioner shall at once ascertain the amount of the deficiency and serve notice upon the domestic health maintenance organization to cure the deficiency within ninety days after that service of notice.

(3) If the deficiency is not cured, and proof thereof filed with the commissioner within the ninety-day period, the domestic health maintenance organization shall be declared insolvent and shall be proceeded against as authorized by this code or the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the registration of the domestic health maintenance organization as being hazardous to its subscribers and the people in this state.

(4) If the deficiency is not cured the domestic health maintenance organization shall not issue or deliver any health maintenance agreement after the expiration of the ninety-day period.

(5) If the minimum net worth of a foreign health maintenance organization falls below the minimum net worth required by this chapter, the commissioner shall, consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the foreign health maintenance organization's registration as being hazardous to its subscribers, enrollees, or the people in this state. [1997 c 212 § 7.]

48.46.240 Funded reserve requirements. (1) Each health maintenance organization obtaining a certificate of registration from the commissioner shall provide and maintain a funded reserve of one hundred fifty thousand dollars. The funded reserve shall be deposited with the commissioner or with any organization/trustee acceptable to him in the form of cash, securities eligible for investment by the health maintenance organization pursuant to chapter 48.13 RCW, approved surety bond or any combination of these, and must equal or exceed one hundred fifty thousand dollars. The funded reserve shall be established as an assurance that the uncovered expenditure obligations of the health maintenance organization to the enrolled participants will be performed.

(2) All income from reserves on deposit with the commissioner shall belong to the depositing health maintenance organization and shall be paid to it as it becomes available.

(3) Any funded reserve required by this section shall be considered an asset of the health maintenance organization in determining the organization's net worth.

(4) A health maintenance organization that has made a securities deposit with the commissioner may, at its option, withdraw the securities deposit or any part of the deposit after first having deposited or provided in lieu thereof an approved surety bond, a deposit of cash or securities, or any combination of these or other deposits of equal amount and value to that withdrawn. Any securities and surety bond shall be subject to approval by the commissioner before being substituted. [1990 c 119 § 6; 1985 c 320 § 4; 1982 c 151 § 3.]

Effective date—1982 c 151: See note following RCW 48.46.020.

48.46.243 Contract—Participant liability—Commissioner's review. (Effective until July 1, 2009.) (1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any sums owed by the health maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply to emergency care from a provider who is not a participating provider, to out-of-area services or, in exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

(3)(a) Each participating provider contract form shall be filed with the commissioner fifteen days before it is used.

(b) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(c) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) No participating provider, or agent, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization. [1990 c 119 § 7.]

48.46.243 Contract—Participant liability—Commissioner's review. (Effective July 1, 2009.) (1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any

sums owed by the health maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply to emergency care from a provider who is not a participating provider, to out-of-area services or, in exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

(3)(a) Each participating provider contract form shall be filed with the commissioner fifteen days before it is used.

(b) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(c) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) No participating provider, or insurance producer, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization. [2008 c 217 § 56; 1990 c 119 § 7.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.46.245 Plan for handling insolvency—Commissioner's review. Each health maintenance organization shall have a plan for handling insolvency which allows for continuation of benefits for the duration of the agreement period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. The commissioner shall approve such a plan if it includes:

(1) Insurance to cover the expenses to be paid for continued benefits after insolvency;

(2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrolled participants' discharge from inpatient facilities;

(3) Use of insolvency reserves established under RCW 48.46.240;

(4) Acceptable letters of credit or approved surety bonds; or

(5) Any other arrangements the commissioner and the organization mutually agree are appropriate to assure that benefits are continued. [1990 c 119 § 8.]

48.46.247 Insolvency—Commissioner's duties—Participants' options—Allocation of coverage. (1)(a) In the event of insolvency of a health care service contractor or health maintenance organization and upon order of the commissioner, all other carriers then having active enrolled par-

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ticipants under a group plan with the affected agreement holder that participated in the enrollment process with the insolvent health care service contractor or health maintenance organization at a group's last regular enrollment period shall offer the eligible enrolled participants of the insolvent health services contractor or health maintenance organization the opportunity to enroll in an existing group plan without medical underwriting during a thirty-day open enrollment period, commencing on the date of the insolvency. Eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. An open enrollment shall not be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule, unless the plan administrator and agreement holder voluntarily agree to offer a simultaneous open enrollment and extend coverage under the same enrollment terms and conditions as are applicable to carriers under this title and rules adopted under this title. If an exempt plan was offered during the last regular open enrollment period, then the carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(b) For purposes of this subsection only, the term "carrier" means a health maintenance organization or a health care service contractor. In the event of insolvency of a carrier and if no other carrier has active enrolled participants under a group plan with the affected agreement holder, or if the commissioner determines that the other carriers lack sufficient health care delivery resources to assure that health services will be available or accessible to all of the group enrollees of the insolvent carrier, then the commissioner shall allocate equitably the insolvent carrier's group agreements for these groups among all carriers that operate within a portion of the insolvent carrier's area, taking into consideration the health care delivery resources of each carrier. Each carrier to which a group or groups are allocated shall offer the agreement holder, without medical underwriting, the carrier's existing coverage that is most similar to each group's coverage with the insolvent carrier at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's group plan. No offering by a carrier shall be required where the agreement holder participates in a self-insured, self-funded, or other health plan exempt from commissioner rule. The carrier may offer the agreement holder the same coverage as any self-insured plan or plans offered by the agreement holder without regard to coverage, benefit, or provider requirements mandated by this title for the duration of the current agreement period.

(2) The commissioner shall also allocate equitably the insolvent carrier's nongroup enrolled participants who are unable to obtain coverage among all carriers that operate within a portion of the insolvent carrier's service area, taking into consideration the health care delivery resources of the carrier. Each carrier to which nongroup enrolled participants

are allocated shall offer the nongroup enrolled participants the carrier's existing comprehensive conversion plan, without additional medical underwriting, at rates determined in accordance with the successor carrier's existing rating methodology. The eligible enrolled participants shall not be subject to preexisting condition limitations except to the extent that a waiting period for a preexisting condition has not been satisfied under the insolvent carrier's plan.

(3) Any agreements covering participants allocated pursuant to subsections (1)(b) and (2) of this section to carriers pursuant to this section may be rerated after ninety days of coverage.

(4) A limited health care service contractor shall not be required to offer services other than its one limited health care service to any enrolled participant of an insolvent carrier. [1990 c 119 § 9.]

48.46.250 Coverage of dependent children—Newborn infants, congenital anomalies—Notification period.

(1) Any health maintenance agreement under this chapter which provides coverage for dependent children of the enrolled participant shall provide the same coverage for newborn infants of the enrolled participant from and after the moment of birth. Coverage provided under this section shall include, but not be limited to, coverage for congenital anomalies of such children from the moment of birth.

(2) If payment of an additional premium is required to provide coverage for a child, the agreement may require that notification of birth of a newly born child and payment of the required premiums must be furnished to the health maintenance organization. The notification period shall be no less than sixty days from the date of birth. This subsection applies to agreements issued or renewed on or after January 1, 1984. [1984 c 4 § 2; 1983 c 202 § 12.]

48.46.260 Individual health maintenance agreement—Return within ten days of delivery—Refunds—Void from beginning. (Effective until July 1, 2009.) Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any reason. The health maintenance organization shall refund promptly any fee paid for the agreement. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the health maintenance organization or agent. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the provisions of this section shall be printed on the face of each such agreement or be attached thereto. [1983 c 202 § 13.]

48.46.260 Individual health maintenance agreement—Return within ten days of delivery—Refunds—Void from beginning. (Effective July 1, 2009.) Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the insurance producer through whom it was purchased

within ten days of its delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any reason. The health maintenance organization shall refund promptly any fee paid for the agreement. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the health maintenance organization or insurance producer. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the provisions of this section shall be printed on the face of each such agreement or be attached thereto. [2008 c 217 § 57; 1983 c 202 § 13.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.46.270 Financial interests of health maintenance organization authorities, restricted—Exceptions, regulations.

(1) No person having any authority in the investment or disposition of the funds of a health maintenance organization and no officer or director of a health maintenance organization shall accept, except for the health maintenance organization, or be the beneficiary of any fee, brokerage, gift, commission, or other emolument because of any sale of health care service agreements or any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the health maintenance organization, or be pecuniarily interested therein in any capacity; except, that such a person may procure a loan from the health maintenance organization directly upon approval by two-thirds of its directors and upon the pledge of securities eligible for the investment of the health maintenance organization's funds under this title.

(2) The commissioner may, by regulations, from time to time, define and permit additional exceptions to the prohibition contained in subsection (1) of this section solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the health maintenance organization, or to a corporation or firm in which the director is interested, for necessary services performed or sales or purchases made to or for the health maintenance organization in the ordinary course of the health maintenance organization's business and in the usual private professional or business capacity of the director or the corporation or firm. [1985 c 320 § 5; 1983 c 202 § 14.]

48.46.272 Diabetes coverage—Definitions. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, non-insulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All health benefit plans offered by health maintenance organizations, issued or renewed after January 1, 1998, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For health benefit plans that include coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all health benefit plans, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents the health maintenance organization from restricting patients to seeing only health care providers who have signed participating provider agreements with the health maintenance organization or an insuring entity under contract with the health maintenance organization.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements.

(6) The health maintenance organization need not include the coverage required in this section in a group contract offered to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefits status under this title that does not offer coverage similar to that mandated under this section.

(7) This section does not apply to the health benefit plans that provide benefits identical to the schedule of services covered by the basic health plan. [2004 c 244 § 14; 1997 c 276 § 5.]

Application—2004 c 244: See note following RCW 48.21.045.

Effective date—1997 c 276: See note following RCW 41.05.185.

48.46.275 Mammograms—Insurance coverage.

Each health maintenance agreement issued or renewed after January 1, 1990, that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

All services must be provided by the health maintenance organization or rendered upon referral by the health maintenance organization. This section shall not be construed to

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prevent the application of standard agreement provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of a health maintenance organization to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 735; 1989 c 338 § 4.]

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

48.46.277 Prostate cancer screening. (1) Each health maintenance agreement issued or renewed after December 31, 2006, that provides coverage for hospital or medical expenses shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) All services must be provided by the health maintenance organization or rendered upon a referral by the health maintenance organization.

(3) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of a health maintenance organization to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. This section shall not apply to medicare supplemental policies or supplemental contracts covering a specified disease or other limited benefits. [2006 c 367 § 5.]

48.46.280 Reconstructive breast surgery. (1) Any health care service plan issued, amended, or renewed after July 24, 1983, shall provide coverage for reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness, or injury.

(2) Any health care service plan issued, amended, or renewed after January 1, 1986, shall provide coverage for all stages of one reconstructive breast reduction on the nondiseased breast to make it equal in size with the diseased breast after definitive reconstructive surgery on the diseased breast has been performed. [1985 c 54 § 8; 1983 c 113 § 4.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.46.285 Mastectomy, lumpectomy. No health maintenance organization under this chapter may refuse coverage or cancel or decline coverage solely because of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. The amount of benefits payable, or any term, rate, condition, or type of coverage shall not be restricted, modified, excluded, increased, or reduced solely on the basis of a mastectomy or lumpectomy performed on the insured or prospective insured more than five years previously. [1985 c 54 § 4.]

Effective date—1985 c 54: See note following RCW 48.20.397.

48.46.291 Mental health services—Health plans—Definition—Coverage required, when. (1) For the purposes of this section, "mental health services" means medi-

cally necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health maintenance organization's medical director or designee determines the treatment to be medically necessary.

(2) All health benefit plans offered by health maintenance organizations that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all health benefit plans delivered, issued for delivery, or renewed on or after January 1, 2008, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all health benefit plans delivered, issued for delivery, or renewed on or after July 1, 2010, coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a

lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services. [2007 c 8 § 4; 2006 c 74 § 3; 2005 c 6 § 5.]

Effective date—2007 c 8: See note following RCW 48.20.580.

Effective date—2006 c 74: See note following RCW 48.21.241.

Findings—Intent—Severability—2005 c 6: See notes following RCW 41.05.600.

48.46.292 Mental health treatment—Waiver of preauthorization for persons involuntarily committed. A health maintenance organization providing services or benefits for hospital or medical care coverage in this state shall waive a preauthorization from the health maintenance organization before an enrolled participant or the enrolled participant's covered dependents receive mental health treatment rendered by a state hospital as defined in RCW 72.23.010 if the enrolled participant or the enrolled participant's covered dependents are involuntarily committed to a state hospital as defined in RCW 72.23.010. [1993 c 272 § 5.]

Savings—Severability—1993 c 272: See notes following RCW 43.20B.347.

48.46.300 Future dividends or refunds, restricted—Issuance or sale of securities regulated. (1) No health maintenance organization nor any individual acting in behalf thereof may guarantee or agree to the payment of future dividends or future refunds of unused charges or savings in any specific or approximate amounts or percentages in respect to any contract being offered to the public, except in a group contract containing an experience refund provision.

(2) The issuance, sale, or offer for sale in this state of securities of its own issue by any health maintenance organization domiciled in this state other than the memberships and bonds of a nonprofit corporation are subject to the provisions of chapter 48.06 RCW relating to obtaining solicitation permits. [1983 c 106 § 8.]

48.46.310 Registration not endorsement. The granting of a certificate of registration to a health maintenance organization is permissive only, and does not constitute an endorsement by the insurance commissioner of any person or thing related to the health maintenance organization, and no person may advertise or display a certificate of registration for use as an inducement in any solicitation. [1983 c 106 § 9.]

48.46.320 Dependent children, termination of coverage, conditions. Any health maintenance agreement which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the agreement shall also provide in substance that attainment of such limiting age shall not operate to terminate the coverage of such child while the child is and continues to be both: (1) Incapable of self-sustaining employment by reason of developmental disability or physical handicap; and (2) chiefly dependent upon the subscriber for support and maintenance, if proof of such incapacity and dependency is furnished to the health maintenance organization by the enrolled participant within thirty-one days of the child's attainment of the limiting age and subsequently as required by the health maintenance organization but not more frequently than annually after the two-year period following the child's attainment of the limiting age. [1985 c 320 § 6; 1983 c 106 § 10.]

48.46.325 Option to cover dependents under age twenty-five. (Effective January 1, 2009.) (1) Any individual health maintenance agreement that provides coverage for a subscriber's dependent must offer the option of covering any unmarried dependent under the age of twenty-five.

(2) Any group health maintenance agreement that provides coverage for a participating member's dependent must offer each participating member the option of covering any unmarried dependent under the age of twenty-five. [2007 c 259 § 22.]

Effective date—2007 c 259 §§ 18-22: See note following RCW 41.05.095.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

48.46.340 Return of agreement within ten days. (Effective until July 1, 2009.) Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the agent through whom it was purchased within ten days of its delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any reason. The health maintenance organization shall refund promptly any fee paid for the agreement. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the substance of this section shall be printed on the face of each such agreement or be attached thereto. [1983 c 106 § 12.]

48.46.340 Return of agreement within ten days. (Effective July 1, 2009.) Every subscriber of an individual health maintenance agreement may return the agreement to the health maintenance organization or the insurance producer through whom it was purchased within ten days of its

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delivery to the subscriber if, after examination of the agreement, the subscriber is not satisfied with it for any reason. The health maintenance organization shall refund promptly any fee paid for the agreement. Upon such return of the agreement, it shall be void from the beginning and the parties shall be in the same position as if no agreement had been issued. Notice of the substance of this section shall be printed on the face of each such agreement or be attached thereto. [2008 c 217 § 58; 1983 c 106 § 12.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.46.350 Chemical dependency treatment. Each group agreement for health care services that is delivered or issued for delivery or renewed on or after January 1, 1988, must contain provisions providing benefits for the treatment of chemical dependency rendered to covered persons by a provider which is an "approved treatment program" under RCW 70.96A.020(3). However, this section does not apply to any agreement written as supplemental coverage to any federal or state programs of health care including, but not limited to, Title XVIII health insurance for the aged, which is commonly referred to as Medicare, Parts A&B, and amendments thereto. Treatment must be covered under the chemical dependency coverage if treatment is rendered by the health maintenance organization or if the health maintenance organization refers the enrolled participant or the enrolled participant's dependents to a physician licensed under chapter 18.57 or 18.71 RCW, or to a qualified counselor employed by an approved treatment program described in RCW 70.96A.020(3). In all cases, a health maintenance organization retains the right to diagnose the presence of chemical dependency and select the modality of treatment that best serves the interest of the health maintenance organization's enrolled participant, or the enrolled participant's covered dependent. [2003 c 248 § 19; 1990 1st ex.s. c 3 § 14; 1987 c 458 § 18; 1983 c 106 § 13.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

Chemical dependency benefits, rules: RCW 48.21.197.

48.46.355 "Chemical dependency" defined. For the purposes of RCW 48.46.350, "chemical dependency" means an illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. [1987 c 458 § 19.]

Effective date—Severability—1987 c 458: See notes following RCW 48.21.160.

48.46.360 Payment of cost of agreement directly to holder during labor dispute—Changes restricted—Notice to employee. Any employee whose compensation

includes a health maintenance agreement, the cost of which is paid in full or in part by an employer including the state of Washington, its political subdivisions, or municipal corporations, or paid by payroll deduction, may pay the cost as it becomes due directly to the agreement holder whenever the employee's compensation is suspended or terminated directly or indirectly as a result of a strike, lockout, or other labor dispute, for a period not exceeding six months and at the rate and coverages as the health maintenance agreement provides. During that period of time, such agreement may not be altered or changed. Nothing in this section impairs the right of the health maintenance organization to make normal decreases or increases in the cost of the health maintenance agreement upon expiration and renewal of the agreement, in accordance with the agreement. Thereafter, if such health maintenance agreement is no longer available, the employee shall be given the opportunity to convert as specified in RCW 48.46.450 and 48.46.460. When the employee's compensation is so suspended or terminated, the employee shall be notified immediately by the agreement holder in writing, by mail addressed to the address last of record with the agreement holder, that the employee may pay the cost of the health maintenance agreement to the agreement holder as it becomes due as provided in this section. Payment must be made when due or the coverage may be terminated by the health maintenance organization. [1985 c 7 § 116; 1983 c 106 § 14.]

48.46.370 Coverage not denied for handicap. No health maintenance organization may deny coverage to a person solely on account of the presence of any sensory, mental, or physical handicap. Nothing in this section may be construed as limiting a health maintenance organization's authority to deny or otherwise limit coverage to a person when the person because of a medical condition does not meet the essential eligibility requirements established by the health maintenance organization for purposes of determining coverage for any person. [1983 c 106 § 15.]

48.46.375 Benefits for prenatal diagnosis of congenital disorders—Agreements entered into or renewed on or after January 1, 1990. On or after January 1, 1990, every group health maintenance agreement entered into or renewed that covers hospital, medical, or surgical expenses and which provides benefits for pregnancy, childbirth, or related medical conditions to enrollees of such groups, shall offer benefits for prenatal diagnosis of congenital disorders of the fetus by means of screening and diagnostic procedures during pregnancy to such enrollees when those services are determined to be medically necessary by the health maintenance organization in accord with standards set in rule by the board of health: PROVIDED, That such procedures shall be covered only if rendered directly by the health maintenance organization or upon referral by the health maintenance organization. Every group health maintenance organization shall communicate the availability of such coverage to all groups covered and to all groups with whom they are negotiating. [1988 c 276 § 8.]

Prenatal testing—Limitation on changes to coverage: RCW 48.42.090.

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48.46.380 Notice of reason for cancellation, denial, or refusal to renew agreement. Every authorized health maintenance organization, upon canceling, denying, or refusing to renew any individual health maintenance agreement, shall, upon written request, directly notify in writing the applicant or enrolled participant as appropriate, of the reasons for the action by the health maintenance organization. Any benefits, terms, rates, or conditions of such agreement which are restricted, excluded, modified, increased, or reduced shall, upon written request, be set forth in writing and supplied to the individual. The written communications required by this section shall be phrased in simple language which is readily understandable to a person of average intelligence, education, and reading ability. [1993 c 492 § 291; 1983 c 106 § 16.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

48.46.390 Providing information on cancellation or refusal—No liability for insurance commissioner or health maintenance organization. With respect to the provisions of health maintenance agreements as set forth in RCW 48.46.380, there shall be no liability on the part of, and no cause of action of any nature shall arise against, the insurance commissioner, the commissioner's agents, or members of the commissioner's staff, or against any health maintenance organization, its authorized representative, its agents, its employees, for providing to the health maintenance organization information as to reasons for cancellation or refusal to issue or renew, for libel or slander on the basis of any statement made by any of them in any written notice of cancellation or refusal to issue or renew, or in any other communications, oral or written, specifying the reasons for cancellation or refusal to issue or renew or the providing of information pertaining thereto, or for statements made or evidence submitted in any hearing conducted in connection therewith. [1983 c 106 § 17.]

48.46.400 False or misleading advertising prohibited. No person may knowingly make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a health maintenance organization, or relative to the business of a health maintenance organization or to any person engaged therein. [1983 c 106 § 18.]

48.46.410 Misrepresentations to induce termination or retention of agreement prohibited. No health maintenance organization nor any person representing a health maintenance organization may by misrepresentation or misleading comparisons induce or attempt to induce any member of a health maintenance organization to terminate or retain an agreement or membership in the organization. [1983 c 106 § 19.]

48.46.420 Penalty for violations. (1) Except as otherwise provided in this chapter, any health maintenance organization which, or person who, violates any provision of this chapter is guilty of a gross misdemeanor.

(2) A health maintenance organization that fails to comply with the net worth requirements of this chapter must cure that defect in compliance with an order of the commissioner rendered in conformity with rules adopted pursuant to chapter 34.05 RCW. The commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrolled participants. [2003 c 250 § 12; 1990 c 119 § 10; 1983 c 106 § 20.]

Severability—2003 c 250: See note following RCW 48.01.080.

48.46.430 Enforcement authority of commissioner.

For the purposes of this chapter, the insurance commissioner shall have the same powers and duties of enforcement as are provided in RCW 48.02.080. [1983 c 106 § 21.]

48.46.440 Continuation option to be offered. Every health maintenance organization that issues agreements providing group coverage for hospital or medical care shall offer the agreement holder an option to include an agreement provision granting a person who becomes ineligible for coverage under the group agreement, the right to continue the group benefits for a period of time and at a rate agreed upon. The agreement provision shall provide that when such coverage terminates the covered person may convert to an agreement as provided in RCW 48.46.450. [1984 c 190 § 8.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

Application—1984 c 190 §§ 2, 5, and 8: See note following RCW 48.21.250.

48.46.450 Conversion agreement to be offered—Exceptions, conditions. (1) Except as otherwise provided by this section, any group health maintenance agreement entered into or renewed on or after January 1, 1985, that provides benefits for hospital or medical care shall contain a provision granting a person covered by the group agreement the right to obtain a conversion agreement from the health maintenance organization upon termination of the person's eligibility for coverage under the group agreement.

(2) A health maintenance organization need not offer a conversion agreement to:

(a) A person whose coverage under the group agreement ended when the person's employment or membership was terminated for misconduct: PROVIDED, That when a person's employment or membership is terminated for misconduct, a conversion policy shall be offered to the spouse and/or dependents of the terminated employee or member. The policy shall include in the conversion provisions the same conversion rights and conditions which are available to employees or members and their spouses and/or dependents who are terminated for reasons other than misconduct;

(b) A person who is eligible for federal Medicare coverage; or

(c) A person who is covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) To obtain the conversion agreement, a person must submit a written application and the first premium payment for the conversion agreement not later than thirty-one days after the date the person's eligibility for group coverage ter-

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minates. The conversion agreement shall become effective without lapse of coverage, immediately following termination of coverage under the group agreement.

(4) If a health maintenance organization or group agreement holder does not renew, cancels, or otherwise terminates the group agreement, the health maintenance organization shall offer a conversion agreement to any person who was covered under the terminated agreement unless the person is eligible to obtain group benefits for hospital or medical care within thirty-one days after such nonrenewal, cancellation, or termination of the group agreement.

(5) The health maintenance organization shall determine the premium for the conversion agreement in accordance with the organization's table of premium rates applicable to the age and class of risk of each person to be covered under the agreement and the type and amount of benefits provided. [1984 c 190 § 9.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.46.460 Conversion agreement—Restrictions and requirements.

(1) A health maintenance organization must offer a conversion agreement for comprehensive health care services and shall not require proof of insurability as a condition for issuance of the conversion agreement.

(2) A conversion agreement may not contain an exclusion for preexisting conditions except to the extent that a waiting period for a preexisting condition has not been satisfied under the group agreement.

(3) A conversion agreement need not provide benefits identical to those provided under the group agreement. The conversion agreement may contain provisions requiring the person covered by the conversion agreement to pay reasonable deductibles and copayments.

(4) The insurance commissioner shall adopt rules to establish minimum benefit standards for conversion agreements.

(5) The commissioner shall adopt rules to establish specific standards for conversion agreement provisions. These rules may include but are not limited to:

(a) Terms of renewability;

(b) Nonduplication of coverage;

(c) Benefit limitations, exceptions, and reductions; and

(d) Definitions of terms. [1984 c 190 § 10.]

Legislative intent—Severability—1984 c 190: See notes following RCW 48.21.250.

48.46.470 Endorsement of modifications. If an individual health care service agreement is issued on any basis other than as applied for, an endorsement setting forth such modification must accompany and be attached to the agreement. No agreement shall be effective unless the endorsement is signed by the applicant, and a signed copy thereof returned to the health maintenance organization. [1985 c 320 § 7.]

48.46.480 Continuation of coverage of former family members. Every health care service agreement issued, amended, or renewed after January 1, 1986, for an individual and his or her dependents shall contain provisions to assure that the covered spouse and/or dependents, in the event that

any cease to be a qualified family member by reason of termination of marriage or death of the principal enrollee, shall have the right to continue the health maintenance agreement without a physical examination, statement of health, or other proof of insurability. [1985 c 320 § 8.]

48.46.490 Coverage for adopted children. (1) Any health maintenance agreement under this chapter which provides coverage for dependent children, as defined in the agreement of the enrolled participant, shall cover adoptive children placed with the enrolled participant on the same basis as other dependents, as provided in RCW 48.01.180.

(2) If payment of an additional premium is required to provide coverage for a child, the agreement may require that notification of placement of a child for adoption and payment of the required premium must be furnished to the health maintenance organization. The notification period shall be no less than sixty days from the date of placement. [1986 c 140 § 5.]

Effective date, application—Severability—1986 c 140: See notes following RCW 48.01.180.

48.46.500 Cancellation of rider. Upon application by an enrollee, a rider shall be canceled if at least five years after its issuance, no health care services have been received by the enrollee during that time for the condition specified in the rider, and a physician, selected by the carrier for that purpose, agrees in writing to the full medical recovery of the enrollee from that condition, such agreement not to be unreasonably withheld. The option of the enrollee to apply for cancellation shall be disclosed on the face of the rider in clear and conspicuous language.

For purposes of this section, a rider is a legal document that modifies a contract to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1987 c 37 § 4.]

48.46.510 Phenylketonuria. (1) The legislature finds that:

- (a) Phenylketonuria is a rare inherited genetic disorder.
- (b) Children with phenylketonuria are unable to metabolize an essential amino acid, phenylalanine, which is found in the proteins of most food.
- (c) To remain healthy, children with phenylketonuria must maintain a strict diet and ingest a mineral and vitamin-enriched formula.
- (d) Children who do not maintain their diets with the formula acquire severe mental and physical difficulties.
- (e) Originally, the formulas were listed as prescription drugs but were reclassified as medical foods to increase their availability.

(2) Subject to requirements and exceptions which may be established by rules adopted by the commissioner, any agreement for health care services delivered or issued for delivery or renewed in this state on or after September 1, 1988, shall provide coverage for the formulas necessary for the treatment of phenylketonuria. Such formulas shall be covered when deemed medically necessary by the medical director or his or her designee of the health maintenance organization and if provided by the health maintenance organization

or upon the health maintenance organization's referral. Formulas shall be covered at the usual and customary rates for such formulas, subject to contract provisions with respect to deductible amounts or co-payments. [1988 c 173 § 4.]

48.46.520 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each employer-sponsored group contract for comprehensive health care service which is entered into, or renewed, on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Covered benefits and treatment must be rendered or referred by the health maintenance organization, and delivered pursuant to the referral and periodic review of a holder of a license issued pursuant to chapter 18.71 or 18.57 RCW or where treatment is rendered by such licensee. Nothing in this section shall prohibit a health maintenance organization from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the health maintenance organization. Benefits shall be provided for the maintenance of a covered enrollee in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be provided to restore and improve function.

(4) It is the intent of this section that employers purchasing comprehensive group coverage including the benefits required by this section, together with the health maintenance organization, retain authority to design and employ utilization and cost controls. Therefore, benefits provided under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the employer purchasing coverage and the health maintenance organization. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available, or may limit the number of services delivered as agreed by the employer purchasing coverage and the health maintenance organization. [1989 c 345 § 3.]

48.46.530 Temporomandibular joint disorders—Insurance coverage. (1) Except as provided in this section, a health maintenance agreement entered into or renewed after December 31, 1989, shall offer optional coverage for the treatment of temporomandibular joint disorders.

(a) Health maintenance organizations offering medical coverage only may limit benefits in such coverages to medical services related to treatment of temporomandibular joint disorders. No health maintenance organizations offering medical and dental coverage may limit benefits in such coverage to dental services related to treatment of temporoman-

dibular joint disorders. No health maintenance organization offering medical coverage only may define all temporomandibular joint disorders as purely dental in nature.

(b) Health maintenance organizations offering optional temporomandibular joint disorder coverage as provided in this section may, but are not required to, offer lesser or no temporomandibular joint disorder coverage as part of their basic group disability contract.

(c) Benefits and coverage offered under this section may be subject to negotiation to promote broad flexibility in potential benefit coverage. This flexibility shall apply to services to be reimbursed, determination of treatments to be considered medically necessary, systems through which services are to be provided, including referral systems and use of other providers, and related issues.

(2) Unless otherwise directed by law, the insurance commissioner shall adopt rules, to be implemented on January 1, 1993, establishing minimum benefits, terms, definitions, conditions, limitations, and provisions for the use of reasonable deductibles and copayments.

(3) A health maintenance organization need not make the offer of coverage required by this section to an employer or other group that offers to its eligible enrollees a self-insured health plan not subject to mandated benefit statutes under Title 48 RCW that does not provide coverage for temporomandibular joint disorders. [1989 c 331 § 4.]

Legislative finding—Effective date—1989 c 331: See notes following RCW 48.21.320.

48.46.535 Prescriptions—Preapproval of individual claims—Subsequent rejection prohibited—Written record required. Health maintenance organizations who through an authorized representative have first approved, by any means, an individual prescription claim as eligible may not reject that claim at some later date. Pharmacists or drug dispensing outlets who obtain preapproval of claims shall keep a written record of the preapproval that consists of identification by name and telephone number of the person who approved the claim. [1993 c 253 § 5.]

Findings—Effective date—1993 c 253: See notes following RCW 48.20.525.

48.46.540 Nonresident pharmacies. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an enrolled participant or his/her representative, controlled substances, legend drugs, or devices into this state.

After October 1, 1991, a health maintenance organization providing coverage of prescription drugs from nonresident pharmacies may only provide coverage from licensed nonresident pharmacies. The health maintenance organizations shall obtain proof of current licensure in conformity with this section and RCW 18.64.350 through 18.64.400 from the nonresident pharmacy and keep that proof of licensure on file.

The department may request from the health maintenance organization the proof of current licensure for all nonresident pharmacies through which the insurer is providing coverage for prescription drugs for residents of the state of Washington. This information, which may constitute a full

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or partial customer list, shall be confidential and exempt from public disclosure, and from the requirements of chapter 42.56 RCW. The board or the department shall not be restricted in the disclosure of the name of a nonresident pharmacy that is or has been licensed under RCW 18.64.360 or 18.64.370 or of the identity of a nonresident pharmacy disciplined under RCW 18.64.350 through 18.64.400. [2005 c 274 § 315; 1991 c 87 § 10.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Effective date—1991 c 87: See note following RCW 18.64.350.

48.46.565 Foot care services. Except to the extent that a health maintenance organization contracts with a group medical practice which only treats that organization's patients, a health maintenance organization may not discriminate in the terms and conditions, including reimbursement, for the provision of foot care services between physicians and surgeons licensed under chapters 18.22, 18.57, and 18.71 RCW. [1999 c 64 § 1.]

Intent—1999 c 64: "This act is intended to be procedural and not to impair the obligation of any existing contract." [1999 c 64 § 2.]

Severability—1999 c 64: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 64 § 3.]

48.46.570 Denturist services. Notwithstanding any provision of any health maintenance organization agreement covering dental care as provided for in this chapter, effective January 1, 1995, benefits shall not be denied thereunder for any service performed by a denturist licensed under chapter 18.30 RCW if (1) the service performed was within the lawful scope of such person's license, and (2) such agreement would have provided benefits if such service had been performed by a dentist licensed under chapter 18.32 RCW. [1995 c 1 § 25 (Initiative Measure No. 607, approved November 8, 1994).]

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

48.46.575 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited. A health maintenance organization that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the health maintenance organization, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 1.]

48.46.580 When injury caused by intoxication or use of narcotics. A health maintenance organization may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the enrolled participant's being intoxicated or under the influence of a narcotic. [2004 c 112 § 5.]

Finding—Application—2004 c 112: See notes following RCW 48.20.385.

48.46.600 Disclosure of certain material transactions—Report—Information is confidential. (1) Every health maintenance organization domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless these acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes under other provisions of this title or other requirements.

(2) The report required in subsection (1) of this section is due within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part of the report, shall be filed with the:

- (a) Commissioner; and
- (b) National association of insurance commissioners.

(4) All reports obtained by or disclosed to the commissioner under this section and RCW 48.46.605 through 48.46.625 are exempt from public inspection and copying and shall not be subject to subpoena. These reports shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the health maintenance organization to which it pertains unless the commissioner, after giving the health maintenance organization that would be affected by disclosure notice and a hearing under chapter 48.04 RCW, determines that the interest of policyholders, subscribers, shareholders, or the public will be served by the publication, in which event the commissioner may publish all or any part of the report in the manner he or she deems appropriate. [1995 c 86 § 19.]

48.46.605 Material acquisitions or dispositions. No acquisitions or dispositions of assets need be reported pursuant to RCW 48.46.600 if the acquisitions or dispositions are not material. For purposes of RCW 48.46.600 through 48.46.625, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period; or disposition, or the aggregate of any series of related dispositions during any thirty-day period is an acquisition or disposition that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting health maintenance organization's total assets as reported in its most recent statutory statement filed with the commissioner. [1995 c 86 § 20.]

48.46.610 Asset acquisitions—Asset dispositions. (1) Asset acquisitions subject to RCW 48.46.600 through 48.46.625 include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting health maintenance organization or the acquisition of materials for such purpose.

(2) Asset dispositions subject to RCW 48.46.600 through 48.46.625 include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, abandon-

ment, destruction, other disposition, or assignment, whether for the benefit of creditors or otherwise. [1995 c 86 § 21.]

48.46.615 Report of a material acquisition or disposition of assets—Information required. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and
- (8) Names of the persons from whom the assets were acquired or to whom they were disposed. [1995 c 86 § 22.]

48.46.620 Material nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported under RCW 48.46.600 if the nonrenewals, cancellations, or revisions are not material. For purposes of RCW 48.46.600 through 48.46.625, a material nonrenewal, cancellation, or revision is one that affects:

(a) More than fifty percent of a health maintenance organization's total reserve credit taken for business ceded, on an annualized basis, as indicated in the health maintenance organization's most recent annual statement;

(b) More than ten percent of a health maintenance organization's total cession when it is replaced by one or more unauthorized reinsurers; or

(c) Previously established collateral requirements, when they have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(2) However, a filing is not required if a health maintenance organization's total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession. [1995 c 86 § 23.]

48.46.625 Report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements—Information required. The following is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:

- (1) The effective date of the nonrenewal, cancellation or revision;
- (2) The description of the transaction with an identification of the initiator;
- (3) The purpose of or reason for the transaction; and
- (4) If applicable, the identity of the replacement reinsurers. [1995 c 86 § 24.]

48.46.900 Liberal construction. It is intended that the provisions of this chapter shall be liberally construed to

accomplish the purposes provided for and authorized herein. [1975 1st ex.s. c 290 § 24.]

48.46.910 Severability—1975 1st ex.s. c 290. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 290 § 26.]

48.46.920 Short title. This 1975 amendatory act may be known and cited as "The Washington Health Maintenance Organization Act of 1975". [1975 1st ex.s. c 290 § 27.]

Chapter 48.47 RCW

MANDATED HEALTH BENEFITS

Sections

48.47.005	Legislative findings—Purpose.
48.47.010	Definitions.
48.47.020	Submission of mandated health benefit proposal—Review—Benefit must be authorized by law.
48.47.030	Mandated health benefit proposal—Guidelines for assessing impact—Inclusion of ad hoc review panels—Health care authority.
48.47.900	Severability—1997 c 412.

48.47.005 Legislative findings—Purpose. The legislature finds that there is a continued interest in mandating certain health coverages or offering of health coverages by health carriers; and that improved access to these health care services to segments of the population which desire them can provide beneficial social and health consequences which may be in the public interest.

The legislature finds further, however, that the cost ramifications of expanding health coverages is of continuing concern; and that the merits of a particular mandated benefit must be balanced against a variety of consequences which may go far beyond the immediate impact upon the cost of insurance coverage. The legislature hereby finds and declares that a systematic review of proposed mandated benefits, which explores all the ramifications of such proposed legislation, will assist the legislature in determining whether mandating a particular coverage or offering is in the public interest. The purpose of this chapter is to establish a procedure for the proposal, review, and determination of mandated benefit necessity. [1997 c 412 § 1; 1984 c 56 § 1. Formerly RCW 48.42.060.]

48.47.010 Definitions. Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Appropriate committees of the legislature" or "committees" means nonfiscal standing committees of the Washington state senate and house of representatives that have jurisdiction over statutes that regulate health carriers, health care facilities, health care providers, or health care services.

(2) "Department" means the Washington state department of health.

(3) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chap-

ter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state, and such other facilities as required by federal law and implementing regulations.

(4) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(5) "Health care service" or "service" means a service, drug, or medical equipment offered or provided by a health care facility and a health care provider relating to the prevention, cure, or treatment of illness, injury, or disease.

(6) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, a health maintenance organization as defined in RCW 48.46.020, plans operating under the state health care authority under chapter 41.05 RCW, the state health insurance pool operating under chapter 48.41 RCW, and insuring entities regulated in chapter 48.43 RCW.

(7) "Mandated health benefit," "mandated benefit," or "benefit" means coverage or offering required by law to be provided by a health carrier to: (a) Cover a specific health care service or services; (b) cover treatment of a specific condition or conditions; or (c) contract, pay, or reimburse specific categories of health care providers for specific services; however, it does not mean benefits established pursuant to chapter 74.09, 41.05, or 70.47 RCW, or scope of practice modifications pursuant to chapter 18.120 RCW. [1997 c 412 § 2.]

48.47.020 Submission of mandated health benefit proposal—Review—Benefit must be authorized by law. Mandated health benefits shall be established as follows:

(1) Every person who, or organization that, seeks to establish a mandated benefit shall, at least ninety days prior to a regular legislative session, submit a mandated benefit proposal to the appropriate committees of the legislature, assessing the social impact, financial impact, and evidence of health care service efficacy of the benefit in strict adherence to the criteria enumerated in RCW 48.47.030.

(2) The chair of a committee may request that the department examine the proposal using the criteria set forth in RCW 48.47.030, however, such request must be made no later than nine months prior to a subsequent regular legislative session.

(3) To the extent that funds are appropriated for this purpose, the department shall report to the appropriate committees of the legislature on the appropriateness of adoption no

later than thirty days prior to the legislative session during which the proposal is to be considered.

(4) Mandated benefits must be authorized by law. [1997 c 412 § 3; 1989 1st ex.s. c 9 § 221; 1987 c 150 § 79; 1984 c 56 § 2. Formerly RCW 48.42.070.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1987 c 150: See RCW 18.122.901.

48.47.030 Mandated health benefit proposal—Guidelines for assessing impact—Inclusion of ad hoc review panels—Health care authority. (1) Based on the availability of relevant information, the following criteria shall be used to assess the impact of proposed mandated benefits:

(a) The social impact: (i) To what extent is the benefit generally utilized by a significant portion of the population? (ii) To what extent is the benefit already generally available? (iii) If the benefit is not generally available, to what extent has its unavailability resulted in persons not receiving needed services? (iv) If the benefit is not generally available, to what extent has its unavailability resulted in unreasonable financial hardship? (v) What is the level of public demand for the benefit? (vi) What is the level of interest of collective bargaining agents in negotiating privately for inclusion of this benefit in group contracts?

(b) The financial impact: (i) To what extent will the benefit increase or decrease the cost of treatment or service? (ii) To what extent will the coverage increase the appropriate use of the benefit? (iii) To what extent will the benefit be a substitute for a more expensive benefit? (iv) To what extent will the benefit increase or decrease the administrative expenses of health carriers and the premium and administrative expenses of policyholders? (v) What will be the impact of this benefit on the total cost of health care services and on premiums for health coverage? (vi) What will be the impact of this benefit on costs for state-purchased health care? (vii) What will be the impact of this benefit on affordability and access to coverage?

(c) Evidence of health care service efficacy:

(i) If a mandatory benefit of a specific service is sought, to what extent has there been conducted professionally accepted controlled trials demonstrating the health consequences of that service compared to no service or an alternative service?

(ii) If a mandated benefit of a category of health care provider is sought, to what extent has there been conducted professionally accepted controlled trials demonstrating the health consequences achieved by the mandated benefit of this category of health care provider?

(iii) To what extent will the mandated benefit enhance the general health status of the state residents?

(2) The department shall consider the availability of relevant information in assessing the completeness of the proposal.

(3) The department may supplement these criteria to reflect new relevant information or additional significant issues.

(4) The department shall establish, where appropriate, ad hoc panels composed of related experts, and representatives of carriers, consumers, providers, and purchasers to assist in

the proposal review process. Ad hoc panel members shall serve without compensation.

(5) The health care authority shall evaluate the reasonableness and accuracy of cost estimates associated with the proposed mandated benefit that are provided to the department by the proposer or other interested parties, and shall provide comment to the department. Interested parties may, in addition, submit data directly to the department. [1997 c 412 § 4; 1984 c 56 § 3. Formerly RCW 48.42.080.]

48.47.900 Severability—1997 c 412. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 412 § 7.]

Chapter 48.50 RCW

INSURANCE FRAUD REPORTING IMMUNITY ACT

(Formerly: Arson reporting immunity act)

Sections

48.50.010	Short title.
48.50.020	Definitions.
48.50.030	Release of information or evidence by insurer.
48.50.040	Notification by insurer.
48.50.050	Release of information by authorized agencies.
48.50.055	Release of information to requesting insurer.
48.50.070	Immunity from liability for releasing information.
48.50.075	Immunity from liability for denying claim based on written opinion of authorized agency.
48.50.090	Local ordinances not preempted.
48.50.900	Severability—1979 ex.s. c 80.

48.50.010 Short title. This chapter shall be known and may be cited as the Insurance Fraud Reporting Immunity Act. [1995 c 285 § 20; 1979 ex.s. c 80 § 1.]

Effective date—1995 c 285: See RCW 48.30A.900.

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

(1) "Authorized agency" means a public agency or its official representative having legal authority to investigate criminal activity or the cause of a fire or to initiate criminal proceedings, including the following persons and agencies:

(a) The chief of the Washington state patrol and the director of fire protection;

(b) The prosecuting attorney of the county where the criminal activity occurred;

(c) State, county, and local law enforcement agencies;

(d) The state attorney general;

(e) The Federal Bureau of Investigation, or any other federal law enforcement agency;

(f) The United States attorney's office; and

(g) The office of the insurance commissioner.

(2) "Insurer" means any insurer, as defined in RCW 48.01.050 and any self-insurer.

(3) "Relevant information" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of criminal activity or the cause of any fire more probable or less probable than it would be without the information. [2000 c 254 §

1. Prior: 1995 c 369 § 36; 1995 c 285 § 21; 1986 c 266 § 77; 1985 c 470 § 27; 1979 ex.s. c 80 § 2.]

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

Effective date—1995 c 285: See RCW 48.30A.900.

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

Severability—Effective date—1985 c 470: See notes following RCW 43.44.010.

48.50.030 Release of information or evidence by insurer. (1) Any authorized agency may request, in writing, that an insurer release to the agency any or all relevant information or evidence which the insurer may have in its possession relating to criminal activity, if such information or evidence is deemed important by the agency in its discretion.

(2) An insurer who has reason to believe that a person participated or is participating in criminal activity relating to a contract of insurance may report relevant information to an authorized agency.

(3) The information provided to an authorized agency under this section may include, without limitation:

(a) Pertinent insurance policy information relating to a claim under investigation and any application for such a policy;

(b) Policy premium payment records which are available;

(c) History of previous claims in which the person was involved; and

(d) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence found in the investigation.

(4) The insurer receiving a request under subsection (1) of this section shall furnish all relevant information requested to the agency within a reasonable time, orally or in writing. [1995 c 285 § 22; 1979 ex.s. c 80 § 3.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.040 Notification by insurer. (1) When an insurer has reason to believe that a fire loss reported to the insurer may be of other than accidental cause, the insurer shall notify the chief of the Washington state patrol, through the director of fire protection, in the manner prescribed under RCW 48.05.320 concerning the circumstances of the fire loss, including any and all relevant material developed from the insurer's inquiry into the fire loss.

(2) Notification of the chief of the Washington state patrol, through the director of fire protection, under subsection (1) of this section does not relieve the insurer of the duty to respond to a request for information from any other authorized agency and does not bar an insurer from other reporting under RCW 48.50.030(2). [2000 c 254 § 2. Prior: 1995 c 369 § 37; 1995 c 285 § 23; 1986 c 266 § 91; 1979 ex.s. c 80 § 4.]

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

Effective date—1995 c 285: See RCW 48.30A.900.

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

48.50.050 Release of information by authorized agencies. An authorized agency receiving information under RCW 48.50.030, 48.50.040, or 48.50.055 may release or provide such information to any other authorized agencies. [2000 c 254 § 3; 1979 ex.s. c 80 § 5.]

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48.50.055 Release of information to requesting insurer. An insurer providing information to an authorized agency or agencies under RCW 48.50.030 or 48.50.040 may request that an authorized agency furnish to the insurer any or all relevant information possessed by the agency relating to the particular fire loss. At their discretion, and unless prohibited by any other provision of law, the agency or agencies may release or provide information to the requesting insurer. [2000 c 254 § 4.]

48.50.070 Immunity from liability for releasing information. (Effective until July 1, 2009.) Any licensed insurance agent, any licensed insurance broker, or any insurer or person acting in the insurer's behalf, health maintenance organization or person acting in behalf of the health maintenance organization, health care service contractor or person acting in behalf of the health care service contractor, or any authorized agency which releases information, whether oral or written, to the commissioner, the national insurance crime bureau, the national association of insurance commissioners, other law enforcement agent or agency, or another insurer under RCW 48.50.030, 48.50.040, 48.50.050, 48.50.055, or 48.135.050 is immune from liability in any civil or criminal action, suit, or prosecution arising from the release of the information, unless actual malice on the part of the agent, broker, insurer, health care maintenance organization, health care service contractor, or authorized agency against the insured is shown. [2006 c 284 § 14; 2000 c 254 § 5; 1980 c 102 § 9; 1979 ex.s. c 80 § 7.]

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

48.50.070 Immunity from liability for releasing information. (Effective July 1, 2009.) Any licensed insurance producer, title insurance agent, or insurer or person acting in the insurer's behalf, health maintenance organization or person acting in behalf of the health maintenance organization, health care service contractor or person acting in behalf of the health care service contractor, or any authorized agency which releases information, whether oral or written, to the commissioner, the national insurance crime bureau, the national association of insurance commissioners, other law enforcement agent or agency, or another insurer under RCW 48.50.030, 48.50.040, 48.50.050, 48.50.055, or 48.135.050 is immune from liability in any civil or criminal action, suit, or prosecution arising from the release of the information, unless actual malice on the part of the insurance producer, title insurance agent, insurer, health care maintenance organization, health care service contractor, or authorized agency against the insured is shown. [2008 c 217 § 59; 2006 c 284 § 14; 2000 c 254 § 5; 1980 c 102 § 9; 1979 ex.s. c 80 § 7.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

48.50.075 Immunity from liability for denying claim based on written opinion of authorized agency. In denying a claim, an insurer, health maintenance organization, or health care service contractor who relies upon a written opinion from an authorized agency specifically enumerated in

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RCW 48.50.020(1) (a) through (g) that criminal activity that is related to that claim is being investigated, or a crime has been charged, and that the claimant is a target of the investigation or has been charged with a crime, is not liable for bad faith or other noncontractual theory of damages as a result of this reliance.

Immunity under this section shall exist only so long as the incident for which the claimant may be responsible is under active investigation or prosecution, or the authorized agency states its position that the claim includes or is a result of criminal activity in which the claimant was a participant. [2006 c 284 § 15; 1995 c 285 § 24; 1981 c 320 § 2.]

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—1995 c 285: See RCW 48.30A.900.

48.50.090 Local ordinances not preempted. This chapter does not preempt or preclude any county or municipality from enacting ordinances relating to fire prevention or control of arson. [1979 ex.s. c 80 § 9.]

48.50.900 Severability—1979 ex.s. c 80. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 80 § 11.]

Chapter 48.53 RCW

FIRE INSURANCE—ARSON FRAUD REDUCTION

Sections

48.53.010	Purpose.
48.53.020	Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents.
48.53.030	Cancellation of policy—Conditions required for.
48.53.040	Cancellation of policy—Procedure.
48.53.050	Issuance or cancellation of policy in violation of chapter.
48.53.060	Adoption of rules.

48.53.010 Purpose. It is the purpose of this chapter to reduce the incidence of arson fraud by requiring insurers to obtain specified information prior to issuing a fire insurance policy for certain structures and by authorizing insurers to cancel fire insurance policies when characteristics frequently associated with arson fraud are present. [1982 c 110 § 1.]

48.53.020 Designation of high arson incidence areas and classes of occupancy—Anti-arson application, contents. (1) The chief of the Washington state patrol, through the director of fire protection, may designate certain classes of occupancy within a geographic area or may designate geographic areas as having an abnormally high incidence of arson. This designation shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy.

(2) A fire insurance policy may not be issued to insure any property within a class of occupancy within a geographic area or within a geographic area designated by the chief of the Washington state patrol, through the director of fire protection, as having an abnormally high incidence of arson until the applicant has submitted an anti-arson application and the insurer or the insurer's representative has inspected the prop-

erty. The application shall be prescribed by the chief of the Washington state patrol, through the director of fire protection, and shall contain but not be limited to the following:

(a) The name and address of the prospective insured and any mortgagees or other parties having an ownership interest in the property to be insured;

(b) The amount of insurance requested and the method of valuation used to establish the amount of insurance;

(c) The dates and selling prices of the property, if any, during the previous three years;

(d) Fire losses exceeding one thousand dollars during the previous five years for property in which the prospective insured held an equity interest or mortgage;

(e) Current corrective orders pertaining to fire, safety, health, building, or construction codes that have not been complied with within the time period or any extension of such time period authorized by the authority issuing such corrective order applicable to the property to be insured;

(f) Present or anticipated occupancy of the structure, and whether a certificate of occupancy has been issued;

(g) Signature and title, if any, of the person submitting the application.

(3) If the facts required to be reported by subsection (2) of this section materially change, the insured shall notify the insurer of any such change within fourteen days.

(4) An anti-arson application is not required for: (a) Fire insurance policies covering one to four-unit owner-occupied residential dwellings; (b) policies existing as of June 10, 1982; or (c) the renewal of these policies.

(5) An anti-arson application shall contain a notice stating: "Designation of a class of occupancy within a geographic area or geographic areas as having an abnormally high incidence of arson shall not be a valid reason for cancellation, refusal to issue or renew, modification, or increasing the premium for any fire insurance policy." [1995 c 369 § 38; 1986 c 266 § 92; 1982 c 110 § 2.]

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

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

48.53.030 Cancellation of policy—Conditions required for. Notwithstanding the provisions of RCW 48.18.290, where two or more of the following conditions exist, an insurer may, under RCW 48.53.040, cancel a fire insurance policy for any structure:

(1) Which, without reasonable explanation, is unoccupied for more than sixty consecutive days, or in which at least sixty-five percent of the rental units are unoccupied for more than one hundred twenty consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;

(2) On which, without reasonable explanation, progress toward completion of permanent repairs has not occurred within sixty days after receipt of funds following satisfactory adjustment or adjudication of loss resulting from a fire;

(3) Which, because of its physical condition, is in danger of collapse;

(4) For which, because of its physical condition, a vacation or demolition order has been issued, or which has been declared unsafe in accordance with applicable law;

(5) From which fixed and salvageable items have been removed, indicating an intent to vacate the structure;

(6) For which, without reasonable explanation, heat, water, sewer, and electricity are not furnished for sixty consecutive days; and

(7) Which is not maintained in substantial compliance with fire, safety, and building codes. [1982 c 110 § 3.]

48.53.040 Cancellation of policy—Procedure. An insurer may cancel a fire insurance policy when the requirements of RCW 48.53.030 are met only in accordance with the following procedure:

(1) The insurer shall, not less than five days prior to cancellation, issue written notice of cancellation to the insured or the insured's representative in charge of the policy. The notice shall contain at least the following:

(a) The date that the policy will be canceled;

(b) A description of the specific facts justifying the cancellation;

(c) A copy of this chapter; and

(d) The name, title, address, and telephone number of the insurer's employee who may be contacted regarding cancellation of the policy.

(2) The notice required by this section shall be actually delivered or mailed to the insured by certified mail, return receipt requested, and in addition by first-class mail. A copy of the notice shall, at the time of delivery or mailing to the insured, or the insured's representative in charge of the policy, be mailed to the insurance commissioner.

(3) The insurer shall also comply with the requirements of *RCW 48.18.290 (1)(b), (2) and (3), and shall provide not less than twenty days notice of cancellation to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder except as provided in subsection (1) of this section.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in an amount as computed on a pro rata basis, must be actually paid or mailed to the insured or other person entitled thereto as shown by the policy or any endorsement thereon, as soon as possible, and no later than thirty days after the date that the notice of cancellation was issued. [1982 c 110 § 4.]

*Reviser's note: RCW 48.18.290 was amended by 2006 c 8 § 212, changing subsection (1)(b) to subsection (1)(e).

48.53.050 Issuance or cancellation of policy in violation of chapter. (1) Any fire insurance policy issued in violation of this chapter shall not be canceled by the insurer under the procedures authorized by this chapter.

(2) Cancellation of a fire insurance policy in violation of this chapter shall constitute a violation of this title. [1982 c 110 § 5.]

48.53.060 Adoption of rules. Rules designating geographic areas or classes of occupancy as having an abnormally high incidence of arson, and any other rules necessary to implement this chapter shall be adopted by the chief of the Washington state patrol, through the director of fire protection, under chapter 34.05 RCW. [1995 c 369 § 39; 1986 c 266 § 93; 1982 c 110 § 6.]

(2008 Ed.)

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

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

Chapter 48.56 RCW

INSURANCE PREMIUM FINANCE COMPANY ACT

Sections

48.56.010	Short title.
48.56.020	Definitions.
48.56.030	License—Required—Fees—Information to be furnished—Penalty.
48.56.040	Investigation of applicant—Qualifications—Hearing.
48.56.050	Revocation, suspension, or refusal to renew.
48.56.060	Records.
48.56.070	Rules and regulations.
48.56.080	Premium finance agreement.
48.56.090	Service charge.
48.56.100	Delinquency charge—Cancellation charge.
48.56.110	Cancellation of insurance contract.
48.56.120	Cancellation of insurance contract—Return of unearned premiums.
48.56.130	Filing of agreement.
48.56.900	Effective date—1969 ex.s. c 190.

48.56.010 Short title. This chapter shall be known and may be cited as "The Insurance Premium Finance Company Act". [1969 ex.s. c 190 § 1.]

48.56.020 Definitions. (*Effective until July 1, 2009.*) As used in this chapter:

(1) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract together with a service charge as authorized and limited by this chapter and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

(3) "Licensee" means a premium finance company holding a license issued by the insurance commissioner under this chapter. [1969 ex.s. c 190 § 2.]

48.56.020 Definitions. (*Effective July 1, 2009.*) As used in this chapter:

(1) "Insurance premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance producer in payment of premiums on an insurance contract together with a service charge as authorized and limited by this chapter and as security therefor the insurance premium finance company receives an assignment of the unearned premium.

(3) "Licensee" means a premium finance company holding a license issued by the insurance commissioner under this chapter. [2008 c 217 § 60; 1969 ex.s. c 190 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.56.030 License—Required—Fees—Information to be furnished—Penalty. (1) No person shall engage in the business of financing insurance premiums in the state without first having obtained a license as a premium finance company from the commissioner. Any person who shall engage in the business of financing insurance premiums in the state without obtaining a license as provided hereunder shall, upon conviction, be guilty of a misdemeanor and shall be subject to the penalties provided in this chapter.

(2)(a) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant and, at the commissioner's discretion, any or all stockholders, directors, partners, officers, and employees of the business shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require.

(b) The annual license fee shall be one hundred dollars. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee of one hundred dollars. The fee for the license shall be paid to the insurance commissioner.

(3) The person to whom the license or the renewal may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the applicant to disclose fully the identity of all stockholders, directors, partners, officers, and employees and may, in his or her discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if he or she finds that any officer, employee, stockholder, or partner who may materially influence the applicant's conduct does not meet the standards of this chapter.

(4) This section shall not apply to any savings and loan association, bank, trust company, consumer loan company, industrial loan company or credit union authorized to do business in this state but RCW 48.56.080 through 48.56.130 and any rules adopted by the commissioner pertaining to such sections shall be applicable to such organizations, if otherwise eligible, under all premium finance transactions wherein an insurance policy, other than a life or disability insurance policy, or any rights thereunder is made the security or collateral for the repayment of the debt, however, neither this section nor the provisions of this chapter shall be applicable to the inclusion of insurance in a retail installment transaction or to insurance purchased in connection with a real estate transaction, mortgage, deed of trust, or other security instrument or an insurance company authorized to do business in this state unless the insurance company elects to become a licensee.

(5) If in the process of verifying fingerprints under subsection (2) of this section, business records, or other information the commissioner's office incurs fees or charges from

another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant. [2002 c 227 § 4; 1969 ex.s. c 190 § 3.]

Effective date—2002 c 227: See note following RCW 48.06.040.

48.56.040 Investigation of applicant—Qualifications—Hearing. (1) Upon the filing of an application and the payment of the license fee the commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this chapter. If the commissioner does not so find, he shall, within thirty days after he has received such application, at the request of the applicant, give the applicant a full hearing.

(2) The commissioner shall issue or renew a license as may be applied for when he is satisfied that the person to be licensed—

(a) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for,

(b) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for, and

(c) if a corporation, is a corporation incorporated under the laws of the state or a foreign corporation authorized to transact business in the state. [1969 ex.s. c 190 § 4.]

48.56.050 Revocation, suspension, or refusal to renew. (1) The commissioner may revoke or suspend the license of any premium finance company when and if after investigation it appears to the commissioner that—

(a) any license issued to such company was obtained by fraud,

(b) there was any misrepresentation in the application for the license,

(c) the holder of such license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company, or

(d) such company has violated any of the provisions of this chapter.

(2) Before the commissioner shall revoke, suspend, or refuse to renew the license of any premium finance company, he shall give to such person an opportunity to be fully heard and to introduce evidence in his behalf. In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing as herein provided, the commissioner may subject such company to a penalty of not more than two hundred dollars for each offense when in his judgment he finds that the public interest would not be harmed by the continued operation of such company. The amount of any such penalty shall be paid by such company through the office of the commissioner to the state treasurer. At any hearing provided by this section, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(3) If the commissioner refuses to issue or renew any license or if any applicant or licensee is aggrieved by any action of the commissioner, said applicant or licensee shall have the right to a hearing and court proceeding as provided by statute. [1969 ex.s. c 190 § 5.]

48.56.060 Records. (1) Every licensee shall maintain records of its premium finance transactions and the said records shall be open to examination and investigation by the commissioner. The commissioner may at any time require any licensee to bring such records as he may direct to the commissioner's office for examination.

(2) Every licensee shall preserve its records of such premium finance transactions, including cards used in a card system, for at least three years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement. [1969 ex.s. c 190 § 6.]

48.56.070 Rules and regulations. The commissioner shall have authority to make and enforce such reasonable rules and regulations as may be necessary in making effective the provisions of this chapter, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this chapter. [1969 ex.s. c 190 § 7.]

48.56.080 Premium finance agreement. (Effective until July 1, 2009.) (1) A premium finance agreement shall—

(a) be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight point type;

(b) contain the name and place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

(c) set forth the following items where applicable—

(i) the total amount of the premiums,

(ii) the amount of the down payment,

(iii) the principal balance (the difference between items (i) and (ii)),

(iv) the amount of the service charge,

(v) the balance payable by the insured (sum of items (iii) and (iv)), and

(vi) the number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in paragraph (c) of subsection (1) need not be stated in the sequence or order in which they appear in such paragraph (c), and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) of this section shall only be required in the initial agreement where the premium finance company and the insured enter into an open end credit transaction, which is defined as follows: A plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) A copy of the premium finance agreement shall be given to the insured at the time or within ten days of its execution, except where the application has been signed by the insured and all the finance charges are one dollar or less per payment. In addition, the premium finance company shall deliver or mail a copy of the premium finance agreement or

notice identifying policy, insured and producing agent to each insurer that has premiums involved in the transaction, within thirty days of the execution of the premium finance agreement.

(5) It shall be illegal for a premium finance company to offset funds of an agent with funds belonging to an insured. Premiums advanced by a premium finance company are funds belonging to the insured and shall be held in a fiduciary relationship. [1975-'76 2nd ex.s. c 119 § 6; 1969 ex.s. c 190 § 8.]

48.56.080 Premium finance agreement. (Effective July 1, 2009.) (1) A premium finance agreement shall:

(a) Be dated, signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight point type;

(b) Contain the name and place of business of the insurance producer negotiating the related insurance contract, the name and residence or the place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium therefor; and

(c) Set forth the following items where applicable:

(i) The total amount of the premiums;

(ii) The amount of the down payment;

(iii) The principal balance (the difference between items (i) and (ii));

(iv) The amount of the service charge;

(v) The balance payable by the insured (sum of items (ii) and (iv)); and

(vi) The number of installments required, the amount of each installment expressed in dollars, and the due date or period thereof.

(2) The items set out in subsection (1)(c) of this section need not be stated in the sequence or order in which they appear in that subsection, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(3) The information required by subsection (1) of this section shall only be required in the initial agreement where the premium finance company and the insured enter into an open end credit transaction, which is defined as follows: A plan prescribing the terms of credit transactions which may be made thereunder from time to time and under the terms of which a finance charge may be computed on the outstanding unpaid balance from time to time thereunder.

(4) A copy of the premium finance agreement shall be given to the insured at the time or within ten days of its execution, except where the application has been signed by the insured and all the finance charges are one dollar or less per payment. In addition, the premium finance company shall deliver or mail a copy of the premium finance agreement or notice identifying policy, insured, and insurance producer to each insurer that has premiums involved in the transaction, within thirty days of the execution of the premium finance agreement.

(5) It shall be illegal for a premium finance company to offset funds of an insurance producer with funds belonging to an insured. Premiums advanced by a premium finance company are funds belonging to the insured and shall be held in a fiduciary relationship. [2008 c 217 § 61; 1975-'76 2nd ex.s. c 119 § 6; 1969 ex.s. c 190 § 8.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.56.090 Service charge. (1) A premium finance company shall not charge, contract for, receive, or collect a service charge other than as permitted by this chapter.

(2) The service charge is to be computed on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the premium finance agreement is payable.

(3) The service charge shall be a maximum of ten dollars per one hundred dollars per year plus an acquisition charge of ten dollars per premium finance agreement which need not be refunded upon cancellation or prepayment. [1969 ex.s. c 190 § 9.]

48.56.100 Delinquency charge—Cancellation charge. A premium finance agreement may provide for the payment by the insured of a delinquency charge of one dollar to a maximum of five percent of the delinquent installment that is in default for a period of five days or more except that if the loan is primarily for personal, family, or household purposes the delinquency charge shall not exceed five dollars.

If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency charge imposed with respect to the installment in default and five dollars. [1995 c 72 § 1; 1969 ex.s. c 190 § 10.]

48.56.110 Cancellation of insurance contract. (1) When a premium finance agreement contains a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the premium finance company unless such cancellation is effectuated in accordance with this section.

(2) Not less than ten days' written notice shall be mailed to the insured of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten day period.

(3) After expiration of such ten day period, the premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, and the insurance contract shall be canceled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at his last known address.

(4) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day it receives the

notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days notice required to complete the cancellation. [1969 ex.s. c 190 § 11.]

48.56.120 Cancellation of insurance contract—Return of unearned premiums. (1) Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured: PROVIDED, That no such refund shall be required if it amounts to less than one dollar. [1969 ex.s. c 190 § 12.]

48.56.130 Filing of agreement. No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns. [1969 ex.s. c 190 § 13.]

48.56.900 Effective date—1969 ex.s. c 190. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the sixtieth day following passage by the legislature and submission to the governor for action. [1969 ex.s. c 190 § 15.]

Chapter 48.58 RCW

RIOT REINSURANCE REIMBURSEMENT

Sections

48.58.010 Riot reinsurance reimbursement—Assessments.

48.58.010 Riot reinsurance reimbursement—Assessments. (1) The commissioner may reimburse the secretary of the department of housing and urban development under the provisions of Section 1223(a)(1) of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448) for losses reinsured by the secretary of the department of housing and urban development and occurring in this state on or after August 1, 1968. After receipt by the state treasurer of a statement requesting reimbursement from the secretary of the department of housing and urban development and upon certification promptly made by the commissioner of insurance, hereafter referred to as the commissioner, of the correctness of the amount thereof, the commissioner is hereby authorized to provide for an assessment upon insurers authorized to do business in this state in amounts sufficient to pay reimbursement to the secretary of the department of housing and urban development: PROVIDED, That the amount assessed each insurer shall be in the same proportion that the premiums written by each insurer in this state bear to the aggregate premiums written in this state by all insurance companies on those lines for which reinsurance was available in this state from the secretary of the department of housing and urban development during the preceding calendar year.

(2) In the event any insurer fails, by reason of insolvency, to pay any assessment as provided herein, the amount assessed each insurer, as computed under subsection (1) of this section, shall be immediately recalculated excluding therefrom the insolvent insurer so that its assessment is, in effect, assumed and redistributed among the remaining insurers.

(3) When assessments as provided herein are made, the individual insurer, after having paid the full amount assessed against the insurer, may deduct from future premium tax liabilities an amount not to exceed twenty percent per annum until such deductions equal the amount of the assessment levied against the insurer.

(4) This section shall cease to be of any force and effect upon termination of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448), except that obligations incurred pursuant to the provisions of this section shall not be impaired by the expiration of the same.

(5) Notwithstanding the termination of the Urban Property Protection and Reinsurance Act of 1968 (Public Law 90-448), the commissioner is authorized to continue in force the program developed in response to that act, the Washington essential property insurance inspection and placement program, in order to provide essential property insurance within the state where it cannot be obtained through the normal insurance market. [1987 c 128 § 1; 1980 c 32 § 9; 1969 ex.s. c 140 § 1.]

Chapter 48.62 RCW

LOCAL GOVERNMENT INSURANCE TRANSACTIONS

Sections

48.62.011	Legislative intent—Construction.
48.62.021	Definitions.
48.62.031	Authority to self-insure—Options—Risk manager.
48.62.034	Joint self-insurance program—Actions authorized.
48.62.036	Authority to form or join a self-insurance risk pool—When section not applicable.
48.62.041	Property and liability advisory board—Creation—Membership—Duties.
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48.62.061	Rule making by state risk manager—Standards.
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48.62.101	Access to information—Executive sessions—Public records act.
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48.62.123	Existing benefit program established as a trust—Risk manager—Limited extension of deadline for compliance.
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48.62.131	Preexisting programs—Notice to state auditor.
48.62.141	Insufficient assets—Program requirement.
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48.62.161	Establishment of fee to cover costs—Boards—State risk manager.
48.62.171	Dissemination of information—Civil immunity.
48.62.900	Effective date, implementation, application—1991 sp.s. c 30.
48.62.901	Severability—1991 sp.s. c 30.

(2008 Ed.)

48.62.011 Legislative intent—Construction. This chapter is intended to provide the exclusive source of local government entity authority to individually or jointly self-insure risks, jointly purchase insurance or reinsurance, and to contract for risk management, claims, and administrative services. This chapter shall be liberally construed to grant local government entities maximum flexibility in self-insuring to the extent the self-insurance programs are operated in a safe and sound manner. This chapter is intended to require prior approval for the establishment of every individual local government self-insured employee health and welfare benefit program and every joint local government self-insurance program. In addition, this chapter is intended to require every local government entity that establishes a self-insurance program not subject to prior approval to notify the state of the existence of the program and to comply with the regulatory and statutory standards governing the management and operation of the programs as provided in this chapter. This chapter is not intended to authorize or regulate self-insurance of unemployment compensation under chapter 50.44 RCW, or industrial insurance under chapter 51.14 RCW. [1991 sp.s. c 30 § 1.]

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

(1) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, water-sewer districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, and quasi-municipal corporations.

(2) "Risk assumption" means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(3) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(4) "Health and welfare benefits" means a plan or program established by a local government entity or entities for the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(5) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(6) "State risk manager" means the risk manager of the risk management division within the office of financial management.

(7) "Nonprofit corporation" or "corporation" has the same meaning as defined in RCW 24.03.005(3). [2004 c 255 § 2; 2002 c 332 § 24; 1999 c 153 § 60; 1991 sp.s. c 30 § 2.]

Findings—Intent—2004 c 255: See note following RCW 48.62.036.

Intent—Effective date—2002 c 332: See notes following RCW 43.41.280.

Part headings not law—1999 c 153: See note following RCW 57.04.050.

48.62.031 Authority to self-insure—Options—Risk manager. (1) The governing body of a local government entity may individually self-insure, may join or form a self-insurance program together with other entities, and may jointly purchase insurance or reinsurance with other entities for property and liability risks, and health and welfare benefits only as permitted under this chapter. In addition, the entity or entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program shall be made under chapter 39.34 RCW and may create a separate legal or administrative entity with powers delegated thereto. Such entity may include or create a nonprofit corporation organized under chapter 24.03 or 24.06 RCW or a partnership organized under chapter 25.04 RCW.

(3) Every individual and joint self-insurance program is subject to audit by the state auditor.

(4) If provided for in the agreement or contract established under chapter 39.34 RCW, a joint self-insurance program may, in conformance with this chapter:

(a) Contract or otherwise provide for risk management and loss control services;

(b) Contract or otherwise provide legal counsel for the defense of claims and other legal services;

(c) Consult with the state insurance commissioner and the state risk manager;

(d) Jointly purchase insurance and reinsurance coverage in such form and amount as the program's participants agree by contract;

(e) Obligate the program's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the program, including the establishment of a reserve or fund for coverage; and

(f) Possess any other powers and perform all other functions reasonably necessary to carry out the purposes of this chapter.

(5) A local government entity that has decided to assume a risk of loss must have available for inspection by the state auditor a written report indicating the class of risk or risks the governing body of the entity has decided to assume.

(6) Every joint self-insurance program governed by this chapter shall appoint the risk manager as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising in this state.

(a) Service upon the risk manager as attorney shall constitute service upon the program. Service upon joint insurance programs subject to chapter 30, Laws of 1991 1st sp. sess. can be had only by service upon the risk manager. At the time of service, the plaintiff shall pay to the risk manager

a fee to be set by the risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the risk manager, each joint self-insurance program shall designate by name and address the person to whom the risk manager shall forward legal process so served upon him or her. The joint self-insurance program may change such person by filing a new designation.

(c) The appointment of the risk manager as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the joint self-insurance program, and shall remain in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising therefrom.

(d) The risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, shall be sent by the risk manager, to the person designated for the purpose by the joint self-insurance program in its most recent such designation filed with the risk manager. No proceedings shall be had against the joint self-insurance program, and the program shall not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the risk manager. [2005 c 147 § 1; 1991 sp.s. c 30 § 3.]

48.62.034 Joint self-insurance program—Actions authorized. (1) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity created under RCW 48.62.031 each may:

(a) Contract indebtedness and issue and sell revenue bonds evidencing such indebtedness or establish lines of credit pursuant to and in the manner provided for local governments in chapter 39.46 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a local government under chapter 39.46 RCW and appointing a treasurer to perform the functions to be performed by the treasurer under chapter 39.46 RCW;

(b) Contract indebtedness and issue and sell short-term obligations evidencing such indebtedness pursuant to and in the manner provided for municipal corporations in chapter 39.50 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a municipal corporation under chapter 39.50 RCW; and

(c) Contract indebtedness and issue and sell refunding bonds pursuant to and in the manner provided for public bodies in chapter 39.53 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a public body under chapter 39.53 RCW.

(2) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity formed under RCW 48.62.031 each may make loans of the proceeds of revenue bonds issued under this section to a

joint self-insurance program or a local government entity that has joined or formed a joint self-insurance program.

(3) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and each local government entity that has joined or formed a joint self-insurance program may accept loans of the proceeds of revenue bonds issued under this section. [2005 c 147 § 2.]

48.62.036 Authority to form or join a self-insurance risk pool—When section not applicable. (1) A nonprofit corporation may form or join a self-insurance risk pool with one or more nonprofit corporations or with a local government entity or entities for property and liability risks.

(2) A nonprofit corporation that participates in or forms a self-insurance risk pool with one or more nonprofit corporations or with a local government entity or entities, as provided in subsection (1) of this section, is subject to the same rules and regulations that apply to a local government entity or entities under this chapter.

(3) This section does not apply to a nonprofit corporation that:

(a) Individually self-insures for property and liability risks;

(b) Participates in a risk pooling arrangement, including a risk retention group or a risk purchasing group, regulated under chapter 48.92 RCW, or is a captive insurer authorized in its state of domicile; or

(c) Is a hospital licensed under chapter 70.41 RCW or an entity owned, operated, controlled by, or affiliated with such a hospital that participates in a self-insurance risk pool or other risk pooling arrangement, unless the self-insurance pool or other risk pooling arrangement for property and liability risks includes a local government entity. [2004 c 255 § 3.]

Findings—Intent—2004 c 255: "The legislature finds that recent increases in property and liability insurance premiums experienced by some nonprofit organizations have the potential to negatively impact the ability of these organizations to continue to offer the level of service they provide in our communities. The legislature finds that nonprofit organizations are distinct from private for-profit businesses. By their very nature, nonprofit organizations are formed for purposes other than generating a profit, and are restricted from distributing any part of the organization's income to its directors or officers. Because of these characteristics, nonprofit organizations provide a unique public good to the residents in our state.

The legislature finds that in order to sustain the financial viability of nonprofit organizations, they should be provided with alternative options for insuring against risks. The legislature further finds that local government entities and nonprofit organizations share the common goal of providing services beneficial to the public interest. The legislature finds that allowing nonprofit organizations and local government entities to pool risk in self-insurance risk pools may be of mutual benefit for both types of entities. Therefore, it is the intent of the legislature to allow nonprofit organizations to form or participate in self-insurance risk pools with other nonprofit organizations or with local government entities where authority for such risk pooling arrangements does not currently exist in state or federal law." [2004 c 255 § 1.]

48.62.041 Property and liability advisory board—Creation—Membership—Duties. (1) The property and liability advisory board is created, consisting of the insurance commissioner and the state risk manager, or their designees, as ex officio members and five members appointed by the governor on the basis of their experience and knowledge in matters pertaining to local government risk management, self-insurance, and management of joint self-insurance pro-

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grams. The board shall include at least two representatives from individual property or liability self-insurance programs and at least two representatives from joint property or liability self-insurance programs.

(2) The board shall assist the state risk manager in:

(a) Adopting rules governing the operation and management of both individual and joint self-insurance programs covering liability and property risks;

(b) Reviewing and approving the creation of joint self-insurance programs covering property or liability risks;

(c) Reviewing annual reports filed by joint self-insurance programs covering property and liability risks and recommending that corrective action be taken by the programs when necessary; and

(d) Responding to concerns of the state auditor related to the management and operation of both individual and joint self-insurance programs covering liability or property risks.

(3) The board shall annually elect a chair and a vice-chair from its members. The board shall meet at least quarterly at such times as the state risk manager may fix. The board members who are appointed shall serve without compensation from the state but shall suffer no loss because of absence from their regular employment. Members of the board who are not public employees shall be compensated in accordance with RCW 43.03.240.

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

(5) The board shall keep public records of its proceedings. [1991 sp.s. c 30 § 4.]

48.62.051 Health and welfare advisory board—Creation—Membership—Duties. (1) The health and welfare advisory board is created consisting of the insurance commissioner and the state risk manager, or their designees, as ex officio members and six members appointed by the governor on the basis of their experience and knowledge pertaining to local government self-insured health and welfare benefits programs. The board shall include one city management representative; one county management representative; two management representatives from local government self-insured health and welfare programs; and two representatives of statewide employee organizations representing local government employees.

(2) The board shall assist the state risk manager in:

(a) Adopting rules governing the operation and management of both individual and joint self-insured health and welfare benefits programs;

(b) Reviewing and approving the creation of both individual and joint self-insured health and welfare benefits programs;

(c) Reviewing annual reports filed by health and welfare benefits programs and in recommending that corrective action be taken by the programs when necessary; and

(d) Responding to concerns of the state auditor related to the management and operation of health and welfare benefits programs.

(3) The board shall annually elect a chair and a vice-chair from its members. The board shall meet at least quarterly at such times as the state risk manager may fix. The board members who are appointed shall serve without compensation from the state but shall suffer no loss because of absence

from their regular employment. Members of the board who are not public employees shall be compensated in accordance with RCW 43.03.240.

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

(5) The board shall keep public records of its proceedings. [1991 sp.s. c 30 § 5.]

48.62.061 Rule making by state risk manager—Standards. The state risk manager, in consultation with the property and liability advisory board, shall adopt rules governing the management and operation of both individual and joint local government self-insurance programs covering property or liability risks. The state risk manager shall also adopt rules governing the management and operation of both individual and joint local government self-insured health and welfare benefits programs in consultation with the health and welfare benefits advisory board. All rules shall be appropriate for the type of program and class of risk covered. The state risk manager's rules shall include:

(1) Standards for the management, operation, and solvency of self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits;

(2) Standards for claims management procedures; and

(3) Standards for contracts between self-insurance programs and private businesses including standards for contracts between third-party administrators and programs. [1991 sp.s. c 30 § 6.]

48.62.071 Program approval required—State risk manager—Plan of management and operation. Before the establishment of a joint self-insurance program covering property or liability risks by local government entities, or an individual or joint local government self-insured health and welfare benefits program, the entity or entities must obtain the approval of the state risk manager. Risk manager approval is not required for the establishment of an individual local government self-insurance program covering property or liability risks. The entity or entities proposing creation of a self-insurance program requiring prior approval shall submit a plan of management and operation to the state risk manager and the state auditor that provides at least the following information:

(1) The risk or risks to be covered, including any coverage definitions, terms, conditions, and limitations or in the case of health and welfare benefits programs, the benefits to be provided, including any benefit definitions, terms, conditions, and limitations;

(2) The amount and method of financing the benefits or covered risks, including the initial capital and proposed rates and projected premiums;

(3) The proposed claim reserving practices;

(4) The proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the self-insurance program;

(5) In the case of a joint program, the legal form of the program, including but not limited to any bylaws, charter, or trust agreement;

(6) In the case of a joint program, the agreements with members of the program defining the responsibilities and benefits of each member and management;

(7) The proposed accounting, depositing, and investment practices of the program;

(8) The proposed time when actuarial analysis will be first conducted and the frequency of future actuarial analysis;

(9) A designation of the individual upon whom service of process shall be executed on behalf of the program. In the case of a joint program, a designation of the individual to whom service of process shall be forwarded by the risk manager on behalf of the program;

(10) All contracts between the program and private persons providing risk management, claims, or other administrative services;

(11) A professional analysis of the feasibility of creation and maintenance of the program; and

(12) Any other information required by rule of the state risk manager that is necessary to determine the probable financial and management success of the program or that is necessary to determine compliance with this chapter. [1991 sp.s. c 30 § 7.]

48.62.081 Multistate program participants—Requirements. A local government entity may participate in a joint self-insurance program covering property or liability risks with similar local government entities from other states if the program satisfies the following requirements:

(1) Only those local government entities of this state and similar entities of other states that are provided insurance by the program may have ownership interest in the program;

(2) The participating local government entities of this state and other states shall elect a board of directors to manage the program, a majority of whom shall be affiliated with one or more of the participating entities;

(3) The program must provide coverage through the delivery to each participating entity of one or more written policies effecting insurance of covered risks;

(4) The program shall be financed, including the payment of premiums and the contribution of initial capital, in accordance with the plan of management and operation submitted to the state risk manager in accordance with this chapter;

(5) The financial statements of the program shall be audited annually by the certified public accountants for the program, and such audited financial statements shall be delivered to the Washington state auditor and the state risk manager not more than one hundred twenty days after the end of each fiscal year of the program;

(6) The investments of the program shall be initiated only with financial institutions and/or broker-dealers doing business in those states in which participating entities are located, and such investments shall be audited annually by the certified public accountants for the program, and a list of such investments shall be delivered to the Washington state auditor not more than one hundred twenty days after the end of each fiscal year of the program;

(7) The treasurer of a multistate joint self-insurance program shall be designated by resolution of the program and such treasurer shall be located in the state of one of the participating entities;

(8) The participating entities may have no contingent liabilities for covered claims, other than liabilities for unpaid premiums, retrospective premiums, or assessments, if assets of the program are insufficient to cover the program's liabilities; and

(9) The program shall obtain approval from the state risk manager in accordance with this chapter and shall remain in compliance with the provisions of this chapter, except to the extent that such provisions are modified by or inconsistent with this section. [1991 sp.s. c 30 § 8.]

48.62.091 Program approval or disapproval—Procedures—Annual report. (1) Within one hundred twenty days of receipt of a plan of management and operation, the state risk manager shall either approve or disapprove the formation of the self-insurance program after reviewing the plan to determine whether the proposed program complies with this chapter and all rules adopted in accordance with this chapter.

(2) If the state risk manager denies a request for approval, the state risk manager shall specify in detail the reasons for denial and the manner in which the program fails to meet the requirements of this chapter or any rules adopted in accordance with this chapter.

(3) Whenever the state risk manager determines that a joint self-insurance program covering property or liability risks or an individual or joint self-insured health and welfare benefits program is in violation of this chapter or is operating in an unsafe financial condition, the state risk manager may issue and serve upon the program an order to cease and desist from the violation or practice.

(a) The state risk manager shall deliver the order to the appropriate entity or entities directly or mail it to the appropriate entity or entities by registered mail with return receipt requested.

(b) If the program violates the order or has not taken steps to comply with the order after the expiration of twenty days after the cease and desist order has been received by the program, the program is deemed to be operating in violation of this chapter, and the state risk manager shall notify the state auditor and the attorney general of the violation.

(c) After hearing or with the consent of a program governed by this chapter and in addition to or in lieu of a continuation of the cease and desist order, the risk manager may levy a fine upon the program in an amount not less than three hundred dollars and not more than ten thousand dollars. The order levying such fine shall specify the period within which the fine shall be fully paid. The period within which such fines shall be paid shall not be less than fifteen nor more than thirty days from the date of such order. Upon failure to pay any such fine when due the risk manager shall request the attorney general to bring a civil action on the risk manager's behalf to collect the fine. The risk manager shall pay any fine so collected to the state treasurer for the account of the general fund.

(4) Each self-insurance program approved by the state risk manager shall annually file a report with the state risk manager and state auditor providing:

(a) Details of any changes in the articles of incorporation, bylaws, or interlocal agreement;

(b) Copies of all the insurance coverage documents;

(c) A description of the program structure, including participants' retention, program retention, and excess insurance limits and attachment point;

(d) An actuarial analysis, if required;

(e) A list of contractors and service providers;

(f) The financial and loss experience of the program; and

(g) Such other information as required by rule of the state risk manager.

(5) No self-insurance program requiring the state risk manager's approval may engage in an act or practice that in any respect significantly differs from the management and operation plan that formed the basis for the state risk manager's approval of the program unless the program first notifies the state risk manager in writing and obtains the state risk manager's approval. The state risk manager shall approve or disapprove the proposed change within sixty days of receipt of the notice. If the state risk manager denies a requested change, the risk manager shall specify in detail the reasons for denial and the manner in which the program would fail to meet the requirements of this chapter or any rules adopted in accordance with this chapter. [1991 sp.s. c 30 § 9.]

48.62.101 Access to information—Executive sessions—Public records act. (1) All self-insurance programs governed by this chapter may provide for executive sessions in accordance with chapter 42.30 RCW to consider litigation and settlement of claims when it appears that public discussion of these matters would impair the program's ability to conduct its business effectively.

(2) Notwithstanding any provision to the contrary contained in the public records act, chapter 42.56 RCW, in a claim or action against the state or a local government entity, no person is entitled to discover that portion of any funds or liability reserve established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in a supplemental or ancillary proceeding to enforce a judgment. All other records of individual or joint self-insurance programs are subject to disclosure in accordance with chapter 42.56 RCW.

(3) In accordance with chapter 42.56 RCW, bargaining groups representing local government employees shall have reasonable access to information concerning the experience and performance of any health and welfare benefits program established for the benefit of such employees. [2005 c 274 § 316; 1991 sp.s. c 30 § 10.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

48.62.111 Investments—Designated treasurer—Deposit requirements—Bond. (1) The assets of a joint self-insurance program governed by this chapter may be invested only in accordance with the general investment authority that participating local government entities possess as a governmental entity.

(2) Except as provided in subsection (3) of this section, a joint self-insurance program may invest all or a portion of its assets by depositing the assets with the treasurer of a county within whose territorial limits any of its member local government entities lie, to be invested by the treasurer for the joint program.

(3) Local government members of a joint self-insurance program may by resolution of the program designate some other person having experience in financial or fiscal matters as treasurer of the program, if that designated treasurer is located in Washington state. The program shall, unless the program's treasurer is a county treasurer, require a bond obtained from a surety company authorized to do business in Washington in an amount and under the terms and conditions that the program finds will protect against loss arising from mismanagement or malfeasance in investing and managing program funds. The program may pay the premium on the bond.

All program funds must be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the treasurer or a person appointed by the program and upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW. The treasurer shall establish a program account, into which shall be recorded all program funds, and the treasurer shall maintain special accounts as may be created by the program into which the treasurer shall record all money as the program may direct by resolution.

(4) The treasurer of the joint program shall deposit all program funds in a public depository or depositories as defined in RCW 39.58.010(2) and under the same restrictions, contracts, and security as provided for any participating local government entity, and the depository shall be designated by resolution of the program.

(5) A joint self-insurance program may invest all or a portion of its assets by depositing the assets with the state investment board, to be invested by the state investment board in accordance with chapter 43.33A RCW. The state investment board shall designate a manager for those funds to whom the program may direct requests for disbursement upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW.

(6) All interest and earnings collected on joint program funds belong to the program and must be deposited to the program's credit in the proper program account.

(7) A joint program may require a reasonable bond from any person handling money or securities of the program and may pay the premium for the bond.

(8) Subsections (3) and (4) of this section do not apply to a multistate joint self-insurance program governed by RCW 48.62.081. [2003 c 248 § 20; 1991 sp.s. c 30 § 11.]

48.62.121 General operating regulations—Employee remuneration—Governing control—School districts—Use of agents and brokers—Health care services—Trusts. (Effective until July 1, 2009.) (1) No employee or official of a local government entity may directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or

official's independence of judgment is impaired with respect to the management and operation of the program.

(2)(a) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to:

(i) Local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute;

(ii) Local government participation in a multistate joint program where control is shared with local government entities from other states; or

(iii) Local government contribution to a self-insured employee health and welfare benefit trust in which the local government shares governing control with their employees.

(b) If a local government self-insured health and welfare benefit program, established by the local government as a trust, shares governing control of the trust with its employees:

(i) The local government must maintain at least a fifty percent voting control of the trust;

(ii) No more than one voting, nonemployee, union representative selected by employees may serve as a trustee; and

(iii) The trust agreement must contain provisions for resolution of any deadlock in the administration of the trust.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of agents and brokers by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits.

(6) An employee health and welfare benefit program established as a trust shall contain a provision that trust funds be expended only for purposes of the trust consistent with statutes and rules governing the local government or governments creating the trust. [1993 c 458 § 1; 1991 sp.s. c 30 § 12.]

Review of health care trusts—1993 c 458: "If chapter 492, Laws of 1993 is enacted into law, the provisions of chapter 48.62 RCW shall be reviewed to evaluate the extent to which health care trusts provide benefits to certain individuals in the state; and to review the federal laws that may constrain the organization or operation of these joint employee-employer entities. The health services commission shall make appropriate recommendations to the governor and the legislature as to how these trusts can be brought under the provisions of chapter 492, Laws of 1993." [1993 c 458 § 3.]

48.62.121 General operating regulations—Employee remuneration—Governing control—School districts—Use of insurance producers—Health care services—Trusts. (Effective July 1, 2009.) (1) No employee or official of a local government entity may directly or indirectly

receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2)(a) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to:

(i) Local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute;

(ii) Local government participation in a multistate joint program where control is shared with local government entities from other states; or

(iii) Local government contribution to a self-insured employee health and welfare benefit trust in which the local government shares governing control with their employees.

(b) If a local government self-insured health and welfare benefit program, established by the local government as a trust, shares governing control of the trust with its employees:

(i) The local government must maintain at least a fifty percent voting control of the trust;

(ii) No more than one voting, nonemployee, union representative selected by employees may serve as a trustee; and

(iii) The trust agreement must contain provisions for resolution of any deadlock in the administration of the trust.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of insurance producers by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits.

(6) An employee health and welfare benefit program established as a trust shall contain a provision that trust funds be expended only for purposes of the trust consistent with statutes and rules governing the local government or governments creating the trust. [2008 c 217 § 62; 1993 c 458 § 1; 1991 sp.s. c 30 § 12.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Review of health care trusts—1993 c 458: "If chapter 492, Laws of 1993 is enacted into law, the provisions of chapter 48.62 RCW shall be (2008 Ed.)

reviewed to evaluate the extent to which health care trusts provide benefits to certain individuals in the state; and to review the federal laws that may constrain the organization or operation of these joint employee-employer entities. The health services commission shall make appropriate recommendations to the governor and the legislature as to how these trusts can be brought under the provisions of chapter 492, Laws of 1993." [1993 c 458 § 3.]

48.62.123 Existing benefit program established as a trust—Risk manager—Limited extension of deadline for compliance. No local government self-insured employee health and welfare benefit program established as a trust by a local government entity or entities prior to July 25, 1993, may continue in operation unless such program complies with the provisions of this chapter within one hundred eighty days after July 25, 1993. The state risk manager may extend such period if the risk manager finds that such local government entity or entities are making a good faith effort and taking all necessary steps to comply with this chapter; however, in no event may the risk manager extend the period required for compliance more than ninety days after the expiration of the initial one hundred eighty-day period. [1993 c 458 § 2.]

Review of health care trusts—1993 c 458: See note following RCW 48.62.121.

48.62.125 Educational service districts—Rules—Superintendent of public instruction. All rules adopted by the superintendent of public instruction by January 1, 1992, that apply to self-insurance programs of educational service districts remain in effect until expressly amended, repealed, or superseded by the state risk manager or the state health care authority. [1991 sp.s. c 30 § 31.]

48.62.131 Preexisting programs—Notice to state auditor. Every local government entity that has established a self-insurance program not subject to the prior approval requirements of this chapter shall provide written notice to the state auditor of the existence of the program. The notice must identify the manager of the program and the class or classes of risk self-insured. The notice must also identify all investments and distribution of assets of the program, the current depository of assets and the program's designation of asset depository and investment agent as required by RCW 48.62.111. In addition, the local government entity shall notify the state auditor whenever the program covers a new class of risk or discontinues the self-insurance of a class of risk. [1991 sp.s. c 30 § 13.]

48.62.141 Insufficient assets—Program requirement. Every joint self-insurance program covering liability or property risks, excluding multistate programs governed by RCW 48.62.081, shall provide for the contingent liability of participants in the program if assets of the program are insufficient to cover the program's liabilities. [1991 sp.s. c 30 § 14.]

48.62.151 Insurance premium taxes—Exemption. (Effective until July 1, 2009.) A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, from fees assessed under chapter 48.02 RCW, from chapters 48.32 and 48.32A RCW, from business and occupations taxes imposed under chapter 82.04 RCW, and from any assigned risk plan or joint under-

writing association otherwise required by law. This section does not apply to and no exemption is provided for insurance companies issuing policies to cover program risks, nor does it apply to or provide an exemption for third-party administrators or brokers serving the self-insurance program. [1991 sp.s. c 30 § 15.]

48.62.151 Insurance premium taxes—Exemption. (*Effective July 1, 2009.*) A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, from fees assessed under chapter 48.02 RCW, from chapters 48.32 and 48.32A RCW, from business and occupations taxes imposed under chapter 82.04 RCW, and from any assigned risk plan or joint underwriting association otherwise required by law. This section does not apply to and no exemption is provided for insurance companies issuing policies to cover program risks, nor does it apply to or provide an exemption for third-party administrators or insurance producers serving the self-insurance program. [2008 c 217 § 63; 1991 sp.s. c 30 § 15.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.62.161 Establishment of fee to cover costs—Boards—State risk manager. (1) The state risk manager shall establish and charge an investigation fee in an amount necessary to cover the costs for the initial review and approval of a self-insurance program. The fee must accompany the initial submission of the plan of operation and management.

(2) The costs of subsequent reviews and investigations shall be charged to the self-insurance program being reviewed or investigated in accordance with the actual time and expenses incurred in the review or investigation.

(3) After the formation of the two advisory boards, each board may calculate, levy, and collect from each joint property and liability self-insurance program and each individual and joint health and welfare benefit program regulated by this chapter a start-up assessment to pay initial expenses and operating costs of the boards and the risk manager's office in administering this chapter. Any program failing to remit its assessment when due is subject to denial of permission to operate or to a cease and desist order until the assessment is paid. [1991 sp.s. c 30 § 16.]

48.62.171 Dissemination of information—Civil immunity. (1) Any person who files reports or furnishes other information required under Title 48 RCW, required by the risk manager or the state auditor under authority granted by Title 48 RCW, or which is useful to the risk manager or the state auditor in the administration of Title 48 RCW, shall be immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information to the risk manager or to the state auditor, unless actual malice, fraud, or bad faith is shown.

(2) The risk manager and the state auditor, and the agents and employees of each, are immune from liability in any civil action or suit arising from the publication of any report or bulletins or arising from dissemination of information related to the official activities of the risk manager, the advisory

boards, or the state auditor, unless actual malice, fraud, or bad faith is shown.

(3) The immunity granted by this section is in addition to any common law or statutory privilege or immunity enjoyed by such person, and nothing in this section is intended to abrogate or modify in any way such common law or statutory privilege or immunity. [1991 sp.s. c 30 § 17.]

48.62.900 Effective date, implementation, application—1991 sp.s. c 30. (1) This act shall take effect January 1, 1992, but the state risk manager shall take all steps necessary to implement this act on its effective date.

(2) Every individual local government self-insured employee health and welfare plan and self-insurance program that has been in continuous operation for at least one year before January 1, 1992, need not obtain approval to continue operations until January 1, 1993, but must comply with all other provisions of this act.

(3) Local government entity authority to self-insure employee health and welfare benefits applies retroactively to 1979. [1991 sp.s. c 30 § 30.]

48.62.901 Severability—1991 sp.s. c 30. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 sp.s. c 30 § 32.]

Chapter 48.66 RCW

MEDICARE SUPPLEMENTAL HEALTH INSURANCE ACT

Sections

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48.66.900	Severability—1981 c 153.
48.66.910	Effective date—1981 c 153.

48.66.010 Short title—Intent—Application of chapter. This chapter shall be known and may be cited as "The Medicare Supplemental Health Insurance Act" and is

intended to govern the content and sale of medicare supplemental insurance as defined in this chapter. The provisions of this chapter shall apply in addition to, rather than in place of, other requirements of Title 48 RCW. [1981 c 153 § 1.]

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

(1) "Medicare supplemental insurance" or "medicare supplement insurance policy" refers to a group or individual policy of disability insurance or a subscriber contract of a health care service contractor, a health maintenance organization, or a fraternal benefit society, which relates its benefits to medicare, or which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. Such term does not include:

(a) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) A policy issued pursuant to a contract under section 1876 of the federal social security act (42 U.S.C. Sec. 1395 et seq.), or an issued policy under a demonstration specified in 42 U.S.C. Sec. 1395(g)(1); or

(c) Medicare advantage plans established under medicare part C; or

(d) Outpatient prescription drug plans established under medicare part D; or

(e) Any health care prepayment plan that provides benefits pursuant to an agreement under section 1833(a)(1)(A) of the federal social security act.

(2) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(3) "Medicare advantage plan" means a plan of coverage for health benefits under medicare part C as defined in 42 U.S.C. Sec. 1395w-28(b), and includes:

(a) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) Medical savings account plans coupled with a contribution into a medicare advantage plan medical savings account; and

(c) Medicare advantage private fee-for-service plans.

(4) "Medicare eligible expenses" means health care expenses of the kinds covered by medicare parts A and B, to the extent recognized as reasonable and medically necessary by medicare.

(5) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy or subscriber contract, the proposed certificate holder.

(6) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy.

(7) "Loss ratio" means the incurred claims as a percentage of the earned premium computed under rules adopted by the insurance commissioner.

(8) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during a specified time period immediately prior to the effective date of coverage.

(9) "Disclosure form" means the form designated by the insurance commissioner which discloses medicare benefits, the supplemental benefits offered by the insurer, and the remaining amount for which the insured will be responsible.

(10) "Issuer" includes insurance companies, health care service contractors, health maintenance organizations, fraternal benefit societies, and any other entity delivering or issuing for delivery medicare supplement policies or certificates to a resident of this state.

(11) "Bankruptcy" means when a medicare advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(12) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three days.

(13)(a) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(i) A group health plan;

(ii) Health insurance coverage;

(iii) Part A or part B of Title XVIII of the social security act (medicare);

(iv) Title XIX of the social security act (medicaid), other than coverage consisting solely of benefits under section 1928;

(v) Chapter 55 of Title 10 U.S.C. (CHAMPUS);

(vi) A medical care program of the Indian health service or of a tribal organization;

(vii) A state health benefits risk pool;

(viii) A health plan offered under chapter 89 of Title 5 U.S.C. (federal employees health benefits program);

(ix) A public health plan as defined in federal regulation; and

(x) A health benefit plan under section 5(e) of the peace corps act (22 U.S.C. Sec. 2504(e)).

(b) "Creditable coverage" does not include one or more, or any combination, of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Worker's compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; and

(viii) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Creditable coverage" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(iii) Other similar, limited benefits as are specified in federal regulations.

(d) "Creditable coverage" does not include the following benefits if offered as independent, noncoordinated benefits:

(i) Coverage only for a specified disease or illness; and

(ii) Hospital indemnity or other fixed indemnity insurance.

(e) "Creditable coverage" does not include the following if it is offered as a separate policy, certificate, or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the social security act;

(ii) Coverage supplemental to the coverage provided under chapter 55 of Title 10 U.S.C.; and

(iii) Similar supplemental coverage provided to coverage under a group health plan.

(14) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as defined in 29 U.S.C. Sec. 1002 (employee retirement income security act).

(15) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile. [2005 c 41 § 3; 1996 c 269 § 1; 1995 c 85 § 1; 1992 c 138 § 1; 1981 c 153 § 2.]

Intent—2005 c 41: See note following RCW 48.66.025.

Effective date—1996 c 269: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 269 § 2.]

48.66.025 Restrictions on issuers—Age of applicants—Preexisting conditions. (1) An issuer may not deny or condition the issuance or effectiveness of any medicare supplement policy or certificate available for sale in this state, or discriminate in the pricing of a policy or certificate, because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six-month period beginning with the first day of the first month in which an individual is both sixty-five years of age or older and is enrolled for benefits under medicare part B. Each medicare supplement policy and certificate currently available from an insurer must be made available to all applicants who qualify under this subsection without regard to age.

(2) If an applicant qualifies under this section and submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage of at least

three months, the issuer may not exclude benefits based on a preexisting condition.

(3) If an applicant qualified under this section submits an application during the time period referenced in subsection (1) of this section and, as of the date of application, has had a continuous period of creditable coverage that is less than three months, the issuer must reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. [2005 c 41 § 2.]

Intent—2005 c 41: "This act is intended to satisfy the directive from the centers for medicare and medicaid services requiring states to implement changes to their medicare supplement insurance requirements to comply with the standards prescribed by the medicare modernization act that are consistent with amendments to the national association of insurance commissioners medicare supplement insurance minimum standards model act along with other corrections to be compliant with federal requirements." [2005 c 41 § 1.]

48.66.030 Renewability—Benefit standards—Benefit limitations. (1) A medicare supplement insurance policy which provides for the payment of benefits may not be based on standards described as "usual and customary," "reasonable and customary," or words of similar import.

(2) Limitations on benefits, such as policy exclusions or waiting periods, shall be labeled in a separate section of the policy or placed with the benefit provisions to which they apply, rather than being included in other sections of the policy, rider, or endorsement. [1992 c 138 § 2; 1981 c 153 § 3.]

48.66.035 Commissioner's approval required. (1) A medicare supplement insurance policy or certificate form or application form, rider, or endorsement shall not be issued, delivered, or used unless it has been filed with and approved by the commissioner.

(2) Rates, or modification of rates, for medicare supplement policies or certificates shall not be used until filed with and approved by the commissioner.

(3) Every filing shall be received not less than thirty days in advance of any such issuance, delivery, or use. At the expiration of such thirty days the form or rate so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may affirmatively approve or disapprove any such form or rate, by giving notice of such extension before expiration of the initial thirty-day waiting period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form or rate shall be deemed approved. A filing of a form or rate or modification thereto may not be deemed approved unless the filing contains all required documents prescribed by the commissioner. The commissioner may withdraw any such approval at any time for cause. By approval of any such form or rate for immediate use, the commissioner may waive any unexpired portion of such initial thirty-day waiting period.

(4) The commissioner's order disapproving any such form or rate or withdrawing a previous approval shall state the grounds therefor.

(5) A form or rate shall not knowingly be issued, delivered, or used if the commissioner's approval does not then exist. [1992 c 138 § 3.]

48.66.041 Minimum standards required by rule—Waiver. (1) The insurance commissioner shall adopt rules to establish minimum standards for benefits in medicare supplement insurance policies and certificates.

(2) The commissioner shall adopt rules to establish specific standards for medicare supplement insurance policy or certificate provisions. These rules may include but are not limited to:

- (a) Terms of renewability;
- (b) Nonduplication of coverage;
- (c) Benefit limitations, exceptions, and reductions;
- (d) Definitions of terms;
- (e) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (f) Establishing uniform methodology for calculating and reporting loss ratios;
- (g) Assuring public access to policies, premiums, and loss ratio information of an issuer of medicare supplement insurance;
- (h) Establishing a process for approving or disapproving proposed premium increases; and
- (i) Establishing standards for medicare SELECT policies and certificates.

(3) The insurance commissioner may adopt rules that establish disclosure standards for replacement of policies or certificates by persons eligible for medicare.

(4) The insurance commissioner may by rule prescribe that an informational brochure, designed to improve the buyer's understanding of medicare and ability to select the most appropriate coverage, be provided to persons eligible for medicare by reason of age. The commissioner may require that the brochure be provided to applicants concurrently with delivery of the outline of coverage, except with respect to direct response insurance, when the brochure may be provided upon request but no later than the delivery of the policy.

(5) In the case of a state or federally qualified health maintenance organization, the commissioner may waive compliance with one or all provisions of this section until January 1, 1983. [1993 c 388 § 1; 1992 c 138 § 4; 1982 c 200 § 1.]

48.66.045 Mandated coverage for replacement policies—Rates on a community-rated basis. Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized benefit plans B, C, D, E, F, G, K, and L without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, G, K, or L, or

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other more comprehensive coverage than the replacing policy;

(2) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy. After December 31, 2005, plans H, I, and J may be replaced only by the same plan if that plan has been modified to remove outpatient prescription drug coverage; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

- (a) Age; or
- (b) Disability or end-stage renal disease. [2005 c 41 § 4; 2004 c 83 § 1; 1999 c 334 § 1; 1995 c 85 § 3.]

Intent—2005 c 41: See note following RCW 48.66.025.

Severability—2004 c 83: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 83 § 2.]

Effective date—2004 c 83: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 83 § 3.]

Effective date—1999 c 334: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 334 § 2.]

48.66.050 Policy or certificate provisions prohibited by rule—Waivers restricted. (1) The insurance commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unfair, unjust, or unfairly discriminatory to any person insured or proposed to be insured under a medicare supplement insurance policy or certificate.

(2) No medicare supplement insurance policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. [1992 c 138 § 5; 1981 c 153 § 5.]

48.66.055 Termination or disenrollment—Application for coverage—Eligible persons—Types of policies—Guaranteed issue periods. (*Effective until July 1, 2009.*)

(1) Under this section, persons eligible for a medicare supplement policy or certificate are those individuals described in subsection (3) of this section who, subject to subsection (3)(b)(ii) of this section, apply to enroll under the policy not later than sixty-three days after the date of the termination of enrollment described in subsection (3) of this section, and who submit evidence of the date of termination or disenroll-

ment, or medicare part D enrollment, with the application for a medicare supplement policy.

(2) With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a medicare supplement policy described in subsection (4) of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

(3) "Eligible persons" means an individual that meets the requirements of (a), (b), (c), (d), (e), or (f) of this subsection, as follows:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(b)(i) The individual is enrolled with a medicare advantage organization under a medicare advantage plan under part C of medicare, and any of the following circumstances apply, or the individual is sixty-five years of age or older and is enrolled with a program of all inclusive care for the elderly (PACE) provider under section 1894 of the social security act, and there are circumstances similar to those described in this subsection (3)(b) that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a medicare advantage plan:

(A) The certification of the organization or plan has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary of the United States department of health and human services, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal social security act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856 of the federal social security act), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the secretary of the United States department of health and human services, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, an agent, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets other exceptional conditions as the secretary of the United States department of health and human services may provide.

(ii)(A) An individual described in (b)(i) of this subsection may elect to apply (a) of this subsection by substituting, for the date of termination of enrollment, the date on which the individual was notified by the medicare advantage organization of the impending termination or discontinuance of the medicare advantage plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

(B) In the case of an individual making the election under (b)(ii)(A) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection (1) of this section is only effective upon termination of coverage under the medicare advantage plan involved;

(c)(i) The individual is enrolled with:

(A) An eligible organization under a contract under section 1876 (medicare risk or cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) An organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan); or

(D) An organization under a medicare select policy; and

(ii) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under (b)(i) of this subsection;

(d) The individual is enrolled under a medicare supplement policy and the enrollment ceases because:

(i)(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(B) Of other involuntary termination of coverage or enrollment under the policy;

(ii) The issuer of the policy substantially violated a material provision of the policy; or

(iii) The issuer, an agent, or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)(i) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any medicare advantage organization under a medicare advantage plan under part C of medicare, any eligible organization under a contract under section 1876 (medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program under section 1894 of the social security act or a medicare select policy; and

(ii) The subsequent enrollment under (e)(i) of this subsection is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal social security act);

(f) The individual, upon first becoming eligible for benefits under part A of medicare at age sixty-five, enrolls in a medicare advantage plan under part C of medicare, or in a PACE program under section 1894, and disenrolls from the plan or program by not later than twelve months after the effective date of enrollment; or

(g) The individual enrolls in a medicare part D plan during the initial enrollment period and, at the time of enrollment in part D, was enrolled under a medicare supplement policy

that covers outpatient prescription drugs, and the individual terminates enrollment in the medicare supplement policy and submits evidence of enrollment in medicare part D along with the application for a policy described in subsection (4)(d) of this section.

(4) An eligible person under subsection (3) of this section is entitled to a medicare supplement policy as follows:

(a) A person eligible under subsection (3)(a), (b), (c), and (d) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A through F (including F with a high deductible), K, or L, offered by any issuer;

(b)(i) Subject to (b)(ii) of this subsection, a person eligible under subsection (3)(e) of this section is entitled to the same medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in (a) of this subsection;

(ii) After December 31, 2005, if the individual was most recently enrolled in a medicare supplement policy with an outpatient prescription drug benefit, a medicare supplement policy described in this subsection (4)(b)(ii) is:

(A) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(B) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K, or L policy that is offered by any issuer;

(c) A person eligible under subsection (3)(f) of this section is entitled to any medicare supplement policy offered by any issuer; and

(d) A person eligible under subsection (3)(g) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage.

(5)(a) At the time of an event described in subsection (3) of this section, and because of which an individual loses coverage or benefits due to the termination of a contract, agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in subsection (3) of this section, and because of which an individual ceases enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated within ten working days of the issuer receiving notification of disenrollment.

(6) Guaranteed issue time periods:

(a) In the case of an individual described in subsection (3)(a) of this section, the guaranteed issue period begins on the later of: (i) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation), or (ii) the date that the applicable coverage terminates or ceases, and ends sixty-three days thereafter;

(b) In the case of an individual described in subsection (3)(b), (c), (e), or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date the applicable coverage is terminated;

(c) In the case of an individual described in subsection (3)(d)(i) of this section, the guaranteed issue period begins on the earlier of: (i) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(d) In the case of an individual described in subsection (3)(b), (d)(ii) and (iii), (e), or (f) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the date that is sixty-three days after the effective date;

(e) In the case of an individual described in subsection (3)(g) of this section, the guaranteed issue period begins on the date the individual receives notice pursuant to section 1882(v)(2)(B) of the federal social security act from the medicare supplement issuer during the sixty-day period immediately preceding the initial part D enrollment period and ends on the date that is sixty-three days after the effective date of the individual's coverage under medicare part D; and

(f) In the case of an individual described in subsection (3) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three days after the effective date.

(7) In the case of an individual described in subsection (3)(e) of this section whose enrollment with an organization or provider described in subsection (3)(e)(i) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment is an initial enrollment as described in subsection (3)(e) of this section.

(8) In the case of an individual described in subsection (3)(f) of this section whose enrollment with a plan or in a program described in subsection (3)(f) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment is an initial enrollment as described in subsection (3)(f) of this section.

(9) For purposes of subsection (3)(e) and (f) of this section, an enrollment of an individual with an organization or provider described in subsection (3)(e)(i) of this section, or with a plan or in a program described in subsection (3)(f) of

this section is not an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program. [2005 c 41 § 5; 2002 c 300 § 4.]

Intent—2005 c 41: See note following RCW 48.66.025.

48.66.055 Termination or disenrollment—Application for coverage—Eligible persons—Types of policies—Guaranteed issue periods. (Effective July 1, 2009.) (1)

Under this section, persons eligible for a medicare supplement policy or certificate are those individuals described in subsection (3) of this section who, subject to subsection (3)(b)(ii) of this section, apply to enroll under the policy not later than sixty-three days after the date of the termination of enrollment described in subsection (3) of this section, and who submit evidence of the date of termination or disenrollment, or medicare part D enrollment, with the application for a medicare supplement policy.

(2) With respect to eligible persons, an issuer may not deny or condition the issuance or effectiveness of a medicare supplement policy described in subsection (4) of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a medicare supplement policy.

(3) "Eligible persons" means an individual that meets the requirements of (a), (b), (c), (d), (e), or (f) of this subsection, as follows:

(a) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(b)(i) The individual is enrolled with a medicare advantage organization under a medicare advantage plan under part C of medicare, and any of the following circumstances apply, or the individual is sixty-five years of age or older and is enrolled with a program of all inclusive care for the elderly (PACE) provider under section 1894 of the social security act, and there are circumstances similar to those described in this subsection (3)(b) that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a medicare advantage plan:

(A) The certification of the organization or plan has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the secretary of the United States department of health and human services, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal social security act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856 of the federal

social security act), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the secretary of the United States department of health and human services, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, an insurance producer, or other entity acting on the organization's behalf materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets other exceptional conditions as the secretary of the United States department of health and human services may provide.

(ii)(A) An individual described in (b)(i) of this subsection may elect to apply (a) of this subsection by substituting, for the date of termination of enrollment, the date on which the individual was notified by the medicare advantage organization of the impending termination or discontinuance of the medicare advantage plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

(B) In the case of an individual making the election under (b)(ii)(A) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection (1) of this section is only effective upon termination of coverage under the medicare advantage plan involved;

(c)(i) The individual is enrolled with:

(A) An eligible organization under a contract under section 1876 (medicare risk or cost);

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(C) An organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan); or

(D) An organization under a medicare select policy; and

(ii) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under (b)(i) of this subsection;

(d) The individual is enrolled under a medicare supplement policy and the enrollment ceases because:

(i)(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(B) Of other involuntary termination of coverage or enrollment under the policy;

(ii) The issuer of the policy substantially violated a material provision of the policy; or

(iii) The issuer, an insurance producer, or other entity acting on the issuer's behalf materially misrepresented the policy's provisions in marketing the policy to the individual;

(e)(i) The individual was enrolled under a medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any medicare advantage organization under a medicare advantage plan under part C of medicare, any eligible organization under a contract under

section 1876 (medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program under section 1894 of the social security act or a medicare select policy; and

(ii) The subsequent enrollment under (e)(i) of this subsection is terminated by the enrollee during any period within the first twelve months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal social security act);

(f) The individual, upon first becoming eligible for benefits under part A of medicare at age sixty-five, enrolls in a medicare advantage plan under part C of medicare, or in a PACE program under section 1894, and disenrolls from the plan or program by not later than twelve months after the effective date of enrollment; or

(g) The individual enrolls in a medicare part D plan during the initial enrollment period and, at the time of enrollment in part D, was enrolled under a medicare supplement policy that covers outpatient prescription drugs, and the individual terminates enrollment in the medicare supplement policy and submits evidence of enrollment in medicare part D along with the application for a policy described in subsection (4)(d) of this section.

(4) An eligible person under subsection (3) of this section is entitled to a medicare supplement policy as follows:

(a) A person eligible under subsection (3)(a), (b), (c), and (d) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A through F (including F with a high deductible), K, or L, offered by any issuer;

(b)(i) Subject to (b)(ii) of this subsection, a person eligible under subsection (3)(e) of this section is entitled to the same medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in (a) of this subsection;

(ii) After December 31, 2005, if the individual was most recently enrolled in a medicare supplement policy with an outpatient prescription drug benefit, a medicare supplement policy described in this subsection (4)(b)(ii) is:

(A) The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(B) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K, or L policy that is offered by any issuer;

(c) A person eligible under subsection (3)(f) of this section is entitled to any medicare supplement policy offered by any issuer; and

(d) A person eligible under subsection (3)(g) of this section is entitled to a medicare supplement policy that has a benefit package classified as plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage.

(5)(a) At the time of an event described in subsection (3) of this section, and because of which an individual loses coverage or benefits due to the termination of a contract, agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or

the administrator of the plan being terminated, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in subsection (3) of this section, and because of which an individual ceases enrollment under a contract, agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, must notify the individual of his or her rights under this section, and of the obligations of issuers of medicare supplement policies under subsection (1) of this section. The notice must be communicated within ten working days of the issuer receiving notification of disenrollment.

(6) Guaranteed issue time periods:

(a) In the case of an individual described in subsection (3)(a) of this section, the guaranteed issue period begins on the later of: (i) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation), or (ii) the date that the applicable coverage terminates or ceases, and ends sixty-three days thereafter;

(b) In the case of an individual described in subsection (3)(b), (c), (e), or (f) of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date the applicable coverage is terminated;

(c) In the case of an individual described in subsection (3)(d)(i) of this section, the guaranteed issue period begins on the earlier of: (i) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and (ii) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(d) In the case of an individual described in subsection (3)(b), (d)(ii) and (iii), (e), or (f) of this section, who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the date that is sixty-three days after the effective date;

(e) In the case of an individual described in subsection (3)(g) of this section, the guaranteed issue period begins on the date the individual receives notice pursuant to section 1882(v)(2)(B) of the federal social security act from the medicare supplement issuer during the sixty-day period immediately preceding the initial part D enrollment period and ends on the date that is sixty-three days after the effective date of the individual's coverage under medicare part D; and

(f) In the case of an individual described in subsection (3) of this section but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three days after the effective date.

(7) In the case of an individual described in subsection (3)(e) of this section whose enrollment with an organization

or provider described in subsection (3)(e)(i) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls with another organization or provider, the subsequent enrollment is an initial enrollment as described in subsection (3)(e) of this section.

(8) In the case of an individual described in subsection (3)(f) of this section whose enrollment with a plan or in a program described in subsection (3)(f) of this section is involuntarily terminated within the first twelve months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment is an initial enrollment as described in subsection (3)(f) of this section.

(9) For purposes of subsection (3)(e) and (f) of this section, an enrollment of an individual with an organization or provider described in subsection (3)(e)(i) of this section, or with a plan or in a program described in subsection (3)(f) of this section is not an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program. [2008 c 217 § 64; 2005 c 41 § 5; 2002 c 300 § 4.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Intent—2005 c 41: See note following RCW 48.66.025.

48.66.060 Equal coverage of sickness and accidents.

A medicare supplement insurance policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. [1981 c 153 § 6.]

48.66.070 Adjustment of benefits and premiums for medicare cost-sharing. A medicare supplement insurance policy must provide that benefits designed to cover cost-sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes. [1981 c 153 § 7.]

48.66.080 "Benefit period"—"Medicare benefit period"—Minimum requirements. "Benefit period" or "medicare benefit period" may not be defined more restrictively than as defined in the medicare program. [1981 c 153 § 8.]

48.66.090 Guaranteed renewable—Exceptions. All medicare supplement policies must be guaranteed renewable and a medicare supplement insurance policy may not provide that the policy may be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation. All medicare supplement policies and certificates must include a renewal or continuation provision. The language or specifications of such provision must be appropriately captioned, appear on the first page of the policy, and shall include any reservation by the issuer or a right to change premium. [1992 c 138 § 6; 1981 c 153 § 9.]

48.66.100 Loss ratio requirements—Mass sales practices of individual policies. (1) Medicare supplement insurance policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, loss ratios of:

(a) At least seventy-five percent of the aggregate amount of premiums earned in the case of group policies; and

(b) At least sixty-five percent of the aggregate amount of premiums earned in the case of individual policies.

(2) For the purpose of this section, medicare supplement insurance policies issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(3) The insurance commissioner may adopt rules sufficient to accomplish the provisions of this section and may, by such rules, impose more stringent or appropriate loss ratio requirements when it is necessary for the protection of the public interest. [1992 c 138 § 7; 1982 c 200 § 2; 1981 c 153 § 10.]

48.66.110 Disclosure by insurer—Outline of coverage required. In order to provide for full and fair disclosure in the sale of medicare supplement policies, a medicare supplement policy or certificate shall not be delivered in this state unless an outline of coverage is delivered to the potential policyholder not later than the time of application for the policy. [1992 c 138 § 8; 1981 c 153 § 11.]

48.66.120 Return of policy and refund of premium—Notice required—Effect of return. (Effective until July 1, 2009.) Every individual medicare supplement insurance policy issued after January 1, 1982, and every certificate issued pursuant to a group medicare supplement policy after January 1, 1982, shall have prominently displayed on the first page of the policy form or certificate a notice stating in substance that the person to whom the policy or certificate is issued shall be permitted to return the policy or certificate within thirty days of its delivery to the purchaser and to have the premium refunded if, after examination of the policy or certificate, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or agent. If a policyholder or purchaser, pursuant to such notice, returns the policy or certificate to the insurer at its home or branch office or to the agent through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy or certificate had been issued. [1983 1st ex.s. c 32 § 12; 1982 c 200 § 3; 1981 c 153 § 12.]

48.66.120 Return of policy and refund of premium—Notice required—Effect of return. (Effective July 1, 2009.) (1) Every individual medicare supplement insurance policy issued after January 1, 1982, and every certificate issued pursuant to a group medicare supplement policy after January 1, 1982, shall have prominently displayed on the first page of the policy form or certificate a notice stating in substance that the person to whom the policy or certificate is issued shall be permitted to return the policy or certificate within thirty days of its delivery to the purchaser and to have

the premium refunded if, after examination of the policy or certificate, the purchaser is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy to the insurer or insurance producer. If a policyholder or purchaser, pursuant to such notice, returns the policy or certificate to the insurer at its home or branch office or to the insurance producer through whom it was purchased, it shall be void from the beginning and the parties shall be in the same position as if no policy or certificate had been issued.

(2) No later than January 1, 2010, or when the insurer has used all of its existing paper individual medicare supplement insurance policy forms which were in its possession on July 1, 2009, whichever is earlier, the notice required by subsection (1) of this section shall use the term insurance producer in place of agent. [2008 c 217 § 65; 1983 1st ex.s. c 32 § 12; 1982 c 200 § 3; 1981 c 153 § 12.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.66.130 Preexisting condition limitations. (1) On or after January 1, 1996, and notwithstanding any other provision of Title 48 RCW, a medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition.

(2) On or after January 1, 1996, a medicare supplement policy or certificate shall not define a preexisting condition more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician, or other health care provider acting within the scope of his or her license, within three months before the effective date of coverage.

(3) If a medicare supplement insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(4) No exclusion or limitation of preexisting conditions may be applied to policies or certificates replaced in accordance with the provisions of RCW 48.66.045 if the policy or certificate replaced had been in effect for at least three months.

(5) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

(6) If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate which has been in effect for at least three months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits similar to those contained in the original policy or certificate. [2005 c 41 § 6; 2002 c 300 § 3; 1995 c 85 § 2; 1992 c 138 § 9; 1981 c 153 § 13.]

Intent—2005 c 41: See note following RCW 48.66.025.

(2008 Ed.)

48.66.140 Medical history. Any time that completion of a medical history of a patient is required in order for an application for a medicare supplement insurance policy to be accepted, that medical history must be completed by the applicant, a relative of the applicant, a legal guardian of the applicant, or a physician. [1981 c 153 § 14.]

48.66.150 Reporting and recordkeeping, separate data required. Commencing with reports for accounting periods beginning on or after January 1, 1982, insurers, health care service contractors, health maintenance organizations, and fraternal benefit societies shall, for reporting and recordkeeping purposes, separate data concerning medicare supplement insurance policies and contracts from data concerning other disability insurance policies and contracts. [1981 c 153 § 15.]

48.66.160 Federal law supersedes. In any case where the provisions of this chapter conflict with provisions of the "Health Insurance For The Aged Act," Title XVIII of the Social Security Amendments of 1965, or any amendments thereto or regulations promulgated thereunder, regarding any contract between the secretary of health and human services and a health maintenance organization, the provisions of the "Health Insurance For The Aged Act" shall supersede and be paramount. [1981 c 153 § 16.]

48.66.165 Conformity with federal law—Rules. The commissioner may adopt, from time-to-time, such rules as are necessary with respect to medicare supplemental insurance to conform Washington policies, contracts, certificates, standards, and practices to the requirements of federal law, specifically including 42 U.S.C. Sec. 1395ss, and federal regulations adopted thereunder. [1991 c 120 § 1.]

48.66.900 Severability—1981 c 153. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 153 § 17.]

48.66.910 Effective date—1981 c 153. This act shall take effect January 1, 1982. [1981 c 153 § 19.]

Chapter 48.68 RCW

HEALTH CARE SAVINGS ACCOUNT ACT

Sections

48.68.005 Intent—Health care savings accounts authorized.
48.68.010 Duties of governor and responsible agencies—Chapter to remain in effect.

48.68.005 Intent—Health care savings accounts authorized. (1) This chapter shall be known as the health care savings account act.

(2) The legislature recognizes that the costs of health care are increasing rapidly and most individuals are removed from participating in the purchase of their health care.

As a result, it becomes critical to encourage and support solutions to alleviate the demand for diminishing state

resources. In response to these increasing costs in health care spending, the legislature intends to clarify that health care savings accounts may be offered as health benefit options to all residents as incentives to reduce unnecessary health services utilization, administration, and paperwork, and to encourage individuals to be in charge of and participate directly in their use of service and health care spending. To alleviate the possible impoverishment of residents requiring long-term care, health care savings accounts may promote savings for long-term care and provide incentives for individuals to protect themselves from financial hardship due to a long-term health care need.

(3) Health care savings accounts are authorized in Washington state as options to employers and residents. [1995 c 265 § 2.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

48.68.010 Duties of governor and responsible agencies—Chapter to remain in effect. The governor and responsible agencies shall:

(1) Request that the United States congress amend the internal revenue code to treat premiums and contributions to health benefits plans, such as health care savings account programs, basic health plans, conventional and standard health plans offered through a health carrier, by employers, self-employed persons, and individuals, as fully excluded employer expenses and deductible from individual adjusted gross income for federal tax purposes.

(2) Request that the United States congress amend the internal revenue code to exempt from federal income tax interest that accrues in health care savings accounts until such money is withdrawn for expenditures other than eligible health expenses as defined in law.

(3) If all federal statute or regulatory waivers necessary to fully implement this chapter have not been obtained by July 1, 1995, this chapter shall remain in effect. [1995 c 265 § 3.]

Captions not law—Effective dates—Savings—Severability—1995 c 265: See notes following RCW 70.47.015.

Chapter 48.70 RCW

SPECIFIED DISEASE INSURANCE ACT

Sections

48.70.010	Legislative intent.
48.70.020	Definitions—Rules.
48.70.030	Expected returns to policyholders—Rules.
48.70.040	Rules required.
48.70.900	Application of chapter.
48.70.910	Severability—1982 c 181.

48.70.010 Legislative intent. This chapter shall be known as the specified disease insurance act and is intended to govern the content and sale of specified disease insurance as defined in this chapter. This chapter applies in addition to, rather than in place of, other requirements of Title 48 RCW. It is the intent of the legislature to guarantee that specified disease policies issued, delivered, or used in this state provide a reasonable level of benefits to the policyholders. This chapter shall be applied broadly to ensure achievement of its aim. [1982 c 181 § 20.]

[Title 48 RCW—page 412]

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

(1) "Specified disease policy" refers to any insurance policy or contract which provides benefits to a policyholder only in the event that the policyholder contracts the disease or diseases specifically named in the policy.

(2) "Loss ratio" means the incurred claims as a percentage of the earned premium, computed under rules adopted by the commissioner. Earned premiums and incurred claims shall be computed under rules adopted by the commissioner. [1982 c 181 § 21.]

48.70.030 Expected returns to policyholders—Rules.

(1) Commencing with reports for the accounting periods beginning on or after July 1, 1983, specified disease policies shall be expected to return to policyholders in the form of aggregate loss ratios under the policy:

(a) At least seventy-five percent of the earned premiums in the case of group policies; and

(b) At least sixty percent of the earned premiums in the case of individual policies.

(2) For the purpose of this section, specified disease insurance policies issued as a result of solicitation of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

(3) By July 1, 1983, the commissioner shall adopt rules sufficient to accomplish the provisions of this section. [1982 c 181 § 22.]

48.70.040 Rules required. By July 1, 1983, the commissioner shall adopt all rules necessary to ensure that specified disease policies provide a reasonable level of benefits to policyholders, and that purchasers and potential purchasers of such policies are fully informed of the level of benefits provided. [1982 c 181 § 23.]

48.70.900 Application of chapter. This chapter shall apply to all policies issued on or after July 1, 1983. This chapter shall not apply to services provided by health care service contractors as defined in RCW 48.44.010. [1982 c 181 § 24.]

48.70.910 Severability—1982 c 181. See note following RCW 48.03.010.

Chapter 48.74 RCW

STANDARD VALUATION LAW

Sections

48.74.010	Short title—"NAIC" defined.
48.74.020	Valuation of reserve liabilities.
48.74.025	Reserves and related actuarial items—Opinion of a qualified actuary—Requirements for the opinion—Rules.
48.74.030	Minimum standard for valuation.
48.74.040	Amount of reserves required.
48.74.050	Minimum aggregate reserves.
48.74.060	Other methods of reserve calculation.
48.74.070	Minimum reserve if gross premium less than valuation net premium.
48.74.080	Procedure when specified methods of reserve determination unfeasible.
48.74.090	Valuation of disability insurance.

(2008 Ed.)

48.74.010 Short title—"NAIC" defined. This chapter may be known and cited as the standard valuation law. As used in this chapter, "NAIC" means the National Association of Insurance Commissioners. [1982 1st ex.s. c 9 § 1.]

48.74.020 Valuation of reserve liabilities. The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods, including net level premium method or other, used in the calculation of such reserves. In calculating such reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard provided in this chapter and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction. [1982 1st ex.s. c 9 § 2.]

48.74.025 Reserves and related actuarial items—Opinion of a qualified actuary—Requirements for the opinion—Rules. (1) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(2)(a) Every life insurance company, except as exempted by rule, shall also include in the opinion required under subsection (1) of this section an opinion as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(b) The commissioner may provide by rule for a transition period for establishing higher reserves that the qualified actuary may deem necessary in order to render the opinion required by this section.

(3) Each opinion required under subsection (2) of this section is governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or if the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(4) A memorandum in support of the opinion, and other material provided by the company to the commissioner in connection with it, must be kept confidential by the commissioner and may not be made public and is not subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of an action required by this section or by rules adopted under it. However, the commissioner may otherwise release the memorandum or other material (a) with the written consent of the company or (b) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum are no longer confidential.

(5) Each opinion required under this section is governed by the following provisions:

(a) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1994.

(b) The opinion applies to all business in force, including individual and group disability insurance, in form and substance acceptable to the commissioner as specified by rule.

(c) The opinion must be based on standards adopted by the commissioner, who in setting the standards shall give due regard to the standards established by the actuarial standards board or its successors.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(e) For purposes of this section, "qualified actuary" means a person who meets qualifications set by the commissioner with due regard to the qualifications established for membership in the American Academy of Actuaries or its successors.

(f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(g) Rules adopted by the commissioner shall define disciplinary action by the commissioner against the company or the qualified actuary. [1993 c 462 § 85.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.030 Minimum standard for valuation. (1) Except as otherwise provided in subsections (2) and (3) of this section, or in RCW 48.74.090, the minimum standard for the valuation of all such policies and contracts issued prior to July 10, 1982, shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (2) and (3) of this section, or in RCW 48.74.090, the minimum standard for the valuation of all such policies and contracts issued on or after July 10, 1982, shall be the commissioner's reserve valuation methods defined in RCW 48.74.040, 48.74.070, and 48.74.090, three and one-half percent interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after July 16, 1973, four percent interest for such policies issued prior to September 1, 1979, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after September 1, 1979, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies—the commissioner's 1941 standard ordinary mortality table for such policies issued prior to the operative date of *RCW 48.23.350(5a) and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after such operative date and prior to the operative date of RCW 48.76.050(4), except that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this chapter may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of RCW 48.76.050(4): (i) The commissioner's 1980 standard ordinary mortality table; or (ii) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors; or (iii) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies—the 1941 standard industrial mortality table for such policies issued prior to the operative date of *RCW 48.23.350(5b), and for such policies issued on or after such operative date the commissioner's 1961 standard industrial mortality table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule of the commissioner for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the 1937 standard annuity mortality table

or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies—the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the class (3) disability table (1926); and for policies issued prior to January 1, 1961, the class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies—for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the intercompany double indemnity mortality table; and for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits—such tables as may be approved by the commissioner.

(2) Except as provided in subsection (3) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after July 10, 1982, and for all annuities and pure endowments purchased on or after such effective date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in RCW 48.74.040 and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued before September 1, 1979, excluding any disability and accidental death benefit in such contracts—the 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after September 1, 1979, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

(c) For individual annuity and pure endowment contracts issued on or after September 1, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts—the 1971 individual annuity mortality table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to September 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest.

(e) For all annuities and pure endowments purchased on or after September 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts—the 1971 group annuity mortality table or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

After July 16, 1973, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1979.

(3)(a) The interest rates used in determining the minimum standard for the valuation of:

(i) All life insurance policies issued in a particular calendar year, on or after the operative date of RCW 48.76.050(4);

(ii) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(iii) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(iv) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed

interest contracts shall be the calendar year statutory valuation interest rates as defined in this section.

(b) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(i) For life insurance:

$$I = .03 + W (R_1 - .03) + W/2 (R_2 - .09);$$

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and .09,

R_2 is the greater of R and .09,

R is the reference interest rate defined in this section, and W is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (ii) of this subparagraph, the formula for life insurance stated in (i) of this subparagraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (ii) of this subparagraph shall apply.

(c) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1983 using the reference interest rate defined for 1982 and shall be determined for each subsequent calendar year regardless of when RCW 48.76.050(4) becomes operative.

(d) The weighting factors referred to in the formulas stated in subparagraph (b) of this subsection are given in the following tables:

(i) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (ii) of this subparagraph, shall be as specified in (d)(iii)(A), (B), and (C) of this subsection, according to the rules and definitions in (d)(iii)(D), (E), and (F) of this subsection:

(A) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(B) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (d)(iii)(A) of this subsection increased by:

	Plan Type		
A	B	C	
.15	.25	.05	

(C) For annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in (d)(iii)(A) of this subsection or derived in (d)(iii)(B) of this subsection increased by:

	Plan Type		
A	B	C	
.05	.05	.05	

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(E) Plan type as used in the tables in (d)(iii)(A), (B), and (C) of this subsection is defined as follows:

Plan Type A: At any time a policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, a policyholder may withdraw funds only: (1) With adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(F) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract. The change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(e) The reference interest rate referred to in subparagraphs (b) and (c) of this subsection is defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30th of the calendar year next preceding the year of issue, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30th of the calendar year of issue or year of purchase of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) of this

subparagraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) of this subparagraph, with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30th of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (ii) of this subparagraph, the average over a period of twelve months, ending on June 30th of the calendar year of the change in the fund, of Moody's corporate bond yield average—monthly average corporates, as published by Moody's Investors Service, Inc.

(f) If Moody's corporate bond yield average—monthly average corporates is no longer published by Moody's Investors Service, Inc., or if the National Association of Insurance Commissioners determines that Moody's corporate bond yield average—monthly average corporates as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by rule adopted by the commissioner, may be substituted. [1993 c 462 § 86; 1982 1st ex.s. c 9 § 3.]

*Reviser's note: RCW 48.23.350 was repealed by 1982 1st ex.s. c 9 § 36. For later enactment, see chapter 48.76 RCW.

48.74.040 Amount of reserves required. (1) Except as otherwise provided in RCW 48.74.040(2), 48.74.070, and 48.74.090, reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after

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the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: PROVIDED HOWEVER, That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year: PROVIDED, That for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in RCW 48.74.070, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph of this subsection and the reserve as of such policy anniversary calculated as described in that paragraph, but with: (i) The value defined in subparagraph (a) of that paragraph being reduced by fifteen percent of the amount of such excess first year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in RCW 48.74.030 (1) and (3) shall be used.

Reserves according to the commissioner's reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, disability and accidental death benefits in all policies and contracts, and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this subsection.

(2) This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retire-

ment annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values. [1993 c 462 § 87; 1982 1st ex.s. c 9 § 4.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.050 Minimum aggregate reserves. (1) In no event may a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after July 10, 1982, be less than the aggregate reserves calculated in accordance with the methods set forth in RCW 48.74.040, 48.74.070, and 48.74.080 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event may the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required under RCW 48.74.025. [1993 c 462 § 88; 1982 1st ex.s. c 9 § 5.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.060 Other methods of reserve calculation. Reserves for all policies and contracts issued prior to the operative date of this chapter, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts, or benefits as established by the commissioner, issued on or after July 10, 1982, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner,

adopt any lower standard of valuation, but not lower than the minimum herein provided. For the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required under RCW 48.74.025 is not to be the adoption of a higher standard of valuation. [1993 c 462 § 89; 1982 1st ex.s. c 9 § 6.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.74.070 Minimum reserve if gross premium less than valuation net premium. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in RCW 48.74.030 (1) and (3): PROVIDED, That for any life insurance policy issued on or after January 1, 1986, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this section shall be applied as if the method actually used in calculating the reserve for such policy were the method described in RCW 48.74.040, ignoring the second paragraph of that section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with RCW 48.74.040, including the second paragraph of that section, and the minimum reserve calculated in accordance with this section. [1982 1st ex.s. c 9 § 7.]

48.74.080 Procedure when specified methods of reserve determination unfeasible. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in RCW 48.74.040 and 48.74.070, the reserves which are held under any such plan must, under regulations promulgated by the commissioner:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) Be computed by a method which is consistent with the principles of this standard valuation law. [1982 1st ex.s. c 9 § 8.]

48.74.090 Valuation of disability insurance. The commissioner shall adopt rules containing the minimum standards applicable to the valuation of disability insurance. [1993 c 462 § 90.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.76 RCW

STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE

Sections

48.76.010	Short title—"NAIC" defined.
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48.76.100	Operative date of chapter.

48.76.010 Short title—"NAIC" defined. This chapter may be known and cited as the standard nonforfeiture law for life insurance. As used in this chapter, "NAIC" means the National Association of Insurance Commissioners. [1982 1st ex.s. c 9 § 10.]

48.76.020 Nonforfeiture and cash surrender provisions required. In the case of policies issued on and after the operative date of this chapter as defined in RCW 48.76.100, no policy of life insurance, except as stated in RCW 48.76.090, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified in this chapter and are essentially in compliance with RCW 48.76.080:

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be specified in this chapter. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(2) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance or five full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this chapter.

(3) That a specified paid-up nonforfeiture benefit becomes effective as specified in the policy unless the person

entitled to make such election elects another available option not later than sixty days after the due date of the premium in default.

(4) That if the policy has become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be specified in this chapter.

(5) That policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy. [1982 1st ex.s. c 9 § 11.]

48.76.030 Amount of cash surrender value. (1) Subject to subsections (2) and (3) of this section, any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by RCW 48.76.020, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have

been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of the then present value of the adjusted premiums as defined in RCW 48.76.050, corresponding to premiums which would have fallen due on and after such anniversary, and the amount of any indebtedness to the company on the policy.

(2) For any policy issued on or after the operative date of RCW 48.76.050(4), which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) of this section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

(3) For any family policy issued on or after the operative date of RCW 48.76.050(4), which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value shall be an amount not less than the sum of the cash surrender value as defined in this section for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in this section for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(4) Any cash surrender value available within thirty days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by RCW 48.76.020, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy. [1982 1st ex.s. c 9 § 12.]

48.76.040 Nonforfeiture benefit in case of premium default. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary is at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this chapter in the absence of the condition that premiums shall have been paid for at least a specified period. [1982 1st ex.s. c 9 § 13.]

48.76.050 Calculation of adjusted premiums—Operative date of section. (1)(a) This subsection does not apply to policies issued on or after the operative date of subsection (4) of this section. Except as provided in subparagraph (c) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such

adjusted premiums shall be equal to the sum of: (i) The then present value of the future guaranteed benefits provided for by the policy; (ii) two percent of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent of the adjusted premium for the first policy year; (iv) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: PROVIDED, That in applying the percentages specified in subparagraph (a)(iii) and (iv) of this subsection, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or level amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this section shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy: PROVIDED HOWEVER, That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to: (i) The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, subparagraph (c)(i) and (ii) of this subsection being calculated separately and as specified in subparagraphs (a) and (b) of this subsection except that, for the purposes of subparagraph (a)(ii), (a)(iii), and (a)(iv) of this subsection, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in subparagraph (c)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in subparagraph (c)(i) of this subsection.

(d) Except as otherwise provided in subsections (2) and (3) of this section, all adjusted premiums and present values referred to in this chapter shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table: PROVIDED, That for any category of ordinary insurance issued on female risks on or after July 1, 1957, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table.

All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: PROVIDED, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent of the rates of mortality according to such applicable table: PROVIDED, FURTHER, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(2) This subsection does not apply to ordinary policies issued on or after the operative date of subsection (4) of this section. In the case of ordinary policies issued on or after the operative date of this section, all adjusted premiums and present values referred to in this chapter shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 16, 1973, and before September 1, 1979, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after September 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: PROVIDED, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table: PROVIDED FURTHER, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After June 11, 1959, any company may file with the commissioner a written notice of its election to comply with the provisions of this section. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such company), this subsection shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1966.

(3) This subsection does not apply to industrial policies issued on or after the operative date of subsection (4) of this section. In the case of industrial policies issued on or after the operative date of this chapter, all adjusted premiums and present values referred to in this chapter shall be calculated on the basis of the commissioner's 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture

benefits provided that such rate of interest shall not exceed three and one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after July 16, 1973, and prior to September 1, 1979, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after September 1, 1979, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used: PROVIDED, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 industrial extended term insurance table: PROVIDED FURTHER, That for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of this section. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such company), this subsection shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1968.

(4)(a) This section applies to all policies issued on or after the operative date of this subsection as defined herein. Except as provided in subparagraph (g) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of: (i) The then present value of the future guaranteed benefits provided for by the policy; (ii) one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and (iii) one hundred twenty-five percent of the nonforfeiture net level premium as defined in subparagraph (b) of this subsection: PROVIDED, That in applying the percentage specified in (iii) of this subparagraph no nonforfeiture net level premium shall be deemed to exceed four percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy

and on each anniversary of such policy on which a premium falls due.

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(d) Except as otherwise provided in subparagraph (g) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (i) the sum of (A) the then present value of the then future guaranteed benefits provided for by the policy and (B) the additional expense allowance, if any, over (ii) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of: (i) One percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five percent of the increase, if positive, in the nonforfeiture net level premium.

(f) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (i) by (ii) where:

(i) Equals the sum of:

(A) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(B) The present value of the increase in future guaranteed benefits provided for by the policy; and

(ii) Equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(g) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the

standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(h) All adjusted premiums and present values referred to in this chapter shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1980 standard ordinary mortality table or at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors, shall for all policies of industrial insurance be calculated on the basis of the commissioner's 1961 standard industrial mortality table, and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section, for policies issued in that calendar year, subject to the following provisions:

(i) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.

(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by RCW 48.76.020, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(iii) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(iv) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

(v) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(vi) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(vii) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(i) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law (chapter 48.74 RCW), rounded to the nearer one quarter of one percent.

(j) Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(k) After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provision[s] of this section after a specified date before January 1, 1989, which shall be the operative date of this section for such company. If a company makes no such election, the operative date of this section for such company shall be January 1, 1989. [1982 1st ex.s. c 9 § 14.]

48.76.060 Requirements when specified methods of minimum values determination unfeasible. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in RCW 48.76.020 through 48.76.050, then:

(1) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by RCW 48.76.020 through 48.76.050;

(2) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this chapter, as determined by regulations promulgated by the commissioner. [1982 1st ex.s. c 9 § 15.]

48.76.070 Calculation of cash surrender value and paid-up nonforfeiture benefit. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in RCW 48.76.030 through 48.76.050 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of RCW 48.76.030, additional benefits payable: (1) In the event of death or dismemberment by accident or accidental means; (2) in the event of total and permanent disability; (3) as reversionary annuity or deferred reversionary annuity benefits; (4)

as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this chapter would not apply; (5) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child; and (6) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this chapter, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits. [1982 1st ex.s. c 9 § 16.]

48.76.080 Cash surrender value required for policies issued on or after January 1, 1986. (1) This section, in addition to all other applicable sections of this chapter, shall apply to all policies issued on or after January 1, 1986. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of: (a) The greater of zero and the basic cash value specified in subsection (2) of this section; and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

(2) The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as defined in subsection (3) of this section, corresponding to premiums which would have fallen due on and after such anniversary: PROVIDED, That the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in RCW 48.76.030 or 48.76.050(4), whichever is applicable, shall be the same as are the effects specified in RCW 48.76.030 or 48.76.050(4), whichever is applicable, on the cash surrender values defined in that section.

(3) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in RCW 48.76.050 (1) or (4). Except as is required by the next succeeding sentence of this paragraph, such percentage:

(a) Must be the same percentage for each policy year between the second policy anniversary and the later of: (i) The fifth policy anniversary; and (ii) The first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and

(b) Must be such that no percentage after the later of the two policy anniversaries specified in subparagraph (a) of this

subsection may apply to fewer than five consecutive policy years: PROVIDED, That no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in RCW 48.76.050 (1) or (4), whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(4) All adjusted premiums and present values referred to in this section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this chapter. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

(5) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in RCW 48.76.020 through 48.76.040, 48.76.050(4), and 48.76.070. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in RCW 48.76.070 shall conform with the principles of this section. [1982 1st ex.s. c 9 § 17.]

48.76.090 Chapter inapplicable to certain policies. (Effective until July 1, 2009.) This chapter does not apply to any of the following:

- (1) Reinsurance;
- (2) Group insurance;
- (3) A pure endowment;
- (4) An annuity or reversionary annuity contract;
- (5) A term policy of a uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(6) A term policy of a decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in RCW 48.76.050, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in RCW 48.76.030 through 48.76.050, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor

(8) A policy which is delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this chapter, the age at expiration for a joint term life insurance

policy is the age at expiration of the oldest life. [1982 1st ex.s. c 9 § 18.]

48.76.090 Chapter inapplicable to certain policies. (Effective July 1, 2009.) This chapter does not apply to any of the following:

- (1) Reinsurance;
- (2) Group insurance;
- (3) A pure endowment;
- (4) An annuity or reversionary annuity contract;
- (5) A term policy of a uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(6) A term policy of a decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in RCW 48.76.050, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;

(7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in RCW 48.76.030 through 48.76.050, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year; nor

(8) A policy which is delivered outside this state through an insurance producer or other representative of the company issuing the policy.

For purposes of determining the applicability of this chapter, the age at expiration for a joint term life insurance policy is the age at expiration of the oldest life. [2008 c 217 § 66; 1982 1st ex.s. c 9 § 18.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.76.100 Operative date of chapter. After July 10, 1982, any company may file with the commissioner a written notice of its election to comply with the provisions of this chapter. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this chapter becomes operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this chapter for such company shall be January 1, 1948. [1982 1st ex.s. c 9 § 19.]

Chapter 48.80 RCW

HEALTH CARE FALSE CLAIM ACT

Sections

48.80.010	Legislative finding—Short title.
48.80.020	Definitions.
48.80.030	Making false claims, concealing information—Penalty—Exclusions.
48.80.040	Use of circumstantial evidence.
48.80.050	Civil action not limited.

48.80.060 Conviction of provider, notification to regulatory agency.
48.80.900 Severability—1986 c 243.

48.80.010 Legislative finding—Short title. The legislature finds and declares that the welfare of the citizens of this state is threatened by the spiraling increases in the cost of health care. It is further recognized that fraudulent health care claims contribute to these increases in health care costs. In recognition of these findings, it is declared that special attention must be directed at eliminating the unjustifiable costs of fraudulent health care claims by establishing specific penalties and deterrents. This chapter may be known and cited as "the health care false claim act." [1986 c 243 § 1.]

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

(1) "Claim" means any attempt to cause a health care payer to make a health care payment.

(2) "Deceptive" means presenting a claim to a health care payer that contains a statement of fact or fails to reveal a material fact, leading the health care payer to believe that the represented or suggested state of affairs is other than it actually is. For the purposes of this chapter, the determination of what constitutes a material fact is a question of law to be resolved by the court.

(3) "False" means wholly or partially untrue or deceptive.

(4) "Health care payment" means a payment for health care services or the right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service.

(5) "Health care payer" means any insurance company authorized to provide health insurance in this state, any health care service contractor authorized under chapter 48.44 RCW, any health maintenance organization authorized under chapter 48.46 RCW, any legal entity which is self-insured and providing health care benefits to its employees, and any insurer or other person responsible for paying for health care services.

(6) "Person" means an individual, corporation, partnership, association, or other legal entity.

(7) "Provider" means any person lawfully licensed or authorized to render any health service. [1995 c 285 § 25; 1986 c 243 § 2.]

Effective date—1995 c 285: See RCW 48.30A.900.

48.80.030 Making false claims, concealing information—Penalty—Exclusions. (1) A person shall not make or present or cause to be made or presented to a health care payer a claim for a health care payment knowing the claim to be false.

(2) No person shall knowingly present to a health care payer a claim for a health care payment that falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards. Each claim that violates this subsection shall constitute a separate offense.

(3) No person shall knowingly make a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment. Each

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claim that violates this subsection shall constitute a separate violation.

(4) No person shall conceal the occurrence of any event affecting his or her initial or continued right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service. A person shall not conceal or fail to disclose any information with intent to obtain a health care payment to which the person or any other person is not entitled, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled.

(5) No provider shall willfully collect or attempt to collect an amount from an insured knowing that to be in violation of an agreement or contract with a health care payor to which the provider is a party.

(6) A person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(7) This section does not apply to statements made on an application for coverage under a contract or certificate of health care coverage issued by an insurer, health care service contractor, health maintenance organization, or other legal entity which is self-insured and providing health care benefits to its employees. [1990 c 119 § 11; 1986 c 243 § 3.]

48.80.040 Use of circumstantial evidence. In a prosecution under this chapter, circumstantial evidence may be presented to demonstrate that a false statement or claim was knowingly made. Such evidence may include but shall not be limited to the following circumstances:

(1) Where a claim for a health care payment is submitted with the person's actual, facsimile, stamped, typewritten, or similar signature on the form required for the making of a claim for health care payment; and

(2) Where a claim for a health care payment is submitted by means of computer billing tapes or other electronic means if the person has advised the health care payer in writing that claims for health care payment will be submitted by use of computer billing tapes or other electronic means. [1986 c 243 § 4.]

48.80.050 Civil action not limited. This chapter shall not be construed to prohibit or limit a prosecution of or civil action against a person for the violation of any other law of this state. [1986 c 243 § 5.]

48.80.060 Conviction of provider, notification to regulatory agency. Upon the conviction under this chapter of any provider, the prosecutor shall provide written notification to the appropriate regulatory or disciplinary agency of such conviction. [1986 c 243 § 6.]

48.80.900 Severability—1986 c 243. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 243 § 7.]

Chapter 48.83 RCW

LONG-TERM CARE INSURANCE
COVERAGE—STANDARDS

Sections

48.83.005	Intent.
48.83.010	Application.
48.83.020	Definitions.
48.83.030	Out-of-state policy—Restriction.
48.83.040	Preexisting conditions.
48.83.050	Prohibited policy terms and practices—Field-issued, defined.
48.83.060	Right to return policy or certificate—Refund.
48.83.070	Required documents for prospective and approved applicants—Contents—When due.
48.83.080	Benefit funded through life insurance policy—Acceleration of a death benefit.
48.83.090	Denial of claims—Written explanation.
48.83.100	Rescission of policy or certificate.
48.83.110	Inflation protection features—Rules.
48.83.120	Nonforfeiture benefit option—Offer required—Rules.
48.83.130	Selling, soliciting, or negotiating coverage—Licensed insurance producers—Training—Issuers duties—Rules.
48.83.140	Determining whether coverage is appropriate—Suitability standards—Information protected—Rules.
48.83.150	Prohibited practices.
48.83.160	Violations—Fine.
48.83.170	Rules, generally.
48.83.900	Severability—2008 c 145.
48.83.901	Effective date—2008 c 145.

48.83.005 Intent. (*Effective January 1, 2009.*) The intent of this chapter is to promote the public interest, support the availability of long-term care coverage, establish standards for long-term care coverage, facilitate public understanding and comparison of long-term care contract benefits, protect persons insured under long-term care insurance policies and certificates, protect applicants for long-term care policies from unfair or deceptive sales or enrollment practices, and provide for flexibility and innovation in the development of long-term care insurance coverage. [2008 c 145 § 1.]

48.83.010 Application. (*Effective January 1, 2009.*) This chapter applies to all long-term care insurance policies, contracts, or riders delivered or issued for delivery in this state on or after January 1, 2009. This chapter does not supersede the obligations of entities subject to this chapter to comply with other applicable laws to the extent that they do not conflict with this chapter, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

(1) Coverage advertised, marketed, or offered as long-term care insurance shall comply with the provisions of this chapter. Any coverage, policy, or rider advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this chapter.

(2) Individual and group long-term care contracts issued prior to January 1, 2009, remain governed by chapter 48.84 RCW and rules adopted thereunder.

(3) This chapter is not intended to prohibit approval of long-term care funded through life insurance. [2008 c 145 § 2.]

48.83.020 Definitions. (*Effective January 1, 2009.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means: (a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and (b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" includes any certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.

(3) "Commissioner" means the insurance commissioner of Washington state.

(4) "Issuer" includes insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations, or other entity delivering or issuing for delivery any long-term care insurance policy, contract, or rider.

(5) "Long-term care insurance" means an insurance policy, contract, or rider that is advertised, marketed, offered, or designed to provide coverage for at least twelve consecutive months for a covered person. Long-term care insurance may be on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. Long-term care insurance includes any policy, contract, or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.

(a) Long-term care insurance includes group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care insurance. However, long-term care insurance does not include life insurance policies that: (i) Accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement; (ii) provide the option of a lump-sum payment for those benefits; and (iii) do not condition the benefits or the eligibility for the benefits upon the receipt of long-term care.

(b) Long-term care insurance also includes qualified long-term care insurance contracts.

(c) Long-term care insurance does not include any insurance policy, contract, or rider that is offered primarily to provide coverage for basic medicare supplement, basic hospital expense, basic medical-surgical expense, hospital confinement indemnity, major medical expense, disability income, related income, asset protection, accident only, specified disease, specified accident, or limited benefit health.

(6) "Group long-term care insurance" means a long-term care insurance policy or contract that is delivered or issued for delivery in this state and is issued to:

(a) One or more employers; one or more labor organizations; or a trust or the trustees of a fund established by one or more employers or labor organizations for current or former employees, current or former members of the labor organizations, or a combination of current and former employees or members, or a combination of such employers, labor organizations, trusts, or trustees; or

(b) A professional, trade, or occupational association for its members or former or retired members, if the association:

(i) Is composed of persons who are or were all actively engaged in the same profession, trade, or occupation; and

(ii) Has been maintained in good faith for purposes other than obtaining insurance; or

(c)(i) An association, trust, or the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Before advertising, marketing, or offering long-term care coverage in this state, the association or associations, or the insurer of the association or associations, must file evidence with the commissioner that the association or associations have at the time of such filing at least one hundred persons who are members and that the association or associations have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws that provide that:

(A) The association or associations hold regular meetings at least annually to further the purposes of the members;

(B) Except for credit unions, the association or associations collect dues or solicit contributions from members; and

(C) The members have voting privileges and representation on the governing board and committees of the association.

(ii) Thirty days after filing the evidence in accordance with this section, the association or associations will be deemed to have satisfied the organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements; [or]

(d) A group other than as described in (a), (b), or (c) of this subsection subject to a finding by the commissioner that:

(i) The issuance of the group policy is not contrary to the best interest of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premiums charged.

(7) "Policy" includes a document such as an insurance policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, health care service contractor, health maintenance organization, or any similar entity authorized by the insurance commissioner to transact the business of long-term care insurance.

(8) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means:

(a) An individual or group insurance contract that meets the requirements of section 7702B(b) of the internal revenue code of 1986, as amended; or

(b) The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of sections 7702B(b) and (e) of the internal revenue code of 1986, as amended. [2008 c 145 § 3.]

48.83.030 Out-of-state policy—Restriction. (*Effective January 1, 2009.*) A group long-term care insurance policy may not be offered to a resident of this state under a group policy issued in another state to a group described in RCW 48.83.020(6)(d), unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state has made a

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determination that such requirements have been met. [2008 c 145 § 4.]

48.83.040 Preexisting conditions. (*Effective January 1, 2009.*) (1) A long-term care insurance policy or certificate may not define "preexisting condition" more restrictively than as a condition for which medical advice or treatment was recommended by or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person, unless the policy or certificate applies to group long-term care insurance under RCW 48.83.020(6) (a), (b), or (c).

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured person, unless the policy or certificate applies to a group as defined in RCW 48.83.020(6)(a).

(3) The commissioner may extend the limitation periods for specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(4) An issuer may use an application form designed to elicit the complete health history of an applicant and underwrite in accordance with that issuer's established underwriting standards, based on the answers on that application. Unless otherwise provided in the policy or certificate and regardless of whether it is disclosed on the application, a preexisting condition need not be covered until the waiting period expires.

(5) A long-term care insurance policy or certificate may not exclude or use waivers or riders to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period. [2008 c 145 § 5.]

48.83.050 Prohibited policy terms and practices—Field-issued, defined. (*Effective January 1, 2009.*) No long-term care insurance policy may:

(1) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder;

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care;

(4) Condition eligibility for any benefits on a prior hospitalization requirement;

(5) Condition eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care;

(6) Condition eligibility for any benefits other than waiver of premium, postconfinement, postacute care, or recuperative benefits on a prior institutionalization requirement;

(7) Include a postconfinement, postacute care, or recuperative benefit unless:

(a) Such requirement is clearly labeled in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits"; and

(b) Such limitations or conditions specify any required number of days of preconfinement or postconfinement;

(8) Condition eligibility for noninstitutional benefits on the prior receipt of institutional care;

(9) A long-term care insurance policy or certificate may be field-issued if the compensation to the field issuer is not based on the number of policies or certificates issued. For purposes of this section, "field-issued" means a policy or certificate issued by a producer or a third-party administrator of the policy pursuant to the underwriting authority by an issuer and using the issuer's underwriting guidelines. [2008 c 145 § 6.]

48.83.060 Right to return policy or certificate—Refund. (Effective January 1, 2009.) (1) Long-term care insurance applicants may return a policy or certificate for any reason within thirty days after its delivery and to have the premium refunded.

(2) All long-term care insurance policies and certificates shall have a notice prominently printed on or attached to the first page of the policy stating that the applicant may return the policy or certificate within thirty days after its delivery and to have the premium refunded.

(3) Refunds or denials of applications must be made within thirty days of the return or denial.

(4) This section shall not apply to certificates issued pursuant to a policy issued to a group defined in RCW 48.83.020(6)(a). [2008 c 145 § 7.]

48.83.070 Required documents for prospective and approved applicants—Contents—When due. (Effective January 1, 2009.) (1) An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

(a) The commissioner must prescribe a standard format, including style, arrangement, overall appearance, and the content of an outline of coverage.

(b) When an insurance producer makes a solicitation in person, he or she must deliver an outline of coverage before presenting an application or enrollment form.

(c) In a direct response solicitation, the outline of coverage must be presented with an application or enrollment form.

(d) If a policy is issued to a group as defined in RCW 48.83.020(6)(a), an outline of coverage is not required to be delivered, if the information that the commissioner requires to be included in the outline of coverage is in other materials relating to enrollment. Upon request, any such materials must be made available to the commissioner.

(2) If an issuer approves an application for a long-term care insurance contract or certificate, the issuer must deliver the contract or certificate of insurance to the applicant within thirty days after the date of approval. A policy summary must be delivered with an individual life insurance policy that provides long-term care benefits within the policy or by

rider. In a direct response solicitation, the issuer must deliver the policy summary, upon request, before delivery of the policy, if the applicant requests a summary.

(a) The policy summary shall include:

(i) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from any applicable death benefits;

(ii) An illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person;

(iii) Any exclusions, reductions, and limitations on benefits of long-term care;

(iv) A statement that any long-term care inflation protection option required by RCW 48.83.110 is not available under this policy; and

(v) If applicable to the policy type, the summary must also include:

(A) A disclosure of the effects of exercising other rights under the policy;

(B) A disclosure of guarantees related to long-term care costs of insurance charges; and

(C) Current and projected maximum lifetime benefits.

(b) The provisions of the policy summary may be incorporated into a basic illustration required under chapter 48.23A RCW, or into the policy summary which is required under rules adopted by the commissioner. [2008 c 145 § 8.]

48.83.080 Benefit funded through life insurance policy—Acceleration of a death benefit. (Effective January 1, 2009.) If a long-term care benefit funded through a life insurance policy by the acceleration of the death benefit is in benefit payment status, a monthly report must be provided to the policyholder. The report must include:

(1) A record of all long-term care benefits paid out during the month;

(2) An explanation of any changes in the policy resulting from paying the long-term care benefits, such as a change in the death benefit or cash values; and

(3) The amount of long-term care benefits that remain to be paid. [2008 c 145 § 9.]

48.83.090 Denial of claims—Written explanation. (Effective January 1, 2009.) All long-term care denials must be made within sixty days after receipt of a written request made by a policyholder or certificate holder, or his or her representative. All denials of long-term care claims by the issuer must provide a written explanation of the reasons for the denial and make available to the policyholder or certificate holder all information directly related to the denial. [2008 c 145 § 10.]

48.83.100 Rescission of policy or certificate. (Effective January 1, 2009.) (1) An issuer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if:

(a) A policy or certificate has been in force for less than six months and upon a showing of misrepresentation that is material to the acceptance for coverage; or

(b) A policy or certificate that has been in force for at least six months but less than two years, upon a showing of

misrepresentation that is both material to the acceptance for coverage and that pertains to the condition for which benefits are sought.

(2) After a policy or certificate has been in force for two years it is not contestable upon the grounds of misrepresentation alone. Such a policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(3) An issuer's payments for benefits under a long-term care insurance policy or certificate may not be recovered by the issuer if the policy or certificate is rescinded.

(4) This section does not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care that are governed by RCW 48.23.050 the state's life insurance incontestability clause. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care. [2008 c 145 § 11.]

48.83.110 Inflation protection features—Rules. (*Effective January 1, 2009.*) (1) The commissioner must establish minimum standards for inflation protection features.

(2) An issuer must comply with the rules adopted by the commissioner that establish minimum standards for inflation protection features. [2008 c 145 § 12.]

48.83.120 Nonforfeiture benefit option—Offer required—Rules. (*Effective January 1, 2009.*) (1) Except as provided by this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If a policyholder or certificate holder declines the nonforfeiture benefit, the issuer must provide a contingent benefit upon lapse that is available for a specified period of time following a substantial increase in premium rates.

(2) If a group long-term care insurance policy is issued, the offer required in subsection (1) of this section must be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in RCW 48.83.020(6)(d) other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

(3) The commissioner must adopt rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse. [2008 c 145 § 13.]

48.83.130 Selling, soliciting, or negotiating coverage—Licensed insurance producers—Training—Issuers duties—Rules. (*Effective January 1, 2009.*) A person may not sell, solicit, or negotiate long-term care insurance unless he or she is appropriately licensed as an insurance producer

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and has successfully completed long-term care coverage education that meets the requirements of this section.

(1) All long-term care education required by this chapter must meet the requirements of chapter 48.17 RCW and rules adopted by the commissioner.

(2)(a)(i) After January 1, 2009, prior to soliciting, selling, or negotiating long-term care insurance coverage, an insurance producer must successfully complete a one-time education course consisting of no fewer than eight hours on long-term care coverage, long-term care services, state and federal regulations and requirements for long-term care and qualified long-term care insurance coverage, changes or improvements in long-term care services or providers, alternatives to the purchase of long-term care insurance coverage, the effect of inflation on benefits and the importance of inflation protection, and consumer suitability standards and guidelines.

(ii) In order to continue soliciting, selling, or negotiating long-term care coverage in this state, all insurance producers selling, soliciting, or negotiating long-term care insurance coverage prior to January 1, 2009, must successfully complete the eight-hour, one-time long-term care education and training course no later than July 1, 2009.

(b) In addition to the one-time education and training requirement set forth in (a) of this subsection, insurance producers who engage in the solicitation, sale, or negotiation of long-term care insurance coverage must successfully complete no fewer than four hours every twenty-four months of continuing education specific to long-term care insurance coverage and issues. Long-term care insurance coverage continuing education shall consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term care insurance partnership programs, including, but not limited to, the following:

(i) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(ii) Available long-term care services and providers;

(iii) Changes or improvements in long-term care services or providers;

(iv) Alternatives to the purchase of private long-term care insurance;

(v) The effect of inflation on benefits and the importance of inflation protection;

(vi) This chapter and chapters 48.84 and 48.85 RCW; and

(vii) Consumer suitability standards and guidelines.

(3) The insurance producer education required by this section shall not include training that is issuer or company product-specific or that includes any sales or marketing information, materials, or training, other than those required by state or federal law.

(4) Issuers shall obtain verification that an insurance producer receives training required by this section before that producer is permitted to sell, solicit, or otherwise negotiate the issuer's long-term care insurance products.

(5) Issuers shall maintain records subject to the state's record retention requirements and shall make evidence of that verification available to the commissioner upon request.

(6)(a) Issuers shall maintain records with respect to the training of its producers concerning the distribution of its long-term care partnership policies that will allow the commissioner to provide assurance to the state department of social and health services, medicaid division, that insurance producers engaged in the sale of long-term care insurance contracts have received the training required by this section and any rules adopted by the commissioner, and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state.

(b) These records shall be maintained in accordance with the state's record retention requirements and shall be made available to the commissioner upon request.

(7) The satisfaction of these training requirements for any state shall be deemed to satisfy the training requirements of this state. [2008 c 145 § 14.]

48.83.140 Determining whether coverage is appropriate—Suitability standards—Information protected—Rules. (Effective January 1, 2009.) Issuers and their agents, if any, must determine whether issuing long-term care insurance coverage to a particular person is appropriate, except in the case of a life insurance policy that accelerates benefits for long-term care.

(1) An issuer must:

(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care coverage is appropriate for the needs of the applicant or insured;

(b) Train its agents in the use of the issuer's suitability standards; and

(c) Maintain a copy of its suitability standards and make the standards available for inspection, upon request.

(2) The following must be considered when determining whether the applicant meets the issuer's suitability standards:

(a) The ability of the applicant to pay for the proposed coverage and any other relevant financial information related to the purchase of or payment for coverage;

(b) The applicant's goals and needs with respect to long-term care and the advantages and disadvantages of long-term care coverage to meet those goals or needs; and

(c) The values, benefits, and costs of the applicant's existing health or long-term care coverage, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

(3) The sale or transfer of any suitability information provided to the issuer or agent by the applicant to any other person or business entity is prohibited.

(4)(a) The commissioner shall adopt, by rule, forms of consumer-friendly personal worksheets that issuers and their agents must use for applications for long-term care coverage.

(b) The commissioner may require each issuer to file its current forms of suitability standards and personal worksheets with the commissioner. [2008 c 145 § 15.]

48.83.150 Prohibited practices. (Effective January 1, 2009.) A person engaged in the issuance or solicitation of long-term care coverage shall not engage in unfair methods of competition or unfair or deceptive acts or practices, as

such methods, acts, or practices are defined in chapter 48.30 RCW, or as defined by the commissioner. [2008 c 145 § 16.]

48.83.160 Violations—Fine. (Effective January 1, 2009.) An issuer or an insurance producer who violates a law or rule relating to the regulation of long-term care insurance or its marketing shall be subject to a fine of up to three times the amount of the commission paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater. [2008 c 145 § 17.]

48.83.170 Rules, generally. (Effective January 1, 2009.) (1) The commissioner must adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. The commissioner must adopt rules establishing loss ratio standards for long-term care insurance policies. The commissioner must adopt rules to promote premium adequacy and to protect policyholders in the event of proposed substantial rate increases, and to establish minimum standards for producer education, marketing practices, producer compensation, producer testing, penalties, and reporting practices for long-term care insurance.

(2) The commissioner shall adopt rules establishing standards protecting patient privacy rights, rights to receive confidential health care services, and standards for an issuer's timely review of a claim denial upon request of a covered person.

(3) The commissioner may adopt reasonable rules to effectuate any provision of this chapter in accordance with the requirements of chapter 34.05 RCW. [2008 c 145 § 18.]

48.83.900 Severability—2008 c 145. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2008 c 145 § 23.]

48.83.901 Effective date—2008 c 145. This act takes effect January 1, 2009. [2008 c 145 § 24.]

Chapter 48.84 RCW

LONG-TERM CARE INSURANCE ACT

Sections

48.84.010	General provisions, intent.
48.84.020	Definitions.
48.84.030	Rules—Benefits-premiums ratio, coverage limitations.
48.84.040	Policies and contracts—Prohibited provisions.
48.84.050	Disclosure rules—Required provisions in policy or contract.
48.84.060	Prohibited practices.
48.84.070	Separation of data regarding certain policies.
48.84.900	Severability—1986 c 170.
48.84.910	Effective date, application—1986 c 170.

Long-term care insurance plans for eligible public employees: RCW 41.05.065.

48.84.010 General provisions, intent. (*Effective until January 1, 2009.*) This chapter may be known and cited as the "long-term care insurance act" and is intended to govern the content and sale of long-term care insurance and long-term care benefit contracts as defined in this chapter. This chapter shall be liberally construed to promote the public interest in protecting purchasers of long-term care insurance from unfair or deceptive sales, marketing, and advertising practices. The provisions of this chapter shall apply in addition to other requirements of Title 48 RCW. [1986 c 170 § 1.]

48.84.010 General provisions, intent. (*Effective January 1, 2009.*) This chapter may be known and cited as the "long-term care insurance act" and is intended to govern the content and sale of long-term care insurance and long-term care benefit contracts issued before January 1, 2009, as defined in this chapter. This chapter shall be liberally construed to promote the public interest in protecting purchasers of long-term care insurance from unfair or deceptive sales, marketing, and advertising practices. The provisions of this chapter shall apply in addition to other requirements of Title 48 RCW. [2008 c 145 § 19; 1986 c 170 § 1.]

Severability—Effective date—2008 c 145: See RCW 48.83.900 and 48.83.901.

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

(1) "Long-term care insurance" or "long-term care benefit contract" means any insurance policy or benefit contract primarily advertised, marketed, offered, or designed to provide coverage or services for either institutional or community-based convalescent, custodial, chronic, or terminally ill care. Such terms do not include and this chapter shall not apply to policies or contracts governed by chapter 48.66 RCW and continuing care retirement communities.

(2) "Loss ratio" means the incurred claims plus or minus the increase or decrease in reserves as a percentage of the earned premiums, or the projected incurred claims plus or minus the increase or decrease in projected reserves as a percentage of projected earned premiums, as defined by the commissioner.

(3) "Preexisting condition" means a covered person's medical condition that caused that person to have received medical advice or treatment during the specified time period before the effective date of coverage.

(4) "Medicare" means Title XVIII of the United States social security act, or its successor program.

(5) "Medicaid" means Title XIX of the United States social security act, or its successor program.

(6) "Nursing home" means a nursing home as defined in RCW 18.51.010. [1986 c 170 § 2.]

48.84.030 Rules—Benefits-premiums ratio, coverage limitations. (1) The commissioner shall adopt rules requiring reasonable benefits in relation to the premium or price charged for long-term care policies and contracts which rules may include but are not limited to the establishment of minimum loss ratios.

(2) In addition, the commissioner may adopt rules establishing standards for long-term care coverage benefit limitations, exclusions, exceptions, and reductions and for policy or contract renewability. [1986 c 170 § 3.]

tions, exclusions, exceptions, and reductions and for policy or contract renewability. [1986 c 170 § 3.]

48.84.040 Policies and contracts—Prohibited provisions. No long-term care insurance policy or benefit contract may:

(1) Use riders, waivers, endorsements, or any similar method to limit or reduce coverage or benefits;

(2) Indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(3) Be canceled, nonrenewed, or segregated at the time of rating solely on the grounds of the age or the deterioration of the mental or physical health of the covered person;

(4) Exclude or limit coverage for preexisting conditions for a period of more than one year prior to the effective date of the policy or contract or more than six months after the effective date of the policy or contract;

(5) Differentiate benefit amounts on the basis of the type or level of nursing home care provided;

(6) Contain a provision establishing any new waiting period in the event an existing policy or contract is converted to a new or other form within the same company. [1986 c 170 § 4.]

48.84.050 Disclosure rules—Required provisions in policy or contract. (*Effective until July 1, 2009.*) (1) The commissioner shall adopt rules requiring disclosure to consumers of the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions contained in a long-term care insurance policy or contract. In adopting such rules the commissioner shall require an understandable disclosure to consumers of any cost for services that the consumer will be responsible for in utilizing benefits covered under the policy or contract.

(2) Each long-term care insurance policy or contract shall include a provision, prominently displayed on the first page of the policy or contract, stating in substance that the person to whom the policy or contract is sold shall be permitted to return the policy or contract within thirty days of its delivery. In the case of policies or contracts solicited and sold by mail, the person may return the policy or contract within sixty days. Once the policy or contract has been returned, the person may have the premium refunded if, after examination of the policy or contract, the person is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy or contract to the insurer or agent. If a person, pursuant to such notice, returns the policy or contract to the insurer at its branch or home office, or to the agent from whom the policy or contract was purchased, the policy or contract shall be void from its inception, and the parties shall be in the same position as if no policy or contract had been issued. [1986 c 170 § 5.]

48.84.050 Disclosure rules—Required provisions in policy or contract. (*Effective July 1, 2009.*) (1) The commissioner shall adopt rules requiring disclosure to consumers of the level, type, and amount of benefits provided and the limitations, exclusions, and exceptions contained in a long-term care insurance policy or contract. In adopting such rules

the commissioner shall require an understandable disclosure to consumers of any cost for services that the consumer will be responsible for in utilizing benefits covered under the policy or contract.

(2) Each long-term care insurance policy or contract shall include a provision, prominently displayed on the first page of the policy or contract, stating in substance that the person to whom the policy or contract is sold shall be permitted to return the policy or contract within thirty days of its delivery. In the case of policies or contracts solicited and sold by mail, the person may return the policy or contract within sixty days. Once the policy or contract has been returned, the person may have the premium refunded if, after examination of the policy or contract, the person is not satisfied with it for any reason. An additional ten percent penalty shall be added to any premium refund due which is not paid within thirty days of return of the policy or contract to the insurer or insurance producer. If a person, pursuant to such notice, returns the policy or contract to the insurer at its branch or home office, or to the insurance producer from whom the policy or contract was purchased, the policy or contract shall be void from its inception, and the parties shall be in the same position as if no policy or contract had been issued.

(3) No later than January 1, 2010, or when the insurer has used all of its existing paper long-term care insurance policy forms which were in its possession on July 1, 2009, whichever is earlier, the notice required by subsection (2) of this section shall use the term insurance producer in place of agent. [2008 c 217 § 67; 1986 c 170 § 5.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.84.060 Prohibited practices. (Effective until July 1, 2009.) No agent, broker, or other representative of an insurer, contractor, or other organization selling or offering long-term care insurance policies or benefit contracts may: (1) Complete the medical history portion of any form or application for the purchase of such policy or contract; (2) knowingly sell a long-term care policy or contract to any person who is receiving medicaid; or (3) use or engage in any unfair or deceptive act or practice in the advertising, sale, or marketing of long-term care policies or contracts. [1986 c 170 § 6.]

48.84.060 Prohibited practices. (Effective July 1, 2009.) No insurance producer or other representative of an insurer, contractor, or other organization selling or offering long-term care insurance policies or benefit contracts may: (1) Complete the medical history portion of any form or application for the purchase of such policy or contract; (2) knowingly sell a long-term care policy or contract to any person who is receiving medicaid; or (3) use or engage in any unfair or deceptive act or practice in the advertising, sale, or marketing of long-term care policies or contracts. [2008 c 217 § 68; 1986 c 170 § 6.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.84.070 Separation of data regarding certain policies. Commencing with reports for accounting periods

beginning on or after January 1, 1988, all insurers, fraternal benefit societies, health care services contractors, and health maintenance organizations shall, for reporting and record keeping purposes, separate data concerning long-term care insurance policies and contracts from data concerning other insurance policies and contracts. [1986 c 170 § 7.]

48.84.900 Severability—1986 c 170. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 170 § 9.]

48.84.910 Effective date, application—1986 c 170. RCW 48.84.060 shall take effect on November 1, 1986, and the commissioner shall adopt all rules necessary to implement RCW 48.84.060 by its effective date including rules prohibiting particular unfair or deceptive acts and practices in the advertising, sale, and marketing of long-term care policies and contracts. The commissioner shall adopt all rules necessary to implement the remaining sections of this chapter by July 1, 1987, and the remaining sections of this chapter shall apply to policies and contracts issued on or after January 1, 1988. [1986 c 170 § 10.]

Chapter 48.85 RCW

WASHINGTON LONG-TERM CARE PARTNERSHIP

Sections

48.85.010	Washington long-term care partnership program—Generally.
48.85.020	Protection of assets—Federal approval—Rules.
48.85.030	Insurance policy criteria—Rules.
48.85.040	Consumer education program.
48.85.900	Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492.

48.85.010 Washington long-term care partnership program—Generally. (Effective until January 1, 2009.) The department of social and health services shall, in conjunction with the office of the insurance commissioner, coordinate a long-term care insurance program entitled the Washington long-term care partnership, whereby private insurance and medicaid funds shall be used to finance long-term care. For individuals purchasing a long-term care insurance policy or contract governed by chapter 48.84 RCW and meeting the criteria prescribed in this chapter, and any other terms as specified by the office of the insurance commissioner and the department of social and health services, this program shall allow for the exclusion of some or all of the individual's assets in determination of medicaid eligibility as approved by the federal health care financing administration. [1995 1st sp.s. c 18 § 76; 1993 c 492 § 458.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.010 Washington long-term care partnership program—Generally. (Effective January 1, 2009.) The department of social and health services shall, in conjunction with the office of the insurance commissioner, coordinate a long-term care insurance program entitled the Washington

long-term care partnership, whereby private insurance and medicaid funds shall be used to finance long-term care. For individuals purchasing a long-term care insurance policy or contract governed by chapter 48.84 or 48.83 RCW and meeting the criteria prescribed in this chapter, and any other terms as specified by the office of the insurance commissioner and the department of social and health services, this program shall allow for the exclusion of some or all of the individual's assets in determination of medicaid eligibility as approved by the federal health care financing administration. [2008 c 145 § 21; 1995 1st sp.s. c 18 § 76; 1993 c 492 § 458.]

Severability—Effective date—2008 c 145: See RCW 48.83.900 and 48.83.901.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.020 Protection of assets—Federal approval—Rules. The department of social and health services shall seek approval from the federal health care financing administration to allow the protection of an individual's assets as provided in this chapter. The department shall adopt all rules necessary to implement the Washington long-term care partnership program, which rules shall permit the exclusion of all or some of an individual's assets in a manner specified by the department in a determination of medicaid eligibility to the extent that private long-term care insurance provides payment or benefits for services. [1995 1st sp.s. c 18 § 77; 1993 c 492 § 459.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.030 Insurance policy criteria—Rules. (1) The insurance commissioner shall adopt rules defining the criteria that long-term care insurance policies must meet to satisfy the requirements of this chapter. The rules shall provide that all long-term care insurance policies purchased for the purposes of this chapter:

- (a) Be guaranteed renewable;
- (b) Provide coverage for nursing home care and provide coverage for an alternative plan of care benefit as defined by the commissioner;
- (c) Provide optional coverage for home and community-based services. Such home and community-based services shall be included in the coverage unless rejected in writing by the applicant;
- (d) Provide automatic inflation protection or similar coverage for any policyholder through the age of seventy-nine and made optional at age eighty to protect the policyholder from future increases in the cost of long-term care;
- (e) Not require prior hospitalization or confinement in a nursing home as a prerequisite to receiving long-term care benefits; and

(f) Contain at least a six-month grace period that permits reinstatement of the policy or contract retroactive to the date of termination if the policy or contract holder's nonpayment of premiums arose as a result of a cognitive impairment suffered by the policy or contract holder as certified by a physician.

(2008 Ed.)

(2) Insurers offering long-term care policies for the purposes of this chapter shall demonstrate to the satisfaction of the insurance commissioner that they:

- (a) Have procedures to provide notice to each purchaser of the long-term care consumer education program;
- (b) Offer case management services;
- (c) Have procedures that provide for the keeping of individual policy records and procedures for the explanation of coverage and benefits identifying those payments or services available under the policy that meet the purposes of this chapter;
- (d) Agree to provide the insurance commissioner, on or before September 1 of each year, an annual report containing information derived from the long-term care partnership long-term care insurance uniform data set as specified by the office of the insurance commissioner. [1995 1st sp.s. c 18 § 78; 1993 c 492 § 460.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.040 Consumer education program. The insurance commissioner shall, with the cooperation of the department of social and health services and members of the long-term care insurance industry, develop a consumer education program designed to educate consumers as to the need for long-term care, methods for financing long-term care, the availability of long-term care insurance, and the availability and eligibility requirements of the asset protection program provided under this chapter. [1995 1st sp.s. c 18 § 79; 1993 c 492 § 461.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

48.85.900 Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492. See RCW 43.72.910 through 43.72.915.

Chapter 48.87 RCW

MIDWIVES AND BIRTHING CENTERS— JOINT UNDERWRITING ASSOCIATION

Sections

48.87.010	Intent.
48.87.020	Definitions.
48.87.030	Plan for establishing association—Commissioner's duty—Market assistance plan.
48.87.040	Composition of association.
48.87.050	Midwifery and birth center malpractice insurance—Rating plan modified according to practice volume.
48.87.060	Administering a plan.
48.87.070	Policies written on a claims made basis—Commissioner may not approve without insurer guarantees.
48.87.080	Risk management program—Part of plan.
48.87.100	Rule making.

48.87.010 Intent. Certified nurse midwives and licensed midwives experience a major problem in both the availability and affordability of malpractice insurance. In particular midwives practicing outside hospital settings are unable to obtain malpractice insurance at any price in this

state at this time. Licensed midwives have been unable to obtain hospital privileges due in part to the requirement of almost all Washington hospitals that professional staff members have liability insurance.

The services performed by midwives are in demand by many women for childbirth and prenatal care. Women often choose to have a home or birth center birth instead of a hospital birth. Women are entitled to the provider of their choice at such a critical life event. Studies document the safety of midwife-attended births and the safety of home births for low-risk women.

At a time when safety, cost-effectiveness, and individual choice are of paramount concern to the citizens of Washington state, midwifery care in a variety of settings must be available to the public. This is essential to the goals of increased access to maternity care and increased cost-effectiveness of care, as well as addressing problems of provider shortage. One of the primary impediments to the availability of maternity services performed by midwives is the lack of available and affordable malpractice liability insurance coverage.

This chapter is intended to increase the availability of cost-effective, high-quality maternity care by making malpractice insurance available for midwives. This chapter is implemented by requiring all insurers authorized to write commercial or professional liability insurance to be members of a joint underwriting association created to provide malpractice insurance for midwives. [1993 c 112 § 1.]

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

(1) "Association" means the joint underwriting association established under this chapter.

(2) "Midwifery and birth center malpractice insurance" means insurance coverage against the legal liability of the insured and against loss damage or expense incident to a claim arising out of the death or injury of a person as a result of negligence or malpractice in rendering professional service by a licensee.

(3) "Licensee" means a person or facility licensed to provide midwifery services under chapter 18.50, 18.79, or 18.46 RCW. [2002 c 300 § 1; 1993 c 112 § 2.]

48.87.030 Plan for establishing association—Commissioner's duty—Market assistance plan. The insurance commissioner shall approve by December 31, 1993, a reasonable plan for the establishment of a nonprofit, joint underwriting association for midwifery and birth center malpractice insurance subject to the conditions and limitations contained in this chapter. Such plan shall include a market assistance plan to be used prior to activating a joint underwriting association. [1993 c 112 § 3.]

48.87.040 Composition of association. The association shall be comprised of all insurers possessing a certificate of authority to write and engaged in writing medical malpractice insurance within this state and general casualty companies. Every insurer shall be a member of the association and shall remain a member as a condition of its authority to con-

tinue to transact business in this state. Only licensed midwives under chapter 18.50 RCW, certified nurse midwives licensed under chapter 18.79 RCW, or birth centers licensed under chapter 18.46 RCW may participate in the joint underwriting authority. [2002 c 300 § 2; 1993 c 112 § 4.]

48.87.050 Midwifery and birth center malpractice insurance—Rating plan modified according to practice volume. A licensee may apply to the association to purchase midwifery and birth center malpractice insurance and the association shall offer a policy with liability limits of one million dollars per claim and three million dollars per annual aggregate, or such other minimum level of mandated coverage as determined by the department of health. The insurance commissioner shall require the use of a rating plan for midwifery malpractice insurance that permits rates to be modified according to practice volume. Any rating plan for midwifery malpractice insurance used under this section must be based on sound actuarial principles. Coverage may not exclude midwives who engage in home birth or birth center deliveries. [1994 c 90 § 1; 1993 c 112 § 5.]

Effective date—1994 c 90: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 90 § 2.]

48.87.060 Administering a plan. The commissioner may select an insurer to administer a plan established under this chapter. The insurer must be admitted to transact the business of insurance of the state of Washington. [1993 c 112 § 6.]

48.87.070 Policies written on a claims made basis—Commissioner may not approve without insurer guarantees. The insurance commissioner may not approve a policy written on a claims made basis by an insurer doing business in this state unless the insurer guarantees to the commissioner the continued availability of suitable liability protection for midwives subsequent to the discontinuance of professional practice by the midwife or the sooner termination of the insurance policy by the insurer for so long as there is a reasonable probability of a claim for injury for which the health care provider might be liable. [1993 c 112 § 7.]

48.87.080 Risk management program—Part of plan. A risk management program for insureds of the association must be established as a part of the plan. This program must include but not be limited to: Investigation and analysis of frequency, severity, and causes of adverse or untoward outcomes; development of measures to control these injuries; systematic reporting of incidents; investigation and analysis of patient complaints; and education of association members to improve quality of care and risk reduction. [1993 c 112 § 8.]

48.87.100 Rule making. The commissioner may adopt all rules necessary to ensure the efficient, equitable operation of the association, including but not limited to, rules requiring or limiting certain policy provisions. [1993 c 112 § 10.]

Chapter 48.88 RCW
DAY CARE SERVICES—
JOINT UNDERWRITING ASSOCIATION

Sections

48.88.010	Intent.
48.88.020	Definitions.
48.88.030	Plan for joint underwriting association.
48.88.040	Association—Membership.
48.88.050	Policies—Liability limits—Rating plan.
48.88.070	Rules.

48.88.010 Intent. Day care service providers have experienced major problems in both the availability and affordability of liability insurance. Premiums for such insurance policies have recently grown as much as five hundred percent and the availability of such insurance in Washington markets has greatly diminished.

The availability of quality day care is essential to achieving such goals as increased workforce productivity, family self-sufficiency, and protection for children at risk due to poverty and abuse. The unavailability of adequate liability insurance threatens to decrease the availability of day care services.

This chapter is intended to remedy the problem of unavailable liability insurance for day care services by requiring all insurers authorized to write commercial or professional liability insurance to be members of a joint underwriting association created to provide liability insurance for day care services. [1986 c 141 § 1.]

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

(1) "Association" means the joint underwriting association established pursuant to the provisions of this chapter.

(2) "Day care insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensee.

(3) "Licensee" means any person or facility licensed to provide day care services pursuant to chapter 74.15 RCW. [1986 c 141 § 2.]

48.88.030 Plan for joint underwriting association. The commissioner shall approve by July 1, 1986, a reasonable plan for the establishment of a nonprofit, joint underwriting association for day care insurance, subject to the conditions and limitations contained in this chapter. [1986 c 141 § 3.]

48.88.040 Association—Membership. The association shall be comprised of all insurers possessing a certificate of authority to write and engage in writing property and casualty insurance within this state on a direct basis, including the liability portion of multiperil policies, but not of ocean marine insurance. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact business in this state. [1986 c 141 § 4.]

(2008 Ed.)

48.88.050 Policies—Liability limits—Rating plan.

Any licensee may apply to the association to purchase day care insurance, and the association shall offer a policy with liability limits of at least one hundred thousand dollars per occurrence. The commissioner shall require the use of a rating plan for day care insurance that permits rates to be modified for individual licensees according to the type, size and past loss experience of the licensee including any other difference among licensees that can be demonstrated to have a probable effect upon losses. [1986 c 141 § 5.]

48.88.070 Rules. The commissioner may adopt all rules necessary to ensure the efficient, equitable operation of the association, including but not limited to, rules requiring or limiting certain policy provisions. [1986 c 141 § 7.]

Chapter 48.90 RCW**CHILD DAY CARE CENTERS—SELF-INSURANCE**

(Formerly: Day care centers—Self-insurance)

Sections

48.90.010	Findings and intent.
48.90.020	Definitions.
48.90.030	Authority to self-insure.
48.90.040	Chapter exclusive.
48.90.050	Elements of plan.
48.90.060	Approval of plan.
48.90.070	Contributing trust fund.
48.90.080	Initial implementation of plan—Conditions.
48.90.090	Standard of care in fund management—Fiduciary.
48.90.100	Annual report.
48.90.110	Powers of association.
48.90.120	Contracts—Terms.
48.90.130	Significant modifications in plan, statement on.
48.90.140	Dissolution of plan and association.
48.90.150	Recovery limits.
48.90.160	Suspension of plan—Reconsideration.
48.90.170	Costs of investigation or review of plan.

48.90.010 Findings and intent. (1) Day care providers are facing a major crisis in that adequate and affordable business liability insurance is no longer available within this state for persons who care for children. Many child day care centers have been forced to purchase inadequate coverage at prohibitive premium rates from unregulated foreign surplus line carriers over which the state has minimal control.

(2) There is a danger that a substantial number of child day care centers who cannot afford the escalating premiums will be unable or unwilling to remain in business without adequate coverage. As a result the number of available facilities will be drastically reduced forcing some parents to leave the workforce to care for their children. A corresponding demand upon the state's resources will result in the form of public assistance to unemployed parents and day care providers.

(3) There is a further danger that a substantial number of child day care centers now licensed pursuant to state law, who currently provide specific safeguards for the health and safety of children but are unable to procure insurance, may choose to continue to operate without state approval, avoiding regulation and payment of legitimate taxes, and forcing some parents to place their children in facilities of unknown quality and questionable levels of safety.

(4) Most child day care centers are small business enterprises with limited resources. The state's policies encourage the growth and development of small businesses.

(5)(a) This chapter is intended to remedy the problem of nonexistent or unaffordable liability coverage for child day care centers, and to encourage compliance with state laws protecting children while meeting the state's sound economic policies of encouraging small business development, sustaining an active workforce, and discouraging policies that result in an increased drain on the state's resources through public assistance and other forms of public funding.

(b) This chapter will empower child day care centers to create self-insurance pools, to purchase insurance coverage, and to contract for risk management and administrative services through an association with demonstrated responsible fiscal management.

The intent of this legislation is to allow these associations maximum flexibility to create and administer plans to provide coverage and risk management services to licensed child day care centers. [2003 c 248 § 21; 1986 c 142 § 1.]

48.90.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Child day care center" means an agency that regularly provides care for one or more children for periods of less than twenty-four hours as defined in *RCW 74.15.020(1)(a).

(2) "Association" means a corporation organized under Title 24 RCW, representative of one or more categories of child day care centers not formed for the sole purpose of establishing and operating a self-insurance program that:

(a) Maintains a roster of current names and addresses of member child day care centers and of former member child day care centers or their representatives, and of all employees of member or former member child day care centers;

(b) Has a membership of a size and stability to ensure that it will be able to provide consistent and responsible fiscal management; and

(c) Maintains a regular newsletter or other periodic communication to member child day care centers.

(3) "Subscriber" means a child day care center that:

(a) Subscribes to a plan created pursuant to this chapter;

(b) Complies with all state licensing requirements;

(c) Is a member in good standing of an association;

(d) Has consistently maintained its license free from revocation for cause, except where the revocation was not later rescinded or vacated by appellate or administrative decision; and

(e) Is prepared to demonstrate the willingness and ability to bear its share of the financial responsibility of its participation in the plan for each applicable contractual period. [2003 c 248 § 22; 1986 c 142 § 2.]

*Reviser's note: RCW 74.15.020 was amended by 2006 c 265 § 401, deleting subsection (1)(a).

48.90.030 Authority to self-insure. Associations meeting the criteria of RCW 48.90.020 are empowered to create and operate self-insurance plans to provide general liability coverage to member child day care centers who choose to subscribe to the plans. [2003 c 248 § 23; 1986 c 142 § 3.]

48.90.040 Chapter exclusive. Except as provided in this chapter, self-insurance plans formed and implemented pursuant to this chapter shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this state. [1986 c 142 § 4.]

48.90.050 Elements of plan. Any association desiring to establish a plan pursuant to this chapter shall prepare and submit to the commissioner a proposed plan of organization and operation, including the following elements:

(1) A statement that the association meets the requirements of this chapter.

(2) A financial plan specifying:

(a) The coverage to be offered by the self-insurance pool, setting forth a deductible level and maximum level of claims that the pool will self-insure;

(b) The amount of cash reserves to be maintained for the payment of claims;

(c) The amount of insurance, if any, to be purchased to cover claims in excess of the amount of claims to be satisfied directly from the association's own cash reserves;

(d) The amount of stop-loss coverage to be purchased in the event the joint self-insurance pool's resources are exhausted in a given fiscal period;

(e) A mechanism for determining and assessing the contingent liability of subscribers in the event the assets in the contributing trust fund are at any time insufficient to cover liabilities; and

(f) Certification that all subscribers in the pool are apprised of the limitations of coverage to be provided.

(3) A plan of management setting forth:

(a) The means of fulfilling the requirements in RCW 48.90.050(2);

(b) The names and addresses of board members and their terms of office, and a copy of the corporate bylaws defining the method of election of board members;

(c) The frequency of studies or other evaluation to establish the periodic contribution rates for each of the subscribers;

(d) The responsibilities of subscribers, including procedures for entry into and withdrawal from the pool, the allocation of contingent liabilities and a procedure for immediate assessments if the contributing trust fund falls below the level set in RCW 48.90.050(2)(b);

(e) A plan for monitoring risks and disseminating information with respect to their reduction or elimination;

(f) A contract with a professional insurance management corporation, for the management and operation of any joint self-insurance pool established by the association; and

(g) The corporate address of the association. [1986 c 142 § 5.]

48.90.060 Approval of plan. If the plan submitted complies with RCW 48.90.050 and if the terms of the plan reflect sound financial management, the commissioner shall approve the plan submitted pursuant to RCW 48.90.050. [1986 c 142 § 6.]

48.90.070 Contributing trust fund. All funds contributed for the purpose of the self-insurance plan shall be deposited in a contributing trust fund, which shall at all times be

maintained separately from the general funds of the association. The association shall not contribute to or draw upon the contributing trust fund at any time or for any reason other than administration of the trust fund and operation of the plan. All administration and operating costs related to the trust fund shall be drawn from it. [1986 c 142 § 7.]

48.90.080 Initial implementation of plan—Conditions. The initial implementation of the plan shall be conditioned upon establishment of the minimum deposits in the contributing trust fund at least thirty days prior to the first effective date of the program for its first year of operation. [1986 c 142 § 8.]

48.90.090 Standard of care in fund management—Fiduciary. In managing the assets of the contributing trust fund, the association shall exercise the reasonable judgment and care that ordinary persons of prudence, intelligence, and discretion exercise in the sound management of their affairs, not in regard to speculation but in regard to preservation of their funds with maximum return, given the information reasonably available. The association may delegate this duty to a responsible fiduciary. If the fiduciary has special skills or represents that it has special skills, then the fiduciary is under a duty to use those skills in the management of the fund's assets. [1986 c 142 § 9.]

48.90.100 Annual report. The association shall provide an annual report of the operations of the plan to all subscribers, to the secretary of social and health services, and to the commissioner. This report shall:

- (1) Review claims made, judgments entered, and claims rejected;
- (2) Certify that the current level of the contributing trust fund is sufficient to meet reasonable needs, or provide a plan for establishing such a level within a reasonable time; and
- (3) Make recommendations for specific measures of risk reduction. [1986 c 142 § 10.]

48.90.110 Powers of association. The association shall have the power, in its capacity as plan administrator, to contract for or delegate services as necessary for the efficient management and operation of the plan, including but not limited to:

- (1) Contracting for risk management and loss control services;
- (2) Designing a continuing program of risk reduction, calling for the participation of all subscribers;
- (3) Contracting for legal counsel for the defense of claims and other legal services;
- (4) Consulting with the commissioner, the secretary of social and health services, or other interested state agencies with respect to any matters affecting the provision of day care for the state's children, and related risk problems; and
- (5) Purchasing commercial insurance coverage in the form and amount as the subscribers may by contract agree, including reinsurance, excess coverage, and stop-loss insurance. [1986 c 142 § 11.]

(2008 Ed.)

48.90.120 Contracts—Terms. (1) All contracts between subscribers and the association shall be for one-year periods and shall terminate on the first day of the next fiscal year of the association following their signature. Subscribers withdrawing from participation in the plan during any contract period may do so only upon surrender of their licenses to care for children to the department of social and health services.

(2) Premiums should be annual, prorated quarterly in the event any subscriber withdraws, or any new subscriber contracts with the association to become part of the plan during the fiscal year. Subscribers should not have the power to delegate or assign the responsibility for their assessments.

(3) Contracts should provide for recovery by the association, of any assessments that are not promptly contributed, for methods of collection, and for resolution of related disputes. [1986 c 142 § 12.]

48.90.130 Significant modifications in plan, statement on. Within six months of the beginning of any fiscal year in which significant modifications of the plan are envisioned, the association shall provide the commissioner with a statement of those modifications, setting forth the proposed changes, reasons for the changes, and reasonable alternatives, if any exist. The statement shall specifically include reference to coverage available in the commercial insurance market, together with suggested solutions within the joint self-insurance plan. [1986 c 142 § 13.]

48.90.140 Dissolution of plan and association. (1) If at any time the plan can no longer be operated on a sound financial basis, the association may elect to dissolve the plan, subject to explicit approval by the commissioner of a plan for dissolution. Once a plan operated by an association has been dissolved, that association may not again implement a plan pursuant to this chapter for five calendar years.

(2) At dissolution, the assets of the association represented by the contributing trust fund shall be deposited with the commissioner for a period of twenty-one years, to be made available for claims arising during that period based upon occurrences during the term of coverage. At the time of transfer of the funds, the association shall certify to the commissioner a list of all current subscribers, with their correct mailing addresses, and shall have notified all current subscribers of their obligation to keep the commissioner informed of any changes in their mailing addresses over the twenty-one year period, and that this obligation extends to their representatives, successors, assigns, and to the representatives of their estates. Upon dissolution, the association is required to provide to the commissioner a list of all plan subscribers during all of the years of operation of the plan.

At the end of the twenty-one year period, any funds remaining in the trust account must be distributed to those subscribers who were current subscribers in the most recent year of operation of the plan, with each current subscriber receiving an equal share of the distribution, without regard for the length of time each child day care center was a subscriber.

In the alternative, in the discretion of the association, the balance of the contributing trust fund may be used to purchase similar or more liberal coverage from a commercial

insurer. Each subscriber shall, however, be given the option to deposit its share of the fund with the commissioner as provided in this section if it elects not to participate in the proposed commercial insurance. [2003 c 248 § 24; 1986 c 142 § 14.]

48.90.150 Recovery limits. No person with a claim covered by a plan established pursuant to this chapter shall be entitled to recover from the plan any amount in excess of the limits of coverage provided for in the plan. [1986 c 142 § 15.]

48.90.160 Suspension of plan—Reconsideration. The commissioner may disapprove, and require suspension of a plan for failure of the association to comply with any provision of this chapter, for gross mismanagement, or for wilful disregard and neglect of its fiduciary duty. The association shall have the right to request reconsideration of the commissioner’s decision within fifteen days of the receipt of the commissioner’s written notification of the decision, or to request a hearing according to chapter 48.04 RCW. [1986 c 142 § 16.]

48.90.170 Costs of investigation or review of plan. All reasonable costs of any investigation or review by the commissioner of an association’s plan of organization and operation, or any changes or modifications thereof, including the dissolution of a plan, shall be paid by the association before issuance of any approval required under this chapter. [1986 c 142 § 17.]

Chapter 48.92 RCW

LIABILITY RISK RETENTION

Sections

48.92.010	Purpose.
48.92.020	Definitions.
48.92.030	Requirements for chartering.
48.92.040	Required acts—Prohibited practices.
48.92.050	Insolvency guaranty fund, participation prohibited—Joint underwriting associations, participation required.
48.92.060	Countersigning not required.
48.92.070	Purchasing groups—Exempt from certain laws.
48.92.080	Purchasing groups—Notice and registration.
48.92.090	Purchasing groups—Dealing with foreign insurers—Deductible or self-insured retention—Aggregate limits.
48.92.095	Premium taxes—Imposition—Obligations—Member’s liability.
48.92.100	Authority of commissioner.
48.92.110	Penalties.
48.92.120	Agents, brokers, solicitors—License required.
48.92.130	Federal injunctions.
48.92.140	Rules.

48.92.010 Purpose. The purpose of this chapter is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986. [1993 c 462 § 91; 1987 c 306 § 1.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

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

(1) "Commissioner" means the insurance commissioner of Washington state or the commissioner, director, or superintendent of insurance in any other state.

(2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

(a) Any person who performs that work; or

(b) Any person who hires an independent contractor to perform that work; but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:

(a) For a corporation, the state in which the purchasing group is incorporated; and

(b) For an unincorporated entity, the state of its principal place of business.

(4) "Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:

(a) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) To pay other obligations in the normal course of business.

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under the laws of this state.

(6) "Liability" means legal liability for damages including costs of defense, legal costs and fees, and other claims expenses because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:

(a) Any business, whether profit or nonprofit, trade, product, services, including professional services, premises, or operations; or

(b) Any activity of any state or local government, or any agency or political subdivision thereof.

"Liability" does not include personal risk liability and an employer’s liability with respect to its employees other than legal liability under the federal Employers’ Liability Act 45 U.S.C. 51 et seq.

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (6) of this section.

(8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group including, at a minimum:

(a) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(b) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(c) Historical and expected loss experience of the proposed members and national experience of similar exposures;

(d) Pro forma financial statements and projections;

(e) Appropriate opinions by a qualified, independent, casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(f) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;

(g) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each of those states; and

(h) Such other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state.

(9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage including damages resulting from the loss of use of property arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group which:

(a) Has as one of its purposes the purchase of liability insurance on a group basis;

(b) Purchases the insurance only for its group members and only to cover their similar or related liability exposure, as described in (c) of this subsection;

(c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(d) Is domiciled in any state.

(11) "Risk retention group" means any corporation or other limited liability association:

(a) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(b) Which is organized for the primary purpose of conducting the activity described under (a) of this subsection;

(c) Which:

(i) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as the terms were defined in the federal Product Liability Risk Retention Act of 1981 before the date of the enactment of the federal Risk Retention Act of 1986;

(d) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(e) Which:

(i) Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the risk retention group; or

(ii) Has as its sole owner an organization that has:

(A) As its members only persons who comprise the membership of the risk retention group; and

(B) As its owners only persons who comprise the membership of the risk retention group and who are provided insurance by the group;

(f) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

(g) Whose activities do not include the provision of insurance other than:

(i) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in businesses or activities so that the group or member meets the requirement described in (f) of this subsection from membership in the risk retention group which provides such reinsurance; and

(h) The name of which includes the phrase "risk retention group."

(12) "State" means any state of the United States or the District of Columbia. [1993 c 462 § 92; 1987 c 306 § 2.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.030 Requirements for chartering. (1) A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this chapter, must comply with all of the laws, rules, regulations, and requirements applicable to the insurers chartered and licensed in this state and with RCW 48.92.040 to the extent the requirements are not a limitation on laws, rules, regulations, or requirements of this state.

(2) A risk retention group chartered in this state shall file with the department and the National Association of Insurance Commissioners an annual statement in a form prescribed by the National Association of Insurance Commissioners, and in electronic form if required by the commissioner, and completed in accordance with its instructions and the National Association of Insurance Commissioners accounting practices and procedures manual.

(3) Before it may offer insurance in any state, each domestic risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study. The risk retention group shall submit an appropriate revision in the event of a subsequent material change in an item of the plan of operation or feasibility study, within ten days of the change. The group may not offer any additional kinds of liability insurance, in this state or in any

other state, until a revision of the plan or study is approved by the commissioner.

(4) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information: The identity of the initial members of the group; the identify of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group; the amount and nature of the initial capitalization; the coverages to be afforded; and the states in which the group intends to operate. Upon receipt of this information, the commissioner shall forward the information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and is not sufficient to satisfy the requirements of RCW 48.92.040 or this chapter. [1993 c 462 § 93; 1987 c 306 § 3.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.040 Required acts—Prohibited practices. (Effective until July 1, 2009.) Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall comply with the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the National Association of Insurance Commissioners:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and any other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under RCW 48.92.020(11);

(b) A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile: PROVIDED, HOWEVER, That the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which: (i) Was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986; and (ii) was offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date;

(c) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required under RCW 48.92.030(3) at the same time that the revision is submitted to the commissioner of its chartering state; and

(d) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(b) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) Upon request by the commissioner, a copy of any information or document pertaining to an outside audit performed with respect to the risk retention group; and

(d) Any information as may be required to verify its continuing qualification as a risk retention group under RCW 48.92.020(11).

(3)(a) A risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report on or before March 1st of each year to the commissioner the direct premiums written for risks resident or located within this state. The risk retention group is subject to taxation, and applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

(b) To the extent agents or brokers are utilized under RCW 48.92.120 or otherwise, they shall report to the commissioner the premiums for direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent agents or brokers are used under RCW 48.92.120 or otherwise, an agent or broker shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in chapter 48.03 RCW. These records must include, for each policy and each kind of insurance provided thereunder, the following:

(i) The limit of liability;

(ii) The time period covered;

(iii) The effective date;

(iv) The name of the risk retention group that issued the policy;

(v) The gross premium charged; and

(vi) The amount of return premiums, if any.

(4) Any risk retention group, its agents and representatives, shall be subject to any and all unfair claims settlement practices statutes and regulations specifically denominated by the commissioner as unfair claims settlement practices regulations.

(5) Any risk retention group, its agents and representatives, shall be subject to the provisions of chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. The examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' examiner handbook.

(7) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(8) The following acts by a risk retention group are hereby prohibited:

(a) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in that group; and

(b) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) The terms of an insurance policy issued by a risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection (6) of this section. [1993 c 462 § 94; 1987 c 306 § 4.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.040 Required acts—Prohibited practices. (*Effective July 1, 2009.*) Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall comply with the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner on a form prescribed by the National Association of Insurance Commissioners:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and any other information including information on its membership, as the commissioner of this state may require to verify that the risk retention group is qualified under RCW 48.92.020(11);

(b) A copy of its plan of operations or a feasibility study and revisions of the plan or study submitted to its state of domicile: PROVIDED, HOWEVER, That the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which: (i) Was defined in the federal Product Liability Risk Retention Act of 1981 before October 27, 1986; and (ii) was offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date;

(c) The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required

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under RCW 48.92.030(3) at the same time that the revision is submitted to the commissioner of its chartering state; and

(d) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) Any risk retention group doing business in this state shall submit to the commissioner:

(a) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(b) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) Upon request by the commissioner, a copy of any information or document pertaining to an outside audit performed with respect to the risk retention group; and

(d) Any information as may be required to verify its continuing qualification as a risk retention group under RCW 48.92.020(11).

(3)(a) A risk retention group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state, and shall report on or before March 1st of each year to the commissioner the direct premiums written for risks resident or located within this state. The risk retention group is subject to taxation, and applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer.

(b) To the extent insurance producers are utilized under RCW 48.92.120 or otherwise, they shall report to the commissioner the premiums for direct business for risks resident or located within this state that the licensees have placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent insurance producers are used under RCW 48.92.120 or otherwise, an insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in chapter 48.03 RCW. These records must include, for each policy and each kind of insurance provided thereunder, the following:

(i) The limit of liability;

(ii) The time period covered;

(iii) The effective date;

(iv) The name of the risk retention group that issued the policy;

(v) The gross premium charged; and

(vi) The amount of return premiums, if any.

(4) Any risk retention group, its appointed insurance producers and representatives, shall be subject to any and all unfair claims settlement practices statutes and regulations specifically denominated by the commissioner as unfair claims settlement practices regulations.

(5) Any risk retention group, its appointed insurance producers and representatives, shall be subject to the provisions of chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices. However, if the commissioner

seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Any risk retention group must submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this state. The examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' examiner handbook.

(7) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain in ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(8) The following acts by a risk retention group are hereby prohibited:

(a) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in that group; and

(b) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies.

(10) The terms of an insurance policy issued by a risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state.

(11) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a state insurance commissioner if there has been a finding of financial impairment after an examination under subsection (6) of this section. [2008 c 217 § 69; 1993 c 462 § 94; 1987 c 306 § 4.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.050 Insolvency guaranty fund, participation prohibited—Joint underwriting associations, participation required. (1) No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state, nor shall any risk retention group, or its insureds or claimants against its insureds, receive any benefit from any such fund for claims arising under the insurance policies issued by a risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations and mandatory liability pools or plans required by the commissioners.

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or a risk retention group, no such risks, wherever resident or located, are covered by an insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state are covered by the state guaranty fund established in chapter 48.32 RCW. [1993 c 462 § 95; 1987 c 306 § 5.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.060 Countersigning not required. A policy of insurance issued to a risk retention group or any member of that group shall not be required to be countersigned. [1987 c 306 § 6.]

48.92.070 Purchasing groups—Exempt from certain laws. A purchasing group and its insurer or insurers are subject to all applicable laws of this state, except that a purchasing group and its insurer or insurers are exempt, in regard to liability insurance for the purchasing group, from any law that:

(1) Prohibits the establishment of a purchasing group;

(2) Makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) Prohibits a purchasing group or its members from purchasing insurance on a group basis described in subsection (2) of this section;

(4) Prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) Requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or certain legal form;

(6) Requires that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) Otherwise discriminates against a purchasing group or any of its members. [1993 c 462 § 96; 1987 c 306 § 7.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.080 Purchasing groups—Notice and registration. (1) A purchasing group which intends to do business in this state shall furnish, before doing business, notice to the commissioner, on forms prescribed by the National Association of Insurance Commissioners which shall:

(a) Identify the state in which the group is domiciled;

(b) Identify all other states in which the group intends to do business;

(c) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(d) Identify the insurance company or companies from which the group intends to purchase its insurance and the domicile of that company or companies;

(e) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;

(f) Identify the principal place of business of the group; and

(g) Provide any other information as may be required by the commissioner to verify that the purchasing group is qualified under RCW 48.92.020(10).

(2) A purchasing group shall, within ten days, notify the commissioner of any changes in any of the items set forth in subsection (1) of this section.

(3) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process, except that this requirement shall not apply in the case of a purchasing group that only purchases insurance that was authorized under the federal Product Liability Risk Retention Act of 1981 and:

(a) Which in any state of the United States:

(i) Was domiciled before April 1, 1986; and

(ii) Is domiciled on and after October 27, 1986;

(b) Which:

(i) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state;

(ii) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; or

(c) Which was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 before October 27, 1986.

(4) A purchasing group that is required to give notice under subsection (1) of this section shall also furnish such information as may be required by the commissioner to:

(a) Verify that the entity qualifies as a purchasing group;

(b) Determine where the purchasing group is located; and

(c) Determine appropriate tax treatment. [1993 c 462 § 97; 1987 c 306 § 8.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.090 Purchasing groups—Dealing with foreign insurers—Deductible or self-insured retention—Aggregate limits. (Effective until July 1, 2009.) (1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of that state.

(2) A purchasing group that obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group that have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.

(3) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to

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the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(4) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits that are applicable to all purchases of group insurance. [1993 c 462 § 98; 1987 c 306 § 9.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.090 Purchasing groups—Dealing with foreign insurers—Deductible or self-insured retention—Aggregate limits. (Effective July 1, 2009.) (1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of that state.

(2) A purchasing group that obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of the group that have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state, and that the risk retention group or insurer may not be subject to all insurance laws and rules of this state.

(3) No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

(4) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits that are applicable to all purchases of group insurance. [2008 c 217 § 70; 1993 c 462 § 98; 1987 c 306 § 9.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.095 Premium taxes—Imposition—Obligations—Member's liability. (Effective until July 1, 2009.) Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups must be:

(1) Imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid for similar coverage from authorized insurers, as defined under chapter 48.05 RCW, or unauthorized insurers, as defined and provided for under chapter 48.15 RCW, by other insurers; and

(2) The obligation of the insurer; and if not paid by the insurer, then the obligation of the purchasing group; and if not paid by the purchasing group, then the obligation of the agent or broker for the purchasing group; and if not paid by the agent or broker for the purchasing group, then the obligation of each of the purchasing group's members. The liability of each member of the purchasing group is several, not joint, and is limited to the tax due in relation to the premiums paid by that member. [1993 c 462 § 99.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.095 Premium taxes—Imposition—Obligations—Member's liability. (*Effective July 1, 2009.*) Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing groups must be:

(1) Imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid for similar coverage from authorized insurers, as defined under chapter 48.05 RCW, or unauthorized insurers, as defined and provided for under chapter 48.15 RCW, by other insurers; and

(2) The obligation of the insurer; and if not paid by the insurer, then the obligation of the purchasing group; and if not paid by the purchasing group, then the obligation of the insurance producer for the purchasing group; and if not paid by the insurance producer for the purchasing group, then the obligation of each of the purchasing group's members. The liability of each member of the purchasing group is several, not joint, and is limited to the tax due in relation to the premiums paid by that member. [2008 c 217 § 71; 1993 c 462 § 99.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.100 Authority of commissioner. The commissioner is authorized to make use of any of the powers established under Title 48 RCW to enforce the laws of this state so long as those powers are not specifically preempted by the federal Product Liability Risk Retention Act of 1981, as amended by the federal Risk Retention Amendments of 1986. This includes, but is not limited to, the commissioner's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, impose penalties, and seek injunctive relief. With regard to any investigation, administrative proceedings, or litigation, the commissioner can rely on the procedural law and regulations of the state. The injunctive authority of the commissioner in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction. [1993 c 462 § 100; 1987 c 306 § 10.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.110 Penalties. A risk retention group which violates any provision of this chapter shall be subject to fines and penalties applicable to licensed insurers generally, including revocation of its license and/or the right to do business in this state. [1987 c 306 § 11.]

48.92.120 Agents, brokers, solicitors—License required. (*Effective until July 1, 2009.*) (1) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance *agent or broker for casualty insurance in accordance with chapter

48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(2)(a) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person is licensed as an insurance *agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(b) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for a member of a purchasing group under a purchasing group's policy unless the person is licensed as an insurance *agent or broker for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(c) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless the person is licensed as a surplus lines [line] broker in accordance with chapter 48.15 RCW and pays the fees designated for the license under RCW 48.14.010.

(3) For purposes of acting as an agent or broker for a risk retention group or purchasing group under subsections (1) and (2) of this section, the requirement of residence in this state does not apply.

(4) Every person licensed under chapters 48.15 and 48.17 RCW, on business placed with risk retention groups or written through a purchasing group, must inform each prospective insured of the provisions of the notice required under RCW 48.92.040(7) in the case of a risk retention group and RCW 48.92.090(2) in the case of a purchasing group. [2005 c 223 § 31; 1993 c 462 § 101; 1987 c 306 § 12.]

***Reviser's note:** 2007 c 117 replaced the terms "agent" and "broker" with the term "producer," effective July 1, 2009.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.120 Soliciting, negotiating, or procuring liability insurance—License required. (*Effective July 1, 2009.*)

(1) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state from a risk retention group unless the person is licensed as an insurance producer for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(2)(a) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance in this state for a purchasing group from an authorized insurer or a risk retention group chartered in a state unless the person is licensed as an insurance producer for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(b) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance coverage in this state for a member of a purchasing group under a purchasing group's policy unless the person is licensed as an insurance producer for casualty insurance in accordance with chapter 48.17 RCW and pays the fees designated for the license under RCW 48.14.010.

(c) A person may not act or aid in any manner in soliciting, negotiating, or procuring liability insurance from an insurer not authorized to do business in this state on behalf of a purchasing group located in this state unless the person is licensed as a surplus line broker in accordance with chapter 48.15 RCW and pays the fees designated for the license under RCW 48.14.010.

(3) For purposes of acting as an insurance producer for a risk retention group or purchasing group under subsections (1) and (2) of this section, the requirement of residence in this state does not apply.

(4) Every person licensed under chapters 48.15 and 48.17 RCW, on business placed with risk retention groups or written through a purchasing group, must inform each prospective insured of the provisions of the notice required under RCW 48.92.040(7) in the case of a risk retention group and RCW 48.92.090(2) in the case of a purchasing group. [2008 c 217 § 72; 2005 c 223 § 31; 1993 c 462 § 101; 1987 c 306 § 12.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.130 Federal injunctions. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance, or operating, in any state or in all states or in any territory or possession of the United States, upon a finding that the group is in a hazardous financial or financially impaired condition, shall be enforceable in the courts of the state. [1993 c 462 § 102; 1987 c 306 § 13.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

48.92.140 Rules. The commissioner may establish and from time to time amend the rules relating to risk retention or purchasing groups as may be necessary or desirable to carry out the provisions of this chapter. [1993 c 462 § 103; 1987 c 306 § 14.]

Severability—Implementation—1993 c 462: See RCW 48.31B.901 and 48.31B.902.

Chapter 48.94 RCW

REINSURANCE INTERMEDIARY ACT

Sections

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48.94.005 Definitions. (Effective until July 1, 2009.)

The definitions set forth in this section apply throughout this chapter:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Controlling person" means a person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

(3) "Insurer" means insurer as defined in RCW 48.01.050.

(4) "Licensed producer" means an agent, broker, or reinsurance intermediary licensed under the applicable provisions of this title.

(5) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections (6) and (7) of this section.

(6) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(7) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the reinsurer whether known as a reinsurance intermediary-manager, manager, or other similar term. Notwithstanding this subsection, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this chapter:

(a) An employee of the reinsurer;

(b) A United States manager of the United States branch of an alien reinsurer;

(c) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the insurer holding company act, chapter 48.31B RCW, and whose compensation is not based on the volume of premiums written;

(d) The manager of a group, association, pool, or organization of insurers that engages in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager’s principal business office is located.

(8) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with the authority to assume reinsurance.

(9) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with this chapter.

(10) "Qualified United States financial institution" means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner. [1993 c 462 § 23.]

48.94.005 Definitions. (Effective July 1, 2009.) The definitions set forth in this section apply throughout this chapter:

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Controlling person" means a person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control, or activities of the reinsurance intermediary.

(3) "Insurer" means insurer as defined in RCW 48.01.050.

(4) "Licensed producer" means an insurance producer or reinsurance intermediary licensed under the applicable provisions of this title.

(5) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections (6) and (7) of this section.

(6) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(7) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as an insurance producer for the reinsurer whether known as a reinsurance intermediary-manager, manager, or other similar term. Notwithstanding this subsection, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this chapter:

(a) An employee of the reinsurer;

(b) A United States manager of the United States branch of an alien reinsurer;

(c) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the insurer holding company act, chapter 48.31B RCW, and whose compensation is not based on the volume of premiums written;

(d) The manager of a group, association, pool, or organization of insurers that engages in joint underwriting or joint reinsurance and that are subject to examination by the insur-

ance commissioner of the state in which the manager's principal business office is located.

(8) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with the authority to assume reinsurance.

(9) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with this chapter.

(10) "Qualified United States financial institution" means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(b) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the commissioner, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner. [2008 c 217 § 73; 1993 c 462 § 23.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.94.010 Acting as a reinsurance intermediary-broker or reinsurance intermediary-manager—Commissioner's powers—Licenses—Attorney exemption. (1) No person, firm, association, or corporation may act as a reinsurance intermediary-broker in this state if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

(a) In this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state; or

(b) In another state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-broker in this state or another state having a regulatory scheme substantially similar to this chapter.

(2) No person, firm, association, or corporation may act as a reinsurance intermediary-manager:

(a) For a reinsurer domiciled in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(b) In this state, if the person, firm, association, or corporation maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state;

(c) In another state for a nondomestic reinsurer, unless the person, firm, association, or corporation is a licensed reinsurance intermediary-manager in this state or another state having a substantially similar regulatory scheme.

(3) The commissioner may require a reinsurance intermediary-manager subject to subsection (2) of this section to:

(a) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4)(a) The commissioner may issue a reinsurance intermediary license to a person, firm, association, or corporation who has complied with the requirements of this chapter. Any such license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons may be named in the application and any supplements to it. Any such license issued to a corporation authorizes all of the officers, and any designated employees and directors of it, to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements to it.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, but the change does not become effective until acknowledged by the commissioner.

(5) The commissioner may refuse to issue a reinsurance intermediary license if, in his or her judgment, the applicant, anyone named on the application, or a member, principal, officer, or director of the applicant, is not trustworthy, or that a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with a prerequisite for the issuance of such license. Upon written request, the commissioner will furnish a summary of the basis for refusal to issue a license, which document is privileged and not subject to chapter 42.56 RCW.

(6) Licensed attorneys-at-law of this state when acting in their professional capacity as such are exempt from this section. [2005 c 274 § 317; 1993 c 462 § 24.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

48.94.015 Written authorization required between a reinsurance intermediary-broker and an insurer—Minimum provisions. Brokers transactions between a reinsurance intermediary-broker and the insurer it represents in such capacity may be entered into only under a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, provide that:

(1) The insurer may terminate the reinsurance intermediary-broker's authority at any time.

(2) The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all com-

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missions, charges, and other fees received by, or owing, to the reinsurance intermediary-broker, and remit all funds due to the insurer within thirty days of receipt.

(3) All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution as defined in this chapter.

(4) The reinsurance intermediary-broker will comply with RCW 48.94.020.

(5) The reinsurance intermediary-broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded. [1993 c 462 § 25.]

48.94.020 Accounts and records maintained by reinsurance intermediary-broker—Access by insurer. (1) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes, or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of assuming reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer has access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer. [1993 c 462 § 26.]

48.94.025 Restrictions on insurer—Obtaining services—Employees—Financial condition of reinsurance intermediary. (1) An insurer may not engage the services of a person, firm, association, or corporation to act as a reinsur-

ance intermediary-broker on its behalf unless the person is licensed as required by RCW 48.94.010(1).

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to the insurer holding company act, chapter 48.31B RCW.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business. [1993 c 462 § 27.]

48.94.030 Contract required between a reinsurance intermediary-manager and a reinsurer—Minimum provisions. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in such capacity may be entered into only under a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through the reinsurance intermediary-manager, a true copy of the approved contract must be filed with the commissioner for approval. The contract must, at a minimum, provide that:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of a dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account must be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes, or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by RCW 48.94.040(4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from an assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer has access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(6) The reinsurance intermediary-manager may not assign the contract in whole or in part.

(7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer are clearly specified.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) All claims will be reported to the reinsurer in a timely manner;

(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) Involves a coverage dispute;

(iii) May exceed the reinsurance intermediary-manager's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(c) All claim files are the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate; the reinsurance intermediary-manager has reasonable access to and the right to copy the files on a timely basis;

(d) Settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of a dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, such interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of

insurance, and not until the adequacy of reserves on remaining claims has been verified under RCW 48.94.040(3).

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall periodically, at least semiannually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with an insurer before ceding or assuming any business with the insurer under this contract.

(14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting. [1993 c 462 § 28.]

48.94.035 Restrictions on reinsurance intermediary-manager—Retrocessions—Syndicates—Licenses—Employees. The reinsurance intermediary-manager may not:

(1) Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions under obligatory automatic agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines must include a list of reinsurers with which the automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint a reinsurance intermediary without assuring that the reinsurance intermediary is lawfully licensed to transact the type of reinsurance for which he or she is appointed.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder's surplus as of December 31st of the last complete calendar year.

(5) Collect a payment from a retrocessionaire or commit the reinsurer to a claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to the insurer holding company act, chapter 48.31B RCW.

(7) Appoint a subreinsurance intermediary-manager. [1993 c 462 § 29.]

48.94.040 Restrictions on reinsurer—Financial condition of reinsurance intermediary-manager—Loss reserves—Retrocessions—Termination of contract—Board of directors. (*Effective until July 1, 2009.*) (1) A reinsurer may not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-

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manager on its behalf unless the person is licensed as required by RCW 48.94.010(2).

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has had prepared by an independent certified accountant in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion is in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates must rest with an officer of the reinsurer who is not affiliated with the reinsurance intermediary-manager.

(5) Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors an officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by the insurer holding company act, chapter 48.31B RCW, or, if applicable, the broker-controlled property and casualty insurer act, chapter 48.97 RCW. [1993 c 462 § 30.]

48.94.040 Restrictions on reinsurer—Financial condition of reinsurance intermediary-manager—Loss reserves—Retrocessions—Termination of contract—Board of directors. (*Effective July 1, 2009.*) (1) A reinsurer may not engage the services of a person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by RCW 48.94.010(2).

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has had prepared by an independent certified accountant in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion is in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates must rest with an officer of the reinsurer who is not affiliated with the reinsurance intermediary-manager.

(5) Within thirty days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors an officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This

subsection does not apply to relationships governed by the insurer holding company act, chapter 48.31B RCW, or, if applicable, the producer-controlled property and casualty insurer act, chapter 48.97 RCW. [2008 c 217 § 74; 1993 c 462 § 30.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.94.045 Examination by commissioner. (1) A reinsurance intermediary is subject to examination by the commissioner. The commissioner has access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer. [1993 c 462 § 31.]

48.94.050 Violations of chapter—Penalties—Judicial review. (1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with chapters 48.17 and 34.05 RCW, to be in violation of any provision of this chapter, shall:

(a) For each separate violation, pay a penalty in an amount not exceeding five thousand dollars;

(b) Be subject to revocation or suspension of its license; and

(c) If a violation was committed by the reinsurance intermediary, make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) The decision, determination, or order of the commissioner under subsection (1) of this section is subject to judicial review under this title and chapter 34.05 RCW.

(3) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided in this title.

(4) Nothing contained in this chapter is intended to or in any manner limits or restricts the rights of policyholders, claimants, creditors, or other third parties or confer any rights to those persons. [1993 c 462 § 32.]

48.94.055 Rule making. The commissioner may adopt reasonable rules for the implementation and administration of this chapter. [1993 c 462 § 33.]

48.94.900 Short title. This chapter may be known and cited as the reinsurance intermediary act. [1993 c 462 § 22.]

48.94.901 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

Chapter 48.97 RCW

BROKER-CONTROLLED PROPERTY AND CASUALTY INSURER ACT [PRODUCER-CONTROLLED PROPERTY AND CASUALTY INSURER ACT, EFFECTIVE JULY 1, 2009]

Sections

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48.97.005 Definitions. (Effective until July 1, 2009.)

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

(1) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.

(2) "Broker" means an insurance broker or brokers or any other person, firm, association, or corporation, when, for compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured other than the person, firm, association, or corporation.

(3) "Control" or "controlled by" has the meaning ascribed in RCW 48.31B.005(2).

(4) "Controlled insurer" means a licensed insurer that is controlled, directly or indirectly, by a broker.

(5) "Controlling producer" means a broker who, directly or indirectly, controls an insurer.

(6) "Licensed insurer" or "insurer" means a person, firm, association, or corporation licensed to transact property and casualty insurance business in this state. The following, among others, are not licensed insurers for purposes of this chapter:

(a) Risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1613 (1986), the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq. (1982 & Supp. 1986), and chapter 48.92 RCW;

(b) Residual market pools and joint underwriting associations; and

(c) Captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another organization, whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members, or both, and their affiliates. [1993 c 462 § 17.]

48.97.005 Definitions. (Effective July 1, 2009.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.

(2) "Control" or "controlled by" has the meaning ascribed in RCW 48.31B.005(2).

(3) "Controlled insurer" means a licensed insurer that is controlled, directly or indirectly, by a broker.

(4) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(5) "Licensed insurer" or "insurer" means a person, firm, association, or corporation licensed to transact property and casualty insurance business in this state. The following, among others, are not licensed insurers for purposes of this chapter:

(a) Risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, P.L. 99-499, 100 Stat. 1613 (1986), the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq. (1982 Supp. 1986), and chapter 48.92 RCW;

(b) Residual market pools and joint underwriting associations; and

(c) Captive insurers. For the purposes of this chapter, captive insurers are insurance companies owned by another organization, whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members, or both, and their affiliates.

(6) "Producer" means an insurance broker or brokers or any other person, firm, association, or corporation when, for compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured other than the person, firm, association, or corporation. [2008 c 217 § 75; 1993 c 462 § 17.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.97.010 Application. This chapter applies to licensed insurers either domiciled in this state or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the Insurer Holding Company Act, chapter 48.31B RCW, or its successor act, to the extent they are not superseded by this chapter, continue to apply to all parties within the holding company systems subject to this chapter. [1993 c 462 § 18.]

48.97.015 Business placed with a controlled insurer—Application of section—Exceptions—Written contract required—Audit committee—Report to commissioner. (Effective until July 1, 2009.) (1)(a) This section applies in a particular calendar year if in that calendar year the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30th of the prior year.

(b) Notwithstanding (a) of this subsection, this section does not apply if:

(i) The controlling producer:

(A) Places insurance only with the controlled insurer; or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance; and

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(B) Accepts insurance placements only from nonaffiliated subbrokers, and not directly from insureds; and

(ii) The controlled insurer, except for business written through a residual market facility such as the assigned risk plan, fair plans, or other such plans, accepts insurance business only from a controlling broker, a broker controlled by the controlled insurer, or a broker that is a subsidiary of the controlled insurer.

(2) A controlled insurer may not accept business from a controlling broker and a controlling broker may not place business with a controlled insurer unless there is a written contract between the controlling broker and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of a dispute regarding the cause for the termination;

(b) The controlling broker shall render accounts to the controlling insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling broker;

(c) The controlling broker shall remit all funds due under the terms of the contract to the controlling insurer on at least a monthly basis. The due date must be fixed so that premiums or installments collected are remitted no later than ninety days after the effective date of a policy placed with the controlling insurer under this contract;

(d) The controlling broker shall hold all funds collected for the controlled insurer's account in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the applicable provisions of this title. However, funds of a controlling broker not required to be licensed in this state must be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction;

(e) The controlling broker shall maintain separately identifiable records of business written for the controlled insurer;

(f) The contract shall not be assigned in whole or in part by the controlling broker;

(g) The controlled insurer shall provide the controlling broker with its underwriting standards, rules, and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling broker shall adhere to the standards, rules, procedures, rates, and conditions that are the same as those applicable to comparable business placed with the controlled insurer by a broker other than the controlling broker;

(h) The rates of the controlling broker's commissions, charges, and other fees must be no greater than those applicable to comparable business placed with the controlled insurer by brokers other than controlling brokers. For purposes of (g) and (h) of this subsection, examples of comparable business include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(i) If the contract provides that the controlling broker, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified under subsection (3) of this section;

(j) The insurer may establish a different limit on the controlling broker's writings in relation to the controlled insurer's surplus and total writings for each line or subline of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and may not accept business from the controlling broker if the limit is reached. The controlling broker may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(k) The controlling broker may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts under obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts of percentages that may be reinsured, and commission schedules.

(3) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(4)(a) In addition to any other required loss reserve certification, the controlled insurer shall, annually, on April 1st of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the broker; and

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling brokers for placements of the same kinds of insurance. [1993 c 462 § 19.]

48.97.015 Business placed with a controlled insurer—Application of section—Exceptions—Written contract required—Audit committee—Report to commissioner. (Effective July 1, 2009.) (1)(a) This section applies in a particular calendar year if in that calendar year the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's

quarterly statement filed as of September 30th of the prior year.

(b) Notwithstanding (a) of this subsection, this section does not apply if:

(i) The controlling producer:

(A) Places insurance only with the controlled insurer; or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance; and

(B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(ii) The controlled insurer, except for business written through a residual market facility such as the assigned risk plan, fair plans, or other such plans, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

(2) A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

(a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of a dispute regarding the cause for the termination;

(b) The controlling producer shall render accounts to the controlling insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;

(c) The controlling producer shall remit all funds due under the terms of the contract to the controlling insurer on at least a monthly basis. The due date must be fixed so that premiums or installments collected are remitted no later than ninety days after the effective date of a policy placed with the controlling insurer under this contract;

(d) The controlling producer shall hold all funds collected for the controlled insurer's account in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the applicable provisions of this title. However, funds of a controlling producer not required to be licensed in this state must be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

(e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(f) The contract shall not be assigned in whole or in part by the controlling producer;

(g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, proce-

dures, rates, and conditions that are the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(h) The rates of the controlling producer's commissions, charges, and other fees must be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of (g) and (h) of this subsection, examples of comparable business include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then the compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event may the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified under subsection (3) of this section;

(j) The insurer may establish a different limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(k) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts under obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts of percentages that may be reinsured, and commission schedules.

(3) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves.

(4)(a) In addition to any other required loss reserve certification, the controlled insurer shall, annually, on April 1st of each year, file with the commissioner an opinion of an independent casualty actuary, or such other independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, including losses incurred but not reported, on business placed by the producer; and

(b) The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentages paid

to noncontrolling producers for placements of the same kinds of insurance. [2008 c 217 § 76; 1993 c 462 § 19.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.97.020 Relationship between broker and controlled insurer—Broker's duty to disclose—Subbrokers. (Effective until July 1, 2009.) The broker, before the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer, except that, if the business is placed through a subbroker who is not a controlling broker, the controlling broker shall retain in his or her records a signed commitment from the subbroker that the subbroker is aware of the relationship between the insurer and the broker and that the subbroker has notified or will notify the insured. [1993 c 462 § 20.]

48.97.020 Relationship between producer and controlled insurer—Producer's duty to disclose—Subproducers. (Effective July 1, 2009.) The producer, before the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his or her records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the producer and that the subproducer has notified or will notify the insured. [2008 c 217 § 77; 1993 c 462 § 20.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.97.025 Broker's failure to comply with chapter—Commissioner's power—Damages—Penalties. (Effective until July 1, 2009.) (1)(a) If the commissioner believes that the controlling broker has not materially complied with this chapter, or a rule adopted or order issued under this chapter, the commissioner may after notice and opportunity to be heard, order the controlling broker to cease placing business with the controlled insurer; and

(b) If it is found that because of material noncompliance that the controlled insurer or any policyholder thereof has suffered loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered under chapter 48.31 RCW, and the receiver appointed under that order believes that the controlling broker or any other person has not materially complied with this chapter, or a rule adopted or order issued under this chapter, and the insurer suffered any loss or damage from the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(3) Nothing contained in this section alters or affects the right of the commissioner to impose other penalties provided for in this title.

(4) Nothing contained in this section alters or affects the rights of policyholders, claimants, creditors, or other third parties. [1993 c 462 § 21.]

48.97.025 Producer's failure to comply with chapter—Commissioner's power—Damages—Penalties. (Effective July 1, 2009.) (1)(a) If the commissioner believes that the controlling producer has not materially complied with this chapter, or a rule adopted or order issued under this chapter, the commissioner may after notice and opportunity to be heard, order the controlling producer to cease placing business with the controlled insurer; and

(b) If it is found that because of material noncompliance that the controlled insurer or any policyholder thereof has suffered loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

(2) If an order for liquidation or rehabilitation of the controlled insurer has been entered under chapter 48.31 RCW, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter, or a rule adopted or order issued under this chapter, and the insurer suffered any loss or damage from the noncompliance, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(3) Nothing contained in this section alters or affects the right of the commissioner to impose other penalties provided for in this title.

(4) Nothing contained in this section alters or affects the rights of policyholders, claimants, creditors, or other third parties. [2008 c 217 § 78; 1993 c 462 § 21.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.97.900 Short title. (Effective until July 1, 2009.) This chapter may be known and cited as the Business Transacted with Broker-controlled Property and Casualty Insurer Act. [1993 c 462 § 16.]

48.97.900 Short title. (Effective July 1, 2009.) This chapter may be known and cited as the business transacted with producer-controlled property and casualty insurer act. [2008 c 217 § 79; 1993 c 462 § 16.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.97.901 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

Chapter 48.98 RCW

MANAGING GENERAL AGENTS ACT

Sections

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48.98.901	Severability—Implementation—1993 c 462.

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

(1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

(2) "Insurer" means a person having a certificate of authority in this state as an insurance company under RCW 48.01.050.

(3) "Managing general agent" means:

(a) A person who manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as a representative of the insurer whether known as a managing general agent, manager, or other similar term, and who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

(i) Adjusts or pays claims in excess of an amount to be determined by the commissioner; or

(ii) Negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding (a) of this subsection, the following persons may not be managing general agents for purposes of this chapter:

(i) An employee of the insurer;

(ii) A United States manager of the United States branch of an alien insurer;

(iii) An underwriting manager who, under a contract, manages all of the insurance operations of the insurer, is under common control with the insurer, subject to the insurer holding company act, chapter 48.31B RCW, and whose compensation is not based on the volume of premiums written; or

(iv) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(4) "Underwrite" means to accept or reject risks on behalf of the insurer. [1993 c 462 § 35.]

48.98.010 Requirements for managing general agent—License—Bond—Errors and omissions policy. (Effective until July 1, 2009.) (1) No person may act in the capacity of a managing general agent with respect to risks located in this state, for an insurer authorized by this state, unless that person is licensed in this state as an *agent, under chapter 48.17 RCW, for the lines of insurance involved and is designated as a managing general agent and appointed as such by the insurer.

(2) No person may act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless that person is licensed as an *agent in this state, under chapter 48.17 RCW, for the lines of insurance involved and is designated as a managing general agent and appointed as such by the insurer.

(3) The commissioner may require a bond for the protection of each insurer.

(4) The commissioner may require the managing general agent to maintain an errors and omissions policy. [1993 c 462 § 36.]

*Reviser's note: 2007 c 117 replaced the terms "agent" and "broker" with the term "producer," effective July 1, 2009.

48.98.010 Requirements for managing general agent—License—Bond—Errors and omissions policy. (Effective July 1, 2009.) (1) No person may act in the capacity of a managing general agent with respect to risks located in this state, for an insurer authorized by this state, unless that person is licensed in this state as an insurance producer, under chapter 48.17 RCW, for the lines of insurance involved and is designated as a managing general agent and appointed as such by the insurer.

(2) No person may act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless that person is licensed as an insurance producer in this state, under chapter 48.17 RCW, for the lines of insurance involved and is designated as a managing general agent and appointed as such by the insurer.

(3) The commissioner may require a bond for the protection of each insurer.

(4) The commissioner may require the managing general agent to maintain an errors and omissions policy. [2008 c 217 § 80; 1993 c 462 § 36.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.98.015 Contract required between a managing general agent and an insurer—Minimum provisions. (Effective until July 1, 2009.) A managing general agent may not place business with an insurer unless there is in force a written contract between the managing general agent and the insurer that sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, that specifies the division of the responsibilities, and that contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of a dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) The managing general agent shall hold funds collected for the account of an insurer in a fiduciary capacity in an FDIC insured financial institution. This account must be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' esti-

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mated claims payments and allocated loss adjustment expenses.

(4) The managing general agent shall maintain separate records of business written for each insurer. The insurer has access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Those records must be retained according to the requirements of this title and rules adopted under it.

(5) The managing general agent may not assign the contract in whole or part.

(6)(a) Appropriate underwriting guidelines must include at least the following: The maximum annual premium volume; the basis of the rates to be charged; the types of risks that may be written; maximum limits of liability; applicable exclusions; territorial limitations; policy cancellation provisions; and the maximum policy period.

(b) The insurer has the right to cancel or not renew any policy of insurance, subject to the applicable laws and rules, including those in chapter 48.18 RCW.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the insurer in a timely manner;

(b) A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner, or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment in excess of an amount set by the commissioner or an amount set by the insurer, whichever is less;

(c) All claim files are the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer, those files become the sole property of the insurer or its liquidator or successor. The managing general agent has reasonable access to and the right to copy the files on a timely basis; and

(d) Settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the managing general agent's settlement authority during the pendency of a dispute regarding the cause for termination.

(8) When electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under RCW 48.98.020.

(10) The managing general agent may not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind automatic reinsurance contracts under obligatory automatic agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Use an agent that is not appointed to represent the insurer in accordance with the requirements of chapter 48.17 RCW;

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that may not exceed one percent of the insurer's policyholder surplus as of December 31st of the last-completed calendar year;

(e) Collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(f) Permit an agent appointed by it to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed by the insurer; or

(h) Appoint a submanaging general agent. [2005 c 223 § 32; 1993 c 462 § 37.]

48.98.015 Contract required between a managing general agent and an insurer—Minimum provisions. (Effective July 1, 2009.) A managing general agent may not place business with an insurer unless there is in force a written contract between the managing general agent and the insurer that sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, that specifies the division of the responsibilities, and that contains the following minimum provisions:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of a dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) The managing general agent shall hold funds collected for the account of an insurer in a fiduciary capacity in an FDIC insured financial institution. This account must be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

(4) The managing general agent shall maintain separate records of business written for each insurer. The insurer has access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the

commissioner. Those records must be retained according to the requirements of this title and rules adopted under it.

(5) The managing general agent may not assign the contract in whole or part.

(6)(a) Appropriate underwriting guidelines must include at least the following: The maximum annual premium volume; the basis of the rates to be charged; the types of risks that may be written; maximum limits of liability; applicable exclusions; territorial limitations; policy cancellation provisions; and the maximum policy period.

(b) The insurer has the right to cancel or not renew any policy of insurance, subject to the applicable laws and rules, including those in chapter 48.18 RCW.

(7) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) All claims must be reported to the insurer in a timely manner;

(b) A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount determined by the commissioner, or exceeds the limit set by the insurer, whichever is less;

(ii) Involves a coverage dispute;

(iii) May exceed the managing general agent's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment in excess of an amount set by the commissioner or an amount set by the insurer, whichever is less;

(c) All claim files are the joint property of the insurer and the managing general agent. However, upon an order of liquidation of the insurer, those files become the sole property of the insurer or its liquidator or successor. The managing general agent has reasonable access to and the right to copy the files on a timely basis; and

(d) Settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the managing general agent's settlement authority during the pendency of a dispute regarding the cause for termination.

(8) When electronic claims files are in existence, the contract must address the timely transmission of the data.

(9) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified under RCW 48.98.020.

(10) The managing general agent may not:

(a) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind automatic reinsurance contracts under obligatory automatic agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or

percentages that may be reinsured, and commission schedules;

(b) Commit the insurer to participate in insurance or reinsurance syndicates;

(c) Use an insurance producer that is not appointed to represent the insurer in accordance with the requirements of chapter 48.17 RCW;

(d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, that may not exceed one percent of the insurer's policyholder surplus as of December 31st of the last-completed calendar year;

(e) Collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(f) Permit an agent appointed by it to serve on the insurer's board of directors;

(g) Jointly employ an individual who is employed by the insurer; or

(h) Appoint a submanaging general agent. [2008 c 217 § 81; 2005 c 223 § 32; 1993 c 462 § 37.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.98.020 Requirements for insurer—Audit, loss reserves, and on-site review of managing general agent—Notice to commissioner—Quarterly review of books and records—Board of director. (Effective until July 1, 2009.)

(1) The insurer shall have on file an independent audited financial statement, in a form acceptable to the commissioner, of each managing general agent with which it is doing or has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) The insurer shall periodically, and no less frequently than semiannually, conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates must rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) Within thirty days of entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of that appointment or termination to the commissioner. Notices of appointment of a managing general agent must include a statement of duties that the managing general agent is expected to perform on behalf of the insurer, the lines of insurance for which the managing general agent is to be authorized to act, and any other information the commissioner may request. This subsection applies to managing general agents operating in this state.

(6) An insurer shall review its books and records each calendar quarter to determine if any agent has become a managing general agent. If the insurer determines that an agent has become a managing general agent under RCW 48.98.005,

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the insurer shall promptly notify the agent and the commissioner of that determination, and the insurer and agent shall fully comply with this chapter within thirty days.

(7) An insurer may not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by the insurer holding company act, chapter 48.31B RCW, or, if applicable, the business transacted with broker-controlled property and casualty insurer act, *chapter 48.97 RCW. [1993 c 462 § 38.]

***Reviser's note:** Chapter 48.97 RCW was renamed the producer-controlled property and casualty insurer act, effective July 1, 2009.

48.98.020 Requirements for insurer—Audit, loss reserves, and on-site review of managing general agent—Notice to commissioner—Quarterly review of books and records—Board of director. (Effective July 1, 2009.) (1) The insurer shall have on file an independent audited financial statement, in a form acceptable to the commissioner, of each managing general agent with which it is doing or has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) The insurer shall periodically, and no less frequently than semiannually, conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates must rest with an officer of the insurer, who may not be affiliated with the managing general agent.

(5) Within thirty days of entering into or terminating a contract with a managing general agent, the insurer shall provide written notification of that appointment or termination to the commissioner. Notices of appointment of a managing general agent must include a statement of duties that the managing general agent is expected to perform on behalf of the insurer, the lines of insurance for which the managing general agent is to be authorized to act, and any other information the commissioner may request. This subsection applies to managing general agents operating in this state.

(6) An insurer shall review its books and records each calendar quarter to determine if any insurance producer has become a managing general agent. If the insurer determines that an insurance producer has become a managing general agent under RCW 48.98.005, the insurer shall promptly notify the insurance producer and the commissioner of that determination, and the insurer and insurance producer shall fully comply with this chapter within thirty days.

(7) An insurer may not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by the insurer holding company act, chapter 48.31B RCW, or, if applicable, the business transacted with broker-controlled property and casualty insurer act, *chapter 48.97 RCW. [2008 c 217 § 82; 1993 c 462 § 38.]

*Reviser's note: Chapter 48.97 RCW was renamed the producer-controlled property and casualty insurer act, effective July 1, 2009.

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.98.025 Examinations—Acts of a managing general agent are acts of the insurer. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer, as provided in chapter 48.03 RCW. [1993 c 462 § 39.]

48.98.030 Violations of chapter—Penalties—Judicial review. (Effective until July 1, 2009.) (1) Subject to a hearing in accordance with chapters 34.05 and 48.04 RCW, upon a finding by the commissioner that any person has violated any provision of this chapter, the commissioner may order:

(a) For each separate violation, a penalty in an amount of not more than one thousand dollars;

(b) Revocation, or suspension for up to one year, of the agent's license; and

(c) The managing general agent to reimburse the insurer, the rehabilitator, or liquidator of the insurer for losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

(2) The decision, determination, or order of the commissioner under this section is subject to judicial review under chapters 34.05 and 48.04 RCW.

(3) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in this title.

(4) Nothing contained in this chapter is intended to or in any manner limits or restricts the rights of policyholders, claimants, and auditors. [1993 c 462 § 40.]

48.98.030 Violations of chapter—Penalties—Judicial review. (Effective July 1, 2009.) (1) Subject to a hearing in accordance with chapters 34.05 and 48.04 RCW, upon a finding by the commissioner that any person has violated any provision of this chapter, the commissioner may order:

(a) For each separate violation, a penalty in an amount of not more than one thousand dollars;

(b) Revocation, or suspension for up to one year, of the managing general agent's license including any insurance producer's licenses held by the managing general agent; and

(c) The managing general agent to reimburse the insurer, the rehabilitator, or liquidator of the insurer for losses incurred by the insurer caused by a violation of this chapter committed by the managing general agent.

(2) The decision, determination, or order of the commissioner under this section is subject to judicial review under chapters 34.05 and 48.04 RCW.

(3) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for in this title.

(4) Nothing contained in this chapter is intended to or in any manner limits or restricts the rights of policyholders, claimants, and auditors. [2008 c 217 § 83; 1993 c 462 § 40.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.98.035 Rule making. The commissioner may adopt rules for the implementation and administration of this chapter, that shall include but are not limited to licensure of managing general agents. [1993 c 462 § 41.]

48.98.040 Continued use of a managing general agent—Compliance with chapter. No insurer may continue to use the services of a managing general agent on and after January 1, 1994, unless that use complies with this chapter. [1993 c 462 § 42.]

48.98.900 Short title. This chapter may be known and cited as the managing general agents act. [1993 c 462 § 34.]

48.98.901 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

Chapter 48.99 RCW

UNIFORM INSURERS LIQUIDATION ACT

Sections

48.99.010	Uniform insurers liquidation act.
48.99.011	Insurer—Self-funded multiple employer welfare arrangement.
48.99.020	Delinquency proceedings—Domestic insurers.
48.99.030	Delinquency proceedings—Foreign insurers.
48.99.040	Claims of nonresidents against domestic insurer.
48.99.050	Claims of residence against foreign insurer.
48.99.060	Priority of certain claims.
48.99.070	Attachment, garnishment, execution stayed.
48.99.080	Severability—Uniformity of interpretation.
48.99.900	Severability—Implementation—1993 c 462.

48.99.010 Uniform insurers liquidation act. This chapter may be known and cited as the uniform insurers liquidation act. For the purposes of this chapter:

(1) "Insurer" means any person, firm, corporation, association, or aggregation of persons doing an insurance business and subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the commissioner, or the equivalent insurance supervisory official of another state.

(2) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer.

(3) "State" means any state of the United States, and also the District of Columbia and Puerto Rico.

(4) "Foreign country" means territory not in any state.

(5) "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an insurer incorporated or organized in a foreign country, the state in which such insurer, having become authorized to do business in such state, has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States; and any such insurer is deemed to be domiciled in such state.

(6) "Ancillary state" means any state other than a domiciliary state.

(7) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of this chapter are in force, including the provisions requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer.

(8) "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons, and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders, or all policyholders and creditors in the United States, shall be deemed general assets.

(9) "Preferred claim" means any claim with respect to which the law of a state or of the United States accords priority of payment from the general assets of the insurer.

(10) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(11) "Secured claim" means any claim secured by mortgage, trust, deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings in the state of the insurer's domicile have become liens upon specific assets by reason of judicial process.

(12) "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require. [1993 c 462 § 78; 1961 c 194 § 12; 1947 c 79 § .31.11; Rem. Supp. 1947 § 45.31.11. Formerly RCW 48.31.110.]

48.99.011 Insurer—Self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, is an insurer under this chapter. [2004 c 260 § 21.]

Severability—Effective date—2004 c 260: See RCW 48.125.900 and 48.125.901.

48.99.020 Delinquency proceedings—Domestic insurers. (1) Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the commissioner as such receiver. The court shall direct the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As domiciliary receiver the commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer, or to liquidate the United States branch of an alien insurer domiciled in this state, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary receivers appointed in this state as to assets located in this state.

(3) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be

imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(4) The commissioner as domiciliary receiver shall be responsible on his official bond for the proper administration of all assets coming into his possession or control. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the assets.

(5) Upon taking possession of the assets of an insurer the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer.

(6) In connection with delinquency proceedings the commissioner may appoint one or more special deputy commissioners to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Within the limits of the duties imposed upon them special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings. [1947 c 79 § .31.12; Rem. Supp. 1947 § 45.31.12. Formerly RCW 48.31.120.]

48.99.030 Delinquency proceedings—Foreign insurers. (*Effective until July 1, 2009.*) (1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties

with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state. [1947 c 79 § .31.13; Rem. Supp. 1947 § 45.31.13. Formerly RCW 48.31.130]

48.99.030 Delinquency proceedings—Foreign insurers. (*Effective July 1, 2009.*) (1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he or she finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he or she shall have the immediate right to recover balances due from local insurance producers and to obtain possession of any books and records of the insurer found in this state. He or she shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he or she may be entitled under the laws of this state. [2008 c 217 § 84; 1947 c 79 § .31.13; Rem. Supp. 1947 § 45.31.13. Formerly RCW 48.31.130]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.99.040 Claims of nonresidents against domestic insurer. (1) In a delinquency proceeding begun in this state against an insurer domiciled in this state, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

(2) Controverted claims belonging to claimants residing in reciprocal states may either (a) be proved in this state as

provided by law, or (b) if ancillary proceedings have been commenced in reciprocal states, be proved in those proceedings. In the event a claimant elects to prove a claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this state as provided in RCW 48.99.050 with respect to ancillary proceedings in this state, the final allowance of a claim by the courts in the ancillary state must be accepted in this state as conclusive as to its amount, and must also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state. [2003 c 248 § 25; 1947 c 79 § .31.14; Rem. Supp. 1947 § 45.31.14. Formerly RCW 48.31.140.]

48.99.050 Claims of residents against foreign insurer.

(1) In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer, who reside within this state may file claims either with the ancillary receiver, if any, appointed in this state, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceeding.

(2) Controverted claims belonging to claimants residing in this state may either (a) be proved in the domiciliary state as provided by the law of that state, or (b), if ancillary proceedings have been commenced in this state, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this state, he shall file his claim with the ancillary receiver in the manner provided by the law of this state for the proving of claims against insurers domiciled in this state, and he shall give notice in writing to the receiver in the domiciliary state, either by registered mail or by personal service at least forty days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based, and the priorities asserted, if any. If the domiciliary receiver, within thirty days after the giving of such notice, shall give notice in writing to the ancillary receiver and to the claimant, either by registered mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim. The final allowance of the claim by the courts of this state shall be accepted as conclusive as to its amount, and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this state. [1947 c 79 § .31.15; Rem. Supp. 1947 § 45.31.15. Formerly RCW 48.31.150.]

48.99.060 Priority of certain claims. (1) In a delinquency proceeding against an insurer domiciled in this state, claims owing to residents of ancillary states shall be preferred claims if like claims are preferred under the laws of this state. All such claims whether owing to residents or nonresidents shall be given equal priority of payment from general assets regardless of where such assets are located.

(2) In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

(3) The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(4) The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender his security and file his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in proceedings in which the domiciliary receiver has had notice and opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state. [1993 c 462 § 79; 1947 c 79 § .31.16; Rem. Supp. 1947 § 45.31.16. Formerly RCW 48.31.160.]

48.99.070 Attachment, garnishment, execution stayed. During the pendency of delinquency proceedings in this or any reciprocal state no action or proceeding in the nature of an attachment, garnishment, or execution shall be commenced or maintained in the courts of this state against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding. [1947 c 79 § .31.17; Rem. Supp. 1947 § 45.31.17. Formerly RCW 48.31.170.]

48.99.080 Severability—Uniformity of interpretation. (1) If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(2) This uniform insurers liquidation act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it. To the extent that its provisions, when applicable, conflict with provisions of chapter 48.31 RCW, the provisions of this chapter shall control. [1993 c 462 § 80; 1947 c 79 § .31.18; Rem. Supp. 1947 § 45.31.18. Formerly RCW 48.31.180.]

48.99.900 Severability—Implementation—1993 c 462. See RCW 48.31B.901 and 48.31B.902.

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Chapter 48.102 RCW VIATICAL SETTLEMENTS

Sections

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48.102.020	Commissioner approval required for contract form, rate, fee, commission, or other compensation charged—Finding necessary for disapproval.
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48.102.050	Rules as necessary to implement chapter.
48.102.055	Consumer protection act applies—Civil action—Damages—Costs—Attorneys' fees.
48.102.900	Short title—1995 c 161.
48.102.901	Application of chapter 21.20 RCW—1995 c 161.

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

(1) "Person" means the same as defined in RCW 48.01.070.

(2) "Viatical settlement broker" means an individual, partnership, corporation, or other entity who or which for another person, and for a fee, commission, or any other valuable consideration, does any of the following things:

(a) Offers or advertises the availability of viatical settlements;

(b) Introduces viators to viatical settlement providers;

(c) Offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. However, "viatical settlement broker" does not mean an attorney, accountant, or financial planner retained to represent the viator, whose fee or other compensation is not paid by the viatical settlement provider.

(3) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator.

(4) "Viatical settlement provider" means any person that enters into an agreement with a viator under the terms of which the viatical settlement provider pays compensation or anything of value, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider. "Viatical settlement provider" does not mean the following:

(a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan; or

(b) The issuer of a life insurance policy providing accelerated benefits, as those are defined in WAC 284-23-620(1).

(5) "Viator" means the owner of a life insurance policy, or the holder of a certificate of insurance, insuring the life of a person with a catastrophic or life-threatening illness or con-

dition, who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate of insurance to the viatical settlement provider. [1995 c 161 § 1.]

48.102.010 License required for providers and brokers—Application—Requirements—Fee—Rules. (1) On or after July 23, 1995, an individual, partnership, corporation, or other entity may not act as a viatical settlement provider or enter into or solicit a viatical settlement contract in this state, or act as a viatical settlement broker, without first obtaining a license from the commissioner.

(2) Application for a license for a viatical settlement provider or viatical settlement broker shall be made on a form prescribed by the commissioner, and the application shall be accompanied by a fee as determined by the commissioner by rule.

(3) Licenses for viatical settlement providers or viatical settlement brokers may be renewed from year to year on the anniversary date or at another interval established by rule, upon payment of the renewal fee and submission of forms of information as determined by rule. Failure to pay the fee within the time prescribed shall result in automatic revocation of the license.

(4) The applicant shall provide the information the commissioner requires on forms prescribed by the commissioner.

(a) The applicant shall disclose the identity of all stockholders, partners, and corporate officers; its parent entities and affiliates, and their stockholders, partners, and officers; to the extent prescribed by the commissioner.

(b) The commissioner may refuse to issue or renew a license if he or she is not satisfied that any officer, partner, stockholder, or employee thereof, who may materially influence the conduct of the applicant or licensee, meets the standards required by the public interest.

(c) A license issued to a partnership, corporation, or other entity authorizes all its partners, officers, and employees to act as viatical settlement providers under the license, if they were identified in the application or application for renewal.

(d) Any person who willfully misrepresents any fact required to be disclosed in an application for a license to act as either a viatical settlement provider or a viatical settlement broker shall be liable to penalties as provided by applicable law.

(5) Upon the filing of an application and the payment of the fee required by rule, the commissioner shall issue or renew a license if the commissioner finds that the applicant:

(a) Has provided a detailed and adequate plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the business covered by the license for which the applicant has applied;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business covered by the license for which the applicant has applied; and

(d) If a corporation, is incorporated under the laws of this state, or is a foreign corporation authorized to transact business in this state.

(6) The commissioner shall not issue or renew any license unless the applicant has filed with the commissioner a written irrevocable consent that any action against the applicant may be commenced by the service of process upon the commissioner. [1995 c 161 § 2.]

48.102.015 Commissioner may suspend, revoke, or refuse to issue or renew license—Information requirements—Hearing—Fine. (1) The commissioner may suspend, revoke, or refuse to issue or renew the license of any viatical settlement broker or viatical settlement provider if the commissioner finds that:

(a) There was any misrepresentation, intentional or otherwise, in the application for the license or for renewal of a license;

(b) The applicant for, or holder of any such license, is or has been subject to a final administrative action for being, or is otherwise shown to be, untrustworthy or incompetent to act as either a viatical settlement broker or a viatical settlement provider;

(c) The applicant for, or holder of any such license, demonstrates a pattern of unreasonable payments to viators;

(d) The applicant for, or holder of any such license, has been convicted of a felony or of any criminal misdemeanor of which criminal fraud is an element; or

(e) The applicant for, or holder of any such license, has violated any provision of this title.

(2) The commissioner may require an applicant or the holder of any license issued under this chapter to supply current information on the identity or capacity of stockholders, partners, officers, and employees, including but not limited to the following: Fingerprints, personal history, business experience, business records, and any other information which the commissioner may require. If required, the applicant or licensee shall furnish his or her fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check.

(3) Before the commissioner suspends or revokes any license issued under this chapter, the commissioner shall conduct a hearing, if the applicant or licensee requests this in writing. The hearing shall be in accordance with chapters 34.05 and 48.04 RCW.

(4) After a hearing or with the consent of any party licensed under this chapter and in addition to or in lieu of the suspension, revocation, or refusal to renew any license under this chapter, the commissioner may levy a fine upon the viatical settlement provider in an amount not more than ten thousand dollars, for each violation of this chapter. The order levying the fine shall specify the period within which the fine shall be fully paid, and that period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due, the commissioner may revoke the license if not already revoked, and the fine may be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be deposited into the general fund.

(5) If in the process of verifying fingerprints under subsection (2) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant or licensee. [2002 c 227 § 5; 1995 c 161 § 3.]

Effective date—2002 c 227: See note following RCW 48.06.040.

48.102.020 Commissioner approval required for contract form, rate, fee, commission, or other compensation charged—Finding necessary for disapproval. After a date established by rule, no viatical settlement provider or viatical settlement broker may use any viatical settlement contract or brokerage contract in this state unless the contract form has been filed with and approved by the commissioner. Any such contract filing is approved if it has not been disapproved within sixty days after it is filed with the commissioner. The rate, fee, commission, or other compensation charged must also be filed with the commissioner at the same time the contract form is filed, and any changes must be filed and approved before use. The commissioner shall disapprove any such viatical settlement contract or brokerage contract, or revoke previous approval, or rates, if the commissioner makes either of the following alternative findings:

(1) The benefits offered to the viator are unreasonable in relation to the rate, fee, or other compensation that is charged; or

(2) Any other provisions or terms of the contract are unreasonable, contrary to the public interest, misleading, or unfair to the viator. [1995 c 161 § 4.]

48.102.025 Licensee must file annual statement. Each holder of any license issued under this chapter shall file with the commissioner, on or before March 1 of each year, an annual statement containing such information as the commissioner may by rule require. [1995 c 161 § 5.]

48.102.030 Examination of business and affairs of applicant or licensee—Production of information—Expenses—Confidentiality of information—Recordkeeping requirements. (1) The commissioner may examine the business and affairs of any applicant for or holder of any license issued under this chapter. The commissioner may require any applicant for or holder of any such license to produce any records, books, files, and any other writings or information reasonably necessary to determine whether or not the applicant for or holder of any such license is acting, or has acted, in violation of any laws, or otherwise contrary to the interests of the public, or has acted in a manner demonstrating incompetence or untrustworthiness to hold any such license. The expenses incurred in conducting any examination shall be paid by the applicant for or holder of any such license.

(2) The names and individual identification data of all viators are private and confidential information and shall not be disclosed by the commissioner, except under court order.

(3) Records of all transactions of viatical settlement contracts and brokerage contracts, and an advertising file containing the text of all advertising used and the dates and

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media in which it was used, shall be maintained by each holder of any license issued under this chapter. [1995 c 161 § 6.]

48.102.035 Requirement to provide information to the viator. A viatical settlement provider shall disclose, in writing, the following information to the viator no later than the date when the viatical settlement contract is signed by all parties:

(1) Possible alternatives to viatical settlement contracts for persons with catastrophic or life-threatening conditions. These shall include, but not be limited to, any available accelerated benefits on the life insurance policy;

(2) The fact that some or all of the proceeds of the viatical settlement may be taxable, and that advice and assistance should be sought from an attorney or tax professional;

(3) The fact that the proceeds of the viatical settlement could be subject to the claims of creditors, and that advice and assistance should be sought from an attorney;

(4) The fact that receiving the proceeds of the viatical settlement might adversely affect the viator's eligibility for medicaid, or other public benefits or entitlements, and that advice and assistance should be sought from an attorney;

(5) The right of the viator to rescind the contract on or before the later of (a) thirty days after the date when it is executed by all parties or (b) fifteen days after the receipt of the proceeds of the viatical settlement contract; and

(6) The date by which the proceeds will be available to the viator, and also the source of the proceeds. [1995 c 161 § 7.]

48.102.040 Requirement for provider to obtain information—Medical information is confidential—Rescission rights—Time is of the essence. (1) A viatical settlement provider entering into a viatical settlement contract with a viator shall first obtain the following:

(a) A written and signed statement from an attending medical doctor that in his or her professional opinion, the viator is of sound mind and under no undue influence;

(b) A document witnessed by a person not employed by or affiliated with the viatical settlement provider, in which the viator consents to the viatical settlement contract, acknowledges the catastrophic or life-threatening illness or condition, and represents that he or she:

(i) Has a complete understanding of the viatical settlement contract;

(ii) Has a full and complete understanding of the life insurance policy;

(iii) Releases his or her medical records for the limited and express purpose of making the viatical settlement agreement possible;

(iv) Has either obtained advice or assistance from an attorney or tax professional, or has had the opportunity to do so; and

(v) Has entered into the viatical settlement contract freely and voluntarily; and

(c) In those cases where the viator is not the insured person, a written consent to the viatical settlement agreement from the insured person or his or her legal representative.

(2) All medical information solicited or obtained by any holder of a license issued under this chapter is subject to all applicable laws governing confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall contain a provision no less favorable than that in the event the viator exercises his or her right to rescind the viatical settlement contract, any proceeds previously paid shall be refunded no later than the earliest of (a) thirty days of the date of rescission or (b) fifteen days of payment of the proceeds.

(4) All viatical settlement contracts entered into in this state shall contain a rescission clause no less favorable than that the viator has the unconditional right to rescind the contract on or before the later of (a) thirty days of the date it is signed by all parties or (b) fifteen days of the receipt of the proceeds of the viatical settlement agreement; subject to refund of those proceeds as set forth in subsection (3) of this section.

(5) Time is of the essence in delivery of the proceeds of any viatical settlement contract by the date disclosed to the viator.

(6) No viatical settlement contract entered into in this state may contain any restrictions upon the use of the proceeds of the contract.

(7) Any viatical settlement contract entered into in this state shall establish the terms under which the viatical settlement provider shall pay compensation or anything of value, which compensation is less than the expected death benefit of the insurance policy or certificate of insurance, in return for the assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. [1995 c 161 § 8.]

48.102.045 Must be licensed—Transfer to unlicensed entity is void—Rights in policy restored to viator—Exceptions allowed by rule. (1) A viatical settlement provider shall not directly or indirectly assign, transfer, sell, resell, or transfer by gift or bequest, or otherwise convey any insurance policy that is or has been the subject of a viatical settlement agreement, to any person, custodian, investor, investor group, or other entity that does not hold a Washington license as a viatical settlement provider, issued by the commissioner.

(2) Any attempted transfer to any person, custodian, investor, investor group, or other entity not holding such a license is void, and all rights in the insurance policy are restored to the viator as of the date of the purported transfer, except that the viator is not required to return the proceeds of the original viatical settlement agreement to the viatical settlement provider. The commissioner may allow exceptions to this subsection, by rule. [1995 c 161 § 9.]

48.102.050 Rules as necessary to implement chapter. The commissioner may adopt rules as necessary to implement this chapter. This includes, but is not limited to, the adoption of rules regarding minimum capital requirements for viatical settlement providers, training and examination requirements for viatical settlement brokers, requiring a prospective viator to contact his or her life insurer regarding pos-

sible accelerated benefits before entering into a viatical settlement agreement, licensing and examination requirements for applicants for a license as a viatical settlement broker, when benefits are or are not reasonable in relation to the rate fee, or other compensation, and bond requirements for either or both viatical settlement providers or viatical settlement brokers. [1995 c 161 § 10.]

48.102.055 Consumer protection act applies—Civil action—Damages—Costs—Attorneys' fees. (1) The legislature finds that the subject of viatical settlements is of vital importance to the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce. It is also an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Any person who is injured by a violation of this chapter may bring a civil action against a viatical settlement provider in superior court to recover his or her actual damages. The court may increase the award of damages to an amount not more than three times the actual damages sustained, and in addition the court may award costs and attorneys' fees to the injured person. [1995 c 161 § 11.]

48.102.900 Short title—1995 c 161. This act may be known and cited as the viatical settlements act. [1995 c 161 § 12.]

48.102.901 Application of chapter 21.20 RCW—1995 c 161. The provisions of this chapter do not affect the application of chapter 21.20 RCW. [1995 c 161 § 13.]

Chapter 48.104 RCW

HOLOCAUST VICTIMS INSURANCE RELIEF ACT

Sections

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48.104.902	Severability—1999 c 8.
48.104.903	Expiration date—1999 c 8.

48.104.010 Historical context—Policy declarations—Intent. (Expires December 31, 2010.) (1) The legislature recognizes the existence of allegations that certain insurers doing business in the state of Washington, either directly or through related companies and affiliates, have failed to honor

insurance policies issued during the World War II era. Although such policies were issued outside of the state of Washington, Washington has a clear obligation to seek justice for its citizens and residents.

(2) The legislature recognizes that allegations regarding a failure to pay legitimate insurance claims threaten the integrity of the insurance market. The basic commodity that insurers sell is trust. Policyholders pay substantial sums to insurers trusting that at a future date, perhaps decades later, the insurer will protect them and their loved ones. An insurer that violates this trust should not be authorized to do business in this state or own or control insurers doing business in this state, lest the integrity of this state's insurance market be compromised.

(3) The legislature recognizes that hundreds of Holocaust survivors and heirs of Holocaust victims are citizens or residents of the state of Washington. The legislature is concerned by allegations that citizens or residents of the state of Washington may have been deprived of their contractual entitlement to benefits under insurance policies issued by insurance companies operating in Europe prior to and during World War II. The state of Washington has a public policy interest in assuring that all of its citizens and residents, including Holocaust survivors, their families, and the heirs of Holocaust victims, who are entitled to proceeds of insurance policies are treated reasonably and fairly and that any contractual obligations are honored.

(4) The legislature recognizes that the business of insurance is one affected by the public interest, requiring that all persons conducting it be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. The insurance commissioner is currently authorized to refuse, suspend, or revoke the certificate of authority of insurers that are affiliated directly or indirectly through ownership, control, reinsurance or other insurance or business relations with any person, persons, or entities whose business operations are or have been marked, to the detriment of policyholders or the public, or by bad faith. The insurance commissioner is also currently authorized to provide assistance to members of the public in resolving complaints involving insurers. It is the intent of the legislature to provide additional resources to the insurance commissioner to implement this authority, to authorize the insurance commissioner to cooperate with other state regulators with regard to such policies, and to authorize the insurance commissioner to cooperate with and act through the international commission concerning World War II era policies established under the efforts of the national association of insurance commissioners. [1999 c 8 § 1.]

48.104.020 Findings. (Expires December 31, 2010.)

The legislature finds the following:

(1) In addition to the many atrocities that befell the victims of the Nazi regime, in many cases insurance policy proceeds were not paid to the victims and their families.

(2) In many instances, insurance company records are the only proof of insurance policies held. In some cases, recollection of those policies' very existence may have perished along with the Holocaust victims.

(3) Several hundred Holocaust survivors and their families, or the heirs of Holocaust victims live in Washington today.

(4) Insurance companies doing business in the state of Washington have a responsibility to ensure that any involvement they or their related companies had with insurance policies of Holocaust victims are disclosed to the state to ensure the rapid payment to victims and their survivors of any proceeds to which they may be entitled.

(5) There has been established an international commission to investigate and facilitate the payment of insurance policies to victims of the Holocaust and their survivors. It is in the best interest of the people of the state of Washington to authorize the insurance commissioner to cooperate with and coordinate his or her activities with the international commission.

(6) Other states are establishing Holocaust survivor assistance offices and registries of insurance policies and Holocaust victims in order to identify policyholders and their survivors to whom policy proceeds may be payable. It is in the best interest of the people of the state of Washington to authorize the insurance commissioner to cooperate with and coordinate his or her activities with those other states.

(7) In addition to unpaid insurance policies, Holocaust victims lost unknown billions of dollars of assets seized by Nazi Germany and its allies and collaborators in Germany and Nazi-occupied Europe between 1933 and 1945. [1999 c 8 § 2.]

48.104.030 Definitions. (Expires December 31, 2010.)

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

(1) "Holocaust survivor" or "Holocaust victim" means any person who was persecuted, imprisoned or liable to imprisonment, or had property taken or confiscated during the period of 1933 to 1945, inclusive, by Nazi Germany, its allies, or sympathizers based on that person's race, religion, ethnicity, physical or mental disability, sexual orientation, or similar class or group-based animus.

(2) "Related company" means any parent, subsidiary, successor in interest, managing general agent, or other person or company affiliated directly or indirectly through ownership, control, common ownership or control, or other business or insurance relationship with another company or insurer.

(3) "Insurer" means an entity holding a certificate of authority or license to conduct the business of insurance in this state, or whose contacts with this state satisfy the constitutional requirements for jurisdiction, that sold life, property, liability, health, annuities, dowry, educational, casualty, or any other insurance covering persons or property to persons in Europe at any time before 1945, whether directly or through or as [a] result of sales by a related company, or is itself a related company to any person, entity, or insurance company that sold such policies, whether the sale of the insurance occurred before or after becoming related.

(4) "Proceeds" means the face or other payout value of policies and annuities plus reasonable interest to date of payments without diminution for wartime or immediate postwar currency devaluation legally due under any insurance policy issued by an insurer or any related company.

(5) "International commission" means the international commission on Holocaust era insurance claims, referenced in and established under a memorandum of understanding originally dated April 8, 1998, between and among the insurance commissioner, various other state insurance regulators, various alien insurance companies, and worldwide Jewish groups, which commission held its first meeting in New York on October 21, 1998, and any successor.

(6) "Other assets" means the proceeds of bank accounts, gold, art, houses, businesses, other real estate properties or land, or the contents of homes, businesses, or other real estate properties of Holocaust survivors or victims. [1999 c 8 § 3.]

48.104.040 Holocaust survivor assistance office. (Expires December 31, 2010.) (1) To assist Holocaust victims, their heirs, or their beneficiaries to recover proceeds from insurance policies that were improperly denied or processed, or from other assets, or both, the insurance commissioner may establish a Holocaust survivor assistance office.

(2) The insurance commissioner may appoint or deputize personnel to be engaged or employed by the Holocaust survivor assistance office and utilize insurance department personnel to resolve or settle claims of Holocaust victims. The insurance commissioner may also engage outside auditors or other qualified personnel to assist in the investigation of claims made by Holocaust victims, their heirs, or their beneficiaries.

(3) The insurance commissioner may cooperate and exchange information with other states establishing similar Holocaust survivor assistance offices and with the international commission, and may enter into agreements whereby a single processing office may be established on behalf of, and to provide services to the residents of, several states. [1999 c 8 § 4.]

48.104.050 Holocaust insurance company registry—Authority—Availability of information. (Expires December 31, 2010.) (1) To facilitate the work of the Holocaust survivor assistance office, the insurance commissioner may establish and maintain a central registry containing records and information relating to insurance policies, as described in RCW 48.104.060, of victims, living and deceased, of the Holocaust. The registry shall be known as the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to make the information in the registry available to the public to the extent necessary and appropriate to determine the existence of insurance policies and to identify beneficiaries, successors in interest, or other persons entitled to the proceeds of such policies, and to enable such persons to claim proceeds to which they may be entitled, while protecting the privacy of policyholders, their survivors, and their family members. All information received by the Holocaust insurance company registry or Holocaust survivor assistance office from any insurer, related company, or foreign government or regulator shall be considered and deemed to be matters and information relating to an examination and part of an examination report that the insurance commissioner may treat as confidential and withhold from public inspection under RCW 48.03.040(6)(c) and 48.03.050. To the extent necessary and appropriate to secure

access to documents and information located in or subject to the jurisdiction of other states and countries, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all documents and information received from an entity regulated by or subject to the laws of such other state or country, or received from any agency of the government of any such state or country, will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the appropriate authority of such state or country or except as permitted or authorized by the laws of such state or country, and any such agreement shall be binding and enforceable notwithstanding chapter 42.56 RCW. To the extent necessary and appropriate to secure access to documents and information from or in the possession of the international commission as to which the international commission has given assurances of confidentiality or privacy, the insurance commissioner is authorized to enter into agreements or to provide assurances that any or all such documents and information will be treated as confidential by the insurance commissioner and will not be disclosed to any person except with the approval of the international commission or as permitted by any agreement or assurances given by the international commission, and any such agreement shall be binding and enforceable notwithstanding chapter 42.56 RCW.

(2) The insurance commissioner may cooperate and exchange information with other states establishing similar registries and with the international commission, and may enter into agreements whereby a single registry may be established on behalf of, and to provide services to the citizens and residents of, several states. [2005 c 274 § 318; 1999 c 8 § 5.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

48.104.060 Holocaust insurance company registry—Operations—Penalties—Funding. (Expires December 31, 2010.) (1) Any insurer that sold life, property, liability, health, annuities, dowry, educational, or casualty insurance policies, to persons in Europe, that were in effect any time between 1933 and 1945, regardless of when the policy was initially purchased or written, shall within ninety days following July 25, 1999, or such later date as the insurance commissioner may establish, file or cause to be filed the following information with the insurance commissioner to be entered into the Holocaust insurance company registry:

(a) A list of such insurance policies;

(b) The insureds, beneficiaries, and face amounts of such policies;

(c) A comparison of the names and other available identifying information of insureds and beneficiaries of such policies and the names and other identifying information of the victims of the Holocaust. The names and other identifying information of victims of the Holocaust shall be provided by the office of the insurance commissioner and may be obtained from the United States Holocaust museum and the Yad Vashem repository in Israel, or other sources;

(d) For each such policy, whichever of the following that may apply:

(i) That the proceeds of the policy have been paid to the designated beneficiaries or their heirs where that person or persons, after diligent search, could be located and identified;

(ii) That the proceeds of the policies where the beneficiaries or heirs could not, after diligent search, be located or identified, have been distributed to Holocaust survivors or to qualified charitable nonprofit organizations for the purpose of assisting Holocaust survivors;

(iii) That a court of law has certified in a legal proceeding resolving the rights of unpaid policyholders, their heirs, and beneficiaries, a plan for the distribution of the proceeds;

(iv) That the proceeds have not been distributed and the amount of those proceeds.

(2) The destruction of any records or other materials pertaining to such policies shall be a class C felony according to chapter 9A.20 RCW. Evidence of the destruction of such material shall be admissible in both administrative and judicial proceedings as evidence in support of any claim being made against the insurer involving the destroyed material.

(3) An insurer currently doing business in the state that did not sell any insurance policies in Europe prior to 1945 except through or as a result of sales by a related company shall not be subject to this section if a related company, whether or not authorized and currently doing business in the state, has made a filing with the insurance commissioner under this section.

(4) The insurance commissioner may fund the costs of operating both the Holocaust survivor assistance office and the Holocaust claims registry by assessments upon those insurers providing information to the Holocaust insurance company registry. The insurance commissioner shall establish standards and procedures to fairly allocate the costs of the Holocaust insurance company registry and Holocaust survivor assistance office among such insurers. The insurance commissioner is expressly authorized to allocate such costs based on the number of policies reported or, based on the total monetary amount of the policies as determined by their face amounts without regard to inflation, interest, or depreciation.

(5) The insurance commissioner is authorized to conduct investigations and examinations of insurers for the purpose of determining compliance with this chapter, verifying the accuracy and completeness of any and all information furnished to the Holocaust insurance company registry and the Holocaust survivor assistance office, and developing and securing such additional information as may be necessary or appropriate to determine those entitled to payment under any policy and the proceeds to which such person may be entitled, if any. Any such investigation shall be considered to be an examination under chapter 48.03 RCW. The costs of any such examination will be borne by the insurer investigated, or the insurer to whom the related company is related, pursuant to RCW 48.03.060(2). Examinations may be conducted in this state, or in the state or country of residence of the insurer or related company, or at such other place or country where the records to be examined may be located.

(6) The insurance commissioner may permit the Holocaust insurance company registry or the Holocaust survivor assistance office or both to accept information and to assist claimants with regard to the location and recovery of property or assets taken or confiscated from Holocaust victims other than insurance policies if the insurance commissioner finds that doing so would not adversely affect the operations of the registry or Holocaust survivor assistance office with

regard to insurance policies. However, all costs and expenses, including that of personnel, attributable to such noninsurance assets shall be separately accounted for and shall not be assessed against insurers under subsections (4) and (5) of this section and shall not be paid from the general funds of the office of the insurance commissioner, but shall be paid solely from contributions or donations received for that purpose.

(a) The insurance commissioner may accept contributions from any other person wishing to fund the operations of the Holocaust survivor assistance office or the Holocaust insurance company registry to facilitate the resolution of claims involving Holocaust victims.

(b) The insurance commissioner is authorized to assist in the creation of an entity to accept tax deductible contributions to support activities conducted by the Holocaust survivor assistance office and the Holocaust insurance company registry.

(c) The insurance commissioner, through the Holocaust survivor assistance office, is authorized, with the consent of the parties, to act as mediator of any dispute involving the claim of a Holocaust victim or his or her heirs or beneficiaries arising from an occurrence during the period between January 1, 1933, and December 31, 1945.

(7) The insurance commissioner is authorized to cooperate with and exchange information with other states with similar Holocaust insurance company registries or Holocaust survivor assistance offices, with the national association of insurance commissioners, with foreign countries and with the international commission. The insurance commissioner is authorized to enter into agreements to handle the processing of claims and registry functions of other states, and to have other states handle all or part of the registry and claims processing functions for this state, as the insurance commissioner may determine to be appropriate. The insurance commissioner is authorized to enter into agreements with other states and the international commission to treat and consider information submitted to them as submitted to this state for [the] purpose of complying with this chapter. As part of any such agreement, the insurance commissioner may agree to reimburse any other state for expenses or costs incurred and such reimbursement shall be recovered by the insurance commissioner as an expense of operating the Holocaust insurance company registry and Holocaust survivor assistance office under subsections (4) and (5) of this section, and to accept reimbursement from any other state for services with regard to residents of such other state.

(8) A finding by the insurance commissioner that a claim subject to the provisions of this section should be paid shall be regarded by any court as highly persuasive evidence that such claim should be paid. [1999 c 8 § 6.]

48.104.070 Penalties. (Expires December 31, 2010.)

Any insurer that knowingly files information required by this chapter that is false shall be liable for a civil penalty not to exceed ten thousand dollars for each violation. [1999 c 8 § 7.]

48.104.080 Suspension of certificate of authority for failure to comply with chapter. (Expires December 31, 2010.) The insurance commissioner is authorized to suspend

the certificate of authority to conduct insurance business in the state of Washington of any insurer that fails to comply with the requirements of this chapter by or after one hundred twenty days after July 25, 1999, until the time that the insurer complies with this chapter. Such suspension shall not affect or relieve the insurer from its obligations to service its existing insureds, and shall not permit the insurer to terminate its existing insureds, except pursuant to the terms of the insurance contract, but shall prohibit the insurer from writing new business in this state until the suspension is lifted by the insurance commissioner. [1999 c 8 § 8.]

48.104.090 Cooperation with international commission—Application of chapter. (Expires December 31, 2010.) The insurance commissioner may suspend the application of this chapter to any insurer that is participating in the international commission process in good faith and is working through the international commission to resolve all outstanding claims with offers of fair settlements in a reasonable time frame. If, however, the international commission fails to establish a mechanism to accomplish identification, adjudication, and payment of insurance policy claims of Holocaust survivors or victims within a reasonable time, then all provisions of this chapter shall come into effect as to any such insurer. For purposes of this section, a reasonable time shall mean by January 1, 2000, or such later date as the insurance commissioner may establish by rule. [1999 c 8 § 9.]

48.104.100 Private rights of action preserved—Venue. (Expires December 31, 2010.) Any Holocaust survivor, or heir or beneficiary of a Holocaust survivor or victim, who resides in this state and has a claim against an insurer arising out of an insurance policy or policies purchased or in effect in Europe before 1945 from that insurer may bring a legal action against that insurer to recover on that claim in the superior court of the county in which any plaintiff resides, which court shall be vested with jurisdiction over that action. [1999 c 8 § 10.]

48.104.110 Extension of statute of limitations. (Expires December 31, 2010.) Any action brought by a Holocaust survivor or the heir or beneficiary of a Holocaust survivor or victim, seeking proceeds of the insurance policies issued or in effect before 1945 shall not be dismissed for failure to comply with the applicable statute of limitations, provided the action is commenced on or before December 31, 2010. [1999 c 8 § 11.]

48.104.120 Adoption of rules. (Expires December 31, 2010.) The insurance commissioner may adopt rules to implement this chapter. [1999 c 8 § 12.]

48.104.130 Annual report to legislature. (Expires December 31, 2010.) The insurance commissioner shall report to the legislature one year from July 25, 1999, and annually thereafter on the implementation of this law and resolution of Holocaust claims. [1999 c 8 § 13.]

48.104.900 Short title—1999 c 8. (Expires December 31, 2010.) This chapter shall be known and cited as the Holocaust victim insurance relief act of 1999. [1999 c 8 § 14.]

48.104.901 Captions not law—1999 c 8. (Expires December 31, 2010.) Captions used in this chapter are not any part of the law. [1999 c 8 § 15.]

48.104.902 Severability—1999 c 8. (Expires December 31, 2010.) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 8 § 17.]

48.104.903 Expiration date—1999 c 8. (Expires December 31, 2010.) This chapter expires December 31, 2010. [1999 c 8 § 18.]

Chapter 48.110 RCW

SERVICE CONTRACTS AND PROTECTION PRODUCT GUARANTEES

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48.110.010 Finding—Declaration—Purpose. The legislature finds that increasing numbers of businesses are selling service contracts for repair, replacement, and maintenance of motor vehicles, appliances, computers, electronic equipment, and other consumer products. There are risks that

contract obligors will close or otherwise be unable to fulfill their contract obligations that could result in unnecessary and preventable losses to citizens of this state. The legislature declares that it is necessary to establish standards that will safeguard the public from possible losses arising from the conduct or cessation of the business of service contract obligors or the mismanagement of funds paid for service contracts. The purpose of this chapter is to create a legal framework within which service contracts may be sold in this state and to set forth requirements for conducting a service contract business. [2006 c 274 § 1; 1999 c 112 § 1.]

48.110.015 Exempt from title—Application of chapter.

- (1) The following are exempt from this title:
- (a) Warranties;
 - (b) Maintenance agreements; and
 - (c) Service contracts:
 - (i) Paid for with separate and additional consideration;
 - (ii) Issued at the point of sale, or within sixty days of the original purchase date of the property; and
 - (iii) On tangible property when the tangible property for which the service contract is sold has a purchase price of fifty dollars or less, exclusive of sales tax.
- (2) This chapter does not apply to:
- (a) Vehicle mechanical breakdown insurance;
 - (b) Service contracts on tangible personal property purchased by persons who are not consumers; and
 - (c) Home heating fuel service contracts offered by home heating energy providers. [2006 c 274 § 2; 2006 c 36 § 16; 2000 c 208 § 1; 1999 c 112 § 2.]

Reviser's note: This section was amended by 2006 c 36 § 16 and by 2006 c 274 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2006 c 36: See RCW 48.111.901.

48.110.020 Definitions. The definitions in this section apply throughout this chapter.

- (1) "Administrator" means the person who is responsible for the administration of the service contracts, the service contracts plan, or the protection product guarantees.
- (2) "Commissioner" means the insurance commissioner of this state.
- (3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.
- (4) "Incidental costs" means expenses specified in the guarantee incurred by the protection product guarantee holder related to damages to other property caused by the failure of the protection product to perform as provided in the guarantee. "Incidental costs" may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees. Incidental costs may be paid under the provisions of the protection product guarantee in either a fixed amount specified in the protection product guarantee or sales agreement, or by the use of a formula itemizing specific incidental costs incurred by the protection product guarantee holder to be paid.

(5) "Protection product" means any product offered or sold with a guarantee to repair or replace another product or pay incidental costs upon the failure of the product to perform pursuant to the terms of the protection product guarantee.

(6) "Protection product guarantee" means a written agreement by a protection product guarantee provider to repair or replace another product or pay incidental costs upon the failure of the protection product to perform pursuant to the terms of the protection product guarantee.

(7) "Protection product guarantee provider" means a person who is contractually obligated to the protection product guarantee holder under the terms of the protection product guarantee. Protection product guarantee provider does not include an authorized insurer providing a reimbursement insurance policy.

(8) "Protection product guarantee holder" means a person who is the purchaser or permitted transferee of a protection product guarantee.

(9) "Protection product seller" means the person who sells the protection product to the consumer.

(10) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(11) "Motor vehicle" means any vehicle subject to registration under chapter 46.16 RCW.

(12) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(13) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(14) "Provider fee" means the consideration paid by a consumer for a service contract.

(15) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider or a protection product guarantee provider to provide reimbursement to the service contract provider or the protection product guarantee provider or to pay on behalf of the service contract provider or the protection product guarantee provider all contractual obligations incurred by the service contract provider or the protection product guarantee provider under the terms of the insured service contracts or protection product guarantees issued or sold by the service contract provider or the protection product guarantee provider.

(16) "Service contract" means a contract or agreement for consideration over and above the lease or purchase price of the property for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from power surges and accidental damage from handling, with or without additional provision for incidental payment of indemnity under limited circumstances, including towing, rental, emergency road services, or other expenses relating to the failure of the product or of a component part thereof.

(17) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(18) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(19) "Service contract seller" means the person who sells the service contract to the consumer.

(20) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

(21) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. [2006 c 274 § 3; 2006 c 36 § 17; 2000 c 208 § 2; 1999 c 112 § 3.]

Reviser's note: This section was amended by 2006 c 36 § 17 and by 2006 c 274 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2006 c 36: See RCW 48.111.901.

48.110.030 Registration required—Application—Required information—Grounds for refusal—Annual renewal. (1) A person may not act as, or offer to act as, or hold himself or herself out to be a service contract provider in this state, nor may a service contract be sold to a consumer in this state, unless the service contract provider has a valid registration as a service contract provider issued by the commissioner.

(2) Applicants to be a service contract provider must make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the service contract provider's executive officer or officers directly responsible for the service contract provider's service contract business, and, if more than fifty percent of the service contract provider's gross revenue is derived from the sale of service contracts, the identities of the service contract provider's directors and stockholders having beneficial ownership of ten percent or more of any class of securities;

(c) Audited annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant. If the service contract provider is relying on RCW 48.110.050(2)(c) to

assure the faithful performance of its obligations to service contract holders, then the audited financial statements of the service contract provider's parent company must also be filed;

(d) An application fee of two hundred fifty dollars, which shall be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

(3) The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This appointment is irrevocable and shall bind the service contract provider or any successor in interest, shall remain in effect as long as there is in force in this state any contract or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.

(4) The commissioner may refuse to issue a registration if the commissioner determines that the service contract provider, or any individual responsible for the conduct of the affairs of the service contract provider under subsection (2)(b) of this section, is not competent, trustworthy, financially responsible, or has had a license as a service contract provider or similar license denied or revoked for cause by any state.

(5) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the service contract provider and payment of a fee of two hundred dollars, which shall be deposited into the general fund. If not so renewed, the registration expires on the June 30th next preceding.

(6) A service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [2006 c 274 § 4; 2005 c 223 § 33; 1999 c 112 § 4.]

48.110.033 Application of RCW 48.110.030—Exceptions. (1) Except for service contract providers or protection product guarantee providers, persons marketing, selling, or offering to sell service contracts or protection products for providers are exempt from the registration requirements of RCW 48.110.030.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts or protection products by service contract providers or protection product guarantee providers and related service contract or protection product sellers, administrators, and other persons complying with this chapter are exempt from the other provisions of this title, except chapters 48.04 and 48.30 RCW and as otherwise provided in this chapter. [2006 c 274 § 19.]

48.110.040 Filing of annual report—Fee—Investigations—Confidentiality. (1) Every registered service contract provider must file an annual report for the preceding cal-

endar year with the commissioner on or before March 1st of each year, or within any extension of time the commissioner for good cause may grant. The report must be in the form and contain those matters as the commissioner prescribes and shall be verified by at least two officers of the service contract provider.

(2) At the time of filing the report, the service contract provider must pay a filing fee of twenty dollars which shall be deposited into the general fund.

(3) As part of any investigation by the commissioner, the commissioner may require a service contract provider to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. Monthly financial statements must be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. These monthly financial reports are the internal financial statements of the service contract provider. The monthly financial reports that are filed with the commissioner constitute information that might be damaging to the service contract provider if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner. [2006 c 274 § 5; 2005 c 223 § 34; 1999 c 112 § 5.]

48.110.050 Obligations of service contract provider—Limited application. (1) Service contracts shall not be issued, sold, or offered for sale in this state or sold to consumers in this state unless the service contract provider has:

(a) Provided a receipt for, or other written evidence of, the purchase of the service contract to the contract holder; and

(b) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase.

(2) In order to either demonstrate its financial responsibility or assure the faithful performance of the service contract provider's obligations to its service contract holders, every service contract provider shall comply with the requirements of one of the following:

(a) Insure all service contracts under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner or a risk retention group, as defined in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is in full compliance with the federal liability risk retention act of 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary jurisdiction, and is properly registered with the commissioner under chapter 48.92 RCW. The insurance required by this subsection must meet the following requirements:

(i) The insurer or risk retention group must, at the time the policy is filed with the commissioner, and continuously thereafter, maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file audited financial statements with the commissioner; and

(ii) The commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than fifteen million dollars, but at least equal

to ten million dollars, to issue the insurance required by this subsection if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one;

(b)(i) Maintain a funded reserve account for its obligations under its service contracts issued and outstanding in this state. The reserves shall not be less than forty percent of the gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the commissioner; and

(ii) Place in trust with the commissioner a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

(A) A surety bond issued by an insurer holding a certificate of authority from the commissioner;

(B) Securities of the type eligible for deposit by authorized insurers in this state;

(C) Cash;

(D) An evergreen letter of credit issued by a qualified financial institution; or

(E) Another form of security prescribed by rule by the commissioner; or

(c)(i) Maintain, or its parent company maintain, a net worth or stockholder's equity of at least one hundred million dollars; and

(ii) Upon request, provide the commissioner with a copy of the service contract provider's or the service contract provider's parent company's most recent form 10-K or form 20-F filed with the securities and exchange commission within the last calendar year, or if the company does not file with the securities and exchange commission, a copy of the service contract provider's or the service contract provider's parent company's audited financial statements, which shows a net worth of the service contract provider or its parent company of at least one hundred million dollars. If the service contract provider's parent company's form 10-K, form 20-F, or audited financial statements are filed with the commissioner to meet the service contract provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the service contract provider relating to service contracts sold by the service contract provider in this state. A copy of the guarantee shall be filed with the commissioner. The guarantee shall be irrevocable as long as there is in force in this state any contract or any obligation arising from service contracts guaranteed, unless the parent company has made arrangements approved by the commissioner to satisfy its obligations under the guarantee.

(3) Service contracts shall require the service contract provider to permit the service contract holder to return the service contract within twenty days of the date the service contract was mailed to the service contract holder or within ten days of delivery if the service contract is delivered to the service contract holder at the time of sale, or within a longer time period permitted under the service contract. Upon return of the service contract to the service contract provider

within the applicable period, if no claim has been made under the service contract prior to the return to the service contract provider, the service contract is void and the service contract provider shall refund to the service contract holder, or credit the account of the service contract holder with the full purchase price of the service contract. The right to void the service contract provided in this subsection is not transferable and shall apply only to the original service contract purchaser. A ten percent penalty per month shall be added to a refund of the purchase price that is not paid or credited within thirty days after return of the service contract to the service contract provider.

(4) This section does not apply to service contracts on motor vehicles or to protection product guarantees. [2006 c 274 § 6; 1999 c 112 § 6.]

48.110.055 Protection product guarantee providers—Obligations—Application—Required information—Grounds for refusal—Annual renewal. (1) This section applies to protection product guarantee providers.

(2) A person shall not act as, or offer to act as, or hold himself or herself out to be a protection product guarantee provider in this state, nor may a protection product be sold to a consumer in this state, unless the protection product guarantee provider has:

(a) A valid registration as a protection product guarantee provider issued by the commissioner; and

(b) Either demonstrated its financial responsibility or assured the faithful performance of the protection product guarantee provider's obligations to its protection product guarantee holders by insuring all protection product guarantees under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner or a risk retention group, as defined in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is in full compliance with the federal liability risk retention act of 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary jurisdiction, and properly registered with the commissioner under chapter 48.92 RCW. The insurance required by this subsection must meet the following requirements:

(i) The insurer or risk retention group must, at the time the policy is filed with the commissioner, and continuously thereafter, maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file audited financial statements with the commissioner; and

(ii) The commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than fifteen million dollars, but at least equal to ten million dollars, to issue the insurance required by this subsection if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one.

(3) Applicants to be a protection product guarantee provider shall make an application to the commissioner upon a form to be furnished by the commissioner. The application shall include or be accompanied by the following information and documents:

(a) The names of the protection product guarantee provider's executive officer or officers directly responsible for

the protection product guarantee provider's protection product guarantee business and their biographical affidavits on a form prescribed by the commissioner;

(b) The name, address, and telephone number of any administrators designated by the protection product guarantee provider to be responsible for the administration of protection product guarantees in this state;

(c) A copy of the protection product guarantee reimbursement insurance policy or policies;

(d) A copy of each protection product guarantee the protection product guarantee provider proposes to use in this state;

(e) Any other pertinent information required by the commissioner; and

(f) A nonrefundable application fee of two hundred fifty dollars.

(4) The applicant shall appoint the commissioner as its attorney to receive service of legal process in any action, suit, or proceeding in any court. This appointment is irrevocable and shall bind the protection product guarantee provider or any successor in interest, shall remain in effect as long as there is in force in this state any protection product guarantee or any obligation arising therefrom related to residents of this state, and shall be processed in accordance with RCW 48.05.210.

(5) The commissioner may refuse to issue a registration if the commissioner determines that the protection product guarantee provider, or any individual responsible for the conduct of the affairs of the protection product guarantee provider under subsection (3)(a) of this section, is not competent, trustworthy, financially responsible, or has had a license as a protection product guarantee provider or similar license denied or revoked for cause by any state.

(6) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the protection product guarantee provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on the first day of July upon application of the protection product guarantee provider and payment of a fee of two hundred fifty dollars. If not so renewed, the registration expires on the June 30th next preceding.

(7) A protection product guarantee provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [2006 c 274 § 17.]

48.110.060 Reimbursement insurance policies insuring service contracts or protection product guarantees.

(1) Reimbursement insurance policies insuring service contracts or protection product guarantees issued, sold, or offered for sale in this state or issued or sold to consumers in this state shall state that the insurer that issued the reimbursement insurance policy shall reimburse or pay on behalf of the service contract provider or the protection product guarantee provider all sums the service contract provider or the protection product guarantee provider is legally obligated to pay, including but not limited to the refund of the full purchase price of the service contract to the service contract holder or

shall provide the service which the service contract provider or the protection product guarantee provider is legally obligated to perform according to the service contract provider's or protection product guarantee provider's contractual obligations under the service contracts or protection product guarantees issued or sold by the service contract provider or the protection product guarantee provider.

(2) The reimbursement insurance policy shall fully insure the obligations of the service contract provider or protection product guarantee provider, rather than partially insure, or insure only in the event of service contract provider or protection product guarantee provider default.

(3) The reimbursement insurance policy shall state that the service contract holder or protection product guarantee holder is entitled to apply directly to the reimbursement insurance company for payment or performance due. [2006 c 274 § 7; 1999 c 112 § 7.]

48.110.070 Service contracts—Form—Required contents—Limited application. (1) Service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state or sold to residents of this state shall be written, printed, or typed in clear, understandable language that is easy to read, and disclose the requirements set forth in this section, as applicable.

(2) Service contracts insured under a reimbursement insurance policy under RCW 48.110.050(2)(a) and 48.110.060 shall not be issued, sold, or offered for sale in this state or sold to residents of this state unless the service contract conspicuously contains a statement in substantially the following form: "Obligations of the service contract provider under this service contract are insured under a service contract reimbursement insurance policy." The service contract shall also conspicuously state the name and address of the issuer of the reimbursement insurance policy and state that the service contract holder is entitled to apply directly to the reimbursement insurance company.

(3) Service contracts not insured under a reimbursement insurance policy under RCW 48.110.050(2)(a) and 48.110.060 shall contain a statement in substantially the following form: "Obligations of the service contract provider under this contract are backed by the full faith and credit of the service contract provider."

(4) Service contracts shall state the name and address of the service contract provider and shall identify any administrator if different from the service contract provider, the service contract seller, and the service contract holder to the extent that the name of the service contract holder has been furnished by the service contract holder. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract at the time of sale.

(5) Service contracts shall state the purchase price of the service contract and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale.

(6) Service contracts shall state the procedure to obtain service or to file a claim, including but not limited to the procedures for obtaining prior approval for repair work, the toll-free telephone number if prior approval is necessary for ser-

vice, and the procedure for obtaining emergency repairs performed outside of normal business hours or provide for twenty-four-hour telephone assistance.

(7) Service contracts shall state the existence of any deductible amount, if applicable.

(8) Service contracts shall specify the merchandise, parts, and services to be provided and any limitations, exceptions, or exclusions.

(9) Service contracts shall state any restrictions governing the transferability of the service contract, if applicable.

(10) Service contracts shall state the terms, restrictions, or conditions governing cancellation of the service contract prior to the termination or expiration date of the service contract by either the service contract provider or by the service contract holder, which rights can be no more restrictive than provided in RCW 48.110.050(3). The service contract provider of the service contract shall mail a written notice to the service contract holder at the last known address of the service contract holder contained in the records of the service contract provider at least twenty-one days prior to cancellation by the service contract provider. The notice shall state the effective date of the cancellation and the true and actual reason for the cancellation.

(11) Service contracts shall set forth the obligations and duties of the service contract holder, including but not limited to the duty to protect against any further damage and any requirement to follow owner's manual instructions.

(12) Service contracts shall state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

(13) Service contracts shall state any exclusions of coverage.

(14) Service contracts shall not contain a provision which requires that any civil action brought in connection with the service contract must be brought in the courts of a jurisdiction other than this state. Service contracts that authorize binding arbitration to resolve claims or disputes must allow for arbitration proceedings to be held at a location in closest proximity to the service contract holder's permanent residence.

This section does not apply to service contracts on motor vehicles or to protection product guarantees. [2006 c 274 § 8; 1999 c 112 § 8.]

48.110.073 Service contract forms—Motor vehicles—Reliance on reimbursement insurance policy. (1) If the service contract provider or protection product guarantee provider is using [the] reimbursement insurance policy to satisfy the requirements of RCW 48.110.050(2)(a), 48.110.055(2)(b), or 48.110.075(2)(a), then the reimbursement insurance policy shall be filed with and approved by the commissioner in accordance with and pursuant to the requirements of chapter 48.18 RCW.

(2) All service contracts forms covering motor vehicles must be filed with and approved by the commissioner prior to the service contract forms being used, issued, delivered, sold, or marketed in this state or to residents of this state.

(3) All service contracts forms covering motor vehicles being used, issued, delivered, sold, or marketed in this state or to residents of this state by motor vehicle manufacturers or import distributors or wholly owned subsidiaries thereof

must be filed with the commissioner for approval within sixty days after the motor vehicle manufacturer or import distributor or wholly owned subsidiary thereof begins using the service contracts forms.

(4) The commissioner shall disapprove any motor vehicle service contract form if:

(a) The form is in any respect in violation of, or does not comply with, this chapter or any applicable order or regulation of the commissioner issued under this chapter;

(b) The form contains or incorporates by reference any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions;

(c) The form has any title, heading, or other indication of its provisions that is misleading; or

(d) The purchase of the contract is being solicited by deceptive advertising. [2006 c 274 § 20.]

48.110.075 Service contracts on motor vehicles—Obligations of provider—Contract requirements. (1) This section applies to service contracts on motor vehicles.

(2) Service contracts shall not be issued, sold, or offered for sale in this state or sold to consumers in this state unless:

(a) The service contract provider has either demonstrated its financial responsibility or assured the faithful performance of the service contract provider's obligations to its service contract holders by insuring all service contracts under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner or a risk retention group, as defined in 15 U.S.C. Sec. 3901(a)(4), as long as that risk retention group is in full compliance with the federal liability risk retention act of 1986 (15 U.S.C. Sec. 3901 et seq.), is in good standing in its domiciliary jurisdiction, and properly registered with the commissioner under chapter 48.92 RCW. The insurance required by this subsection must meet the following requirements:

(i) The insurer or risk retention group must, at the time the policy is filed with the commissioner, and continuously thereafter, maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file audited financial statements with the commissioner; and

(ii) The commissioner may authorize an insurer or risk retention group that has surplus as to policyholders and paid-in capital of less than fifteen million dollars, but at least equal to ten million dollars, to issue the insurance required by this subsection if the insurer or risk retention group demonstrates to the satisfaction of the commissioner that the company maintains a ratio of direct written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one;

(b) The service contract conspicuously states that the obligations of the provider to the service contract holder are guaranteed under the reimbursement insurance policy, the name and address of the issuer of the reimbursement insurance policy, the applicable policy number, and the means by which a service contract holder may file a claim under the policy;

(c) The service contract conspicuously and unambiguously states the name and address of the service contract provider and identifies any administrator if different from the service contract provider, the service contract seller, and the service contract holder. The identity of the service contract

seller and the service contract holder are not required to be preprinted on the service contract and may be added to the service contract at the time of sale;

(d) The service contract states the purchase price of the service contract and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale;

(e) The contract contains a conspicuous statement that has been initialed by the service contract holder and discloses:

(i) Any material conditions that the service contract holder must meet to maintain coverage under the contract including, but not limited to, any maintenance schedule to which the service contract holder must adhere, any requirement placed on the service contract holder for documenting repair or maintenance work, any duty to protect against any further damage, and any procedure to which the service contract holder must adhere for filing claims;

(ii) The work and parts covered by the contract;

(iii) Any time or mileage limitations;

(iv) That the implied warranty of merchantability on the motor vehicle is not waived if the contract has been purchased within ninety days of the purchase date of the motor vehicle from a provider or service contract seller who also sold the motor vehicle covered by the contract;

(v) Any exclusions of coverage; and

(vi) The contract holder's right to return the contract for a refund, which right can be no more restrictive than provided for in subsection (4) of this section;

(f) The service contract states the procedure to obtain service or to file a claim, including but not limited to the procedures for obtaining prior approval for repair work, the toll-free telephone number if prior approval is necessary for service, and the procedure for obtaining emergency repairs performed outside of normal business hours or for obtaining twenty-four-hour telephone assistance;

(g) The service contract states the existence of any deductible amount, if applicable;

(h) The service contract states any restrictions governing the transferability of the service contract, if applicable; and

(i) The service contract states whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

(3) Service contracts shall not contain a provision which requires that any civil action brought in connection with the service contract must be brought in the courts of a jurisdiction other than this state. Service contracts that authorize binding arbitration to resolve claims or disputes must allow for arbitration proceedings to be held at a location in closest proximity to the service contract holder's permanent residence.

(4)(a) At a minimum, every provider shall permit the service contract holder to return the contract within thirty days of its purchase if no claim has been made under the contract, and shall refund to the holder the full purchase price of the contract unless the service contract holder returns the contract ten or more days after its purchase, in which case the provider may charge a cancellation fee not exceeding twenty-five dollars.

(b) If no claim has been made and a contract holder returns the contract after thirty days, the provider shall refund

the purchase price pro rata based upon either elapsed time or mileage computed from the date the contract was purchased and the mileage on that date, less a cancellation fee not exceeding twenty-five dollars.

(c) A ten percent penalty shall be added to any refund that is not paid within thirty days of return of the contract to the provider.

(d) If a contract holder returns the contract under this subsection, the contract is void from the beginning and the parties are in the same position as if no contract had been issued.

(e) If a service contract holder returns the contract in accordance with this section, the insurer issuing the reimbursement insurance policy covering the contract shall refund to the provider the full premium by the provider for the contract if canceled within thirty days or a pro rata refund if canceled after thirty days.

(5) A service contract provider shall not deny a claim for coverage based upon the service contract holder's failure to properly maintain the vehicle, unless the failure to maintain the vehicle involved the failed part or parts.

(6) A contract provider has only sixty days from the date of the sale of the service contract to the holder to determine whether or not the vehicle qualifies under the provider's program for that vehicle. After sixty days the vehicle qualifies for the service contract that was issued and the service contract provider may not cancel the contract and is fully obligated under the terms of the contract sold to the service contract holder. [2006 c 274 § 18.]

48.110.080 Name of service contract provider or protection product guarantee provider—Use of legal name—False or misleading statements—Restrictions on requirement to purchase service contract. (1) A service contract provider or protection product guarantee provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other service contract provider or protection product guarantee provider. This subsection does not apply to a company that was using any of the prohibited language in its name prior to January 1, 1999. However, a company using the prohibited language in its name shall conspicuously disclose in its service contracts or protection product guarantees the following statement: "This agreement is not an insurance contract."

(2) Every service contract provider or protection product guarantee provider shall conduct its business in its own legal name, unless the commissioner has approved the use of another name.

(3) A service contract provider or protection product guarantee provider or their representatives shall not in their service contracts or protection product guarantees or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(4) A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller shall not require the purchase of a service contract or protection prod-

uct as a condition of a loan or a condition for the sale of any property. [2006 c 274 § 9; 1999 c 112 § 9.]

48.110.090 Recordkeeping of service contract provider or protection product guarantee provider—Requirements—Duration—Form. (1) The service contract provider or protection product guarantee provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(2) The service contract provider's or protection product guarantee provider's accounts, books, and records shall include the following:

(a) Copies of each type of service contract or protection product guarantees offered, issued, or sold;

(b) The name and address of each service contract holder or protection product guarantee holder, to the extent that the name and address have been furnished by the service contract holder or protection product guarantee holder;

(c) A list of the locations where the service contracts or protection products are marketed, sold, or offered for sale; and

(d) Written claim files that contain at least the dates, amounts, and descriptions of claims related to the service contracts or protection products.

(3) Except as provided in subsection (5) of this section, the service contract provider or protection product guarantee provider shall retain all records required to be maintained by subsection (1) of this section for at least six years after the specified coverage has expired.

(4) The records required under this chapter may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If the records are maintained in other than hard copy, the records shall be capable of duplication to legible hard copy.

(5) A service contract provider or protection product guarantee provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders or protection product guarantee holders in this state. [2006 c 274 § 10; 1999 c 112 § 10.]

48.110.100 Termination of reimbursement insurance policy. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with RCW 48.18.290 has been given to the service contract provider or protection product guarantee provider and has been delivered to the commissioner. The termination of a reimbursement insurance policy does not reduce the issuer's responsibility for service contracts issued by service contract providers or protection product guarantees issued by protection product guarantee providers prior to the effective date of the termination. [2006 c 274 § 11; 1999 c 112 § 11.]

48.110.110 Service contract provider or protection product guarantee provider—Agent of insurer which issued reimbursement insurance policy. (1) Service contract providers or protection product guarantee providers are considered to be the agent of the insurer which issued the reimbursement insurance policy for purposes of obligating

the insurer to service contract holders or protection product guarantee holders in accordance with the service contract or protection product guarantee holders and this chapter. Payment of the provider fee by the consumer to the service contract seller, service contract provider, or administrator or payment of consideration for the protection product to the protection product seller constitutes payment by the consumer to the service contract provider or protection product guarantee provider and to the insurer which issued the reimbursement insurance policy. In cases where a service contract provider or protection product guarantee provider is acting as an administrator and enlists other service contract providers or protection product guarantee providers, the service contract provider or protection product guarantee provider acting as the administrator shall notify the insurer of the existence and identities of the other service contract providers or protection product guarantee providers.

(2) This chapter does not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a service contract provider or protection product guarantee provider if the issuer pays or is obligated to pay the service contract holder or protection product guarantee holder sums that the service contract provider or protection product guarantee provider was obligated to pay under the provisions of the service contract or protection product guarantee. [2006 c 274 § 12; 1999 c 112 § 12.]

48.110.120 Commissioner may conduct investigations. (1) The commissioner may conduct investigations of service contract providers or protection product guarantee providers, administrators, service contract sellers or protection product sellers, insurers, and other persons to enforce this chapter and protect service contract holders or protection product guarantee holders in this state. Upon request of the commissioner, the service contract provider or protection product guarantee provider shall make all accounts, books, and records concerning service contracts or protection products offered, issued, or sold by the service contract provider or protection product guarantee provider available to the commissioner which are necessary to enable the commissioner to determine compliance or noncompliance with this chapter.

(2) The commissioner may take actions under RCW 48.02.080 or 48.04.050 which are necessary or appropriate to enforce this chapter and the commissioner's rules and orders, and to protect service contract holders or protection product guarantee holders in this state. [2006 c 274 § 13; 1999 c 112 § 13.]

48.110.130 Denial, suspension, or revocation of registration—Immediate suspension without notice or hearing—Fine. (1) The commissioner may, subject to chapter 48.04 RCW, deny, suspend, or revoke the registration of a service contract provider or protection product guarantee provider if the commissioner finds that the service contract provider or protection product guarantee provider:

(a) Has violated this chapter or the commissioner's rules and orders;

(b) Has refused to be investigated or to produce its accounts, records, and files for investigation, or if any of its officers have refused to give information with respect to its affairs or refused to perform any other legal obligation as to an investigation, when required by the commissioner;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused service contract holders or protection product guarantee holders to accept less than the amount due them or caused service contract holders or protection product guarantee holders to employ attorneys or bring suit against the service contract provider or protection product guarantee provider to secure full payment or settlement of claims;

(d) Is affiliated with or under the same general management or interlocking directorate or ownership as another service contract provider or protection product guarantee provider which unlawfully transacts business in this state without having a registration;

(e) At any time fails to meet any qualification for which issuance of the registration could have been refused had such failure then existed and been known to the commissioner;

(f) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony;

(g) Is under suspension or revocation in another state with respect to its service contract business or protection product business;

(h) Has made a material misstatement in its application for registration;

(i) Has obtained or attempted to obtain a registration through misrepresentation or fraud;

(j) Has, in the transaction of business under its registration, used fraudulent, coercive, or dishonest practices;

(k) Has failed to pay any judgment rendered against it in this state regarding a service contract or protection product guarantee within sixty days after the judgment has become final; or

(l) Has failed to respond promptly to any inquiry from the insurance commissioner relative to service contract or protection product business. A lack of response within fifteen business days from receipt of an inquiry is untimely. A response must be in writing, unless otherwise indicated in the inquiry.

(2) The commissioner may, without advance notice or hearing thereon, immediately suspend the registration of a service contract provider or protection product guarantee provider if the commissioner finds that any of the following circumstances exist:

(a) The provider is insolvent;

(b) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the service contract provider or protection product guarantee provider has been commenced in any state; or

(c) The financial condition or business practices of the service contract provider or protection product guarantee provider otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) If the commissioner finds that grounds exist for the suspension or revocation of a registration issued under this chapter, the commissioner may, in lieu of suspension or revocation, impose a fine upon the service contract provider or protection product guarantee provider in an amount not more

than two thousand dollars per violation. [2006 c 274 § 14; 1999 c 112 § 14.]

48.110.140 Application of consumer protection act.

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act or practice in the conduct of trade or commerce and an unfair method of competition, as specifically contemplated by RCW 19.86.020, and is a violation of the consumer protection act, chapter 19.86 RCW. Any service contract holder or protection product guarantee holder injured as a result of a violation of a provision of this chapter shall be entitled to maintain an action pursuant to chapter 19.86 RCW against the service contract provider or protection product guarantee provider and the insurer issuing the applicable service contract or protection product guarantee reimbursement insurance policy and shall be entitled to all of the rights and remedies afforded by that chapter. [2006 c 274 § 15; 1999 c 112 § 15.]

48.110.150 Rules. The commissioner may adopt rules to implement and administer this chapter. [1999 c 112 § 16.]

48.110.900 Date of application to service contracts.

This chapter applies to all service contracts, other than on motor vehicles, sold or offered for sale ninety or more days after July 25, 1999. This chapter applies to all service contracts on motor vehicles and protection products sold or offered for sale after September 30, 2006. [2006 c 274 § 16; 1999 c 112 § 17.]

48.110.901 Severability—1999 c 112. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 112 § 19.]

48.110.902 Application of chapter to motor vehicle manufacturers or import distributors. (1) RCW 48.110.030 (2)(a) and (b), (3), and (4), 48.110.040, 48.110.060, 48.110.100, 48.110.110, 48.110.075 (2)(a) and (b) and (4)(e), and 48.110.073 (1) and (2) do not apply to motor vehicle service contracts issued by a motor vehicle manufacturer or import distributor covering vehicles manufactured or imported by the motor vehicle manufacturer or import distributor.

(2) RCW 48.110.030(2)(c) does not apply to a publicly traded motor vehicle manufacturer or import distributor.

(3) RCW 48.110.030 (2)(a) through (c), (3), and (4), 48.110.040, and 48.110.073(2) do not apply to wholly owned subsidiaries of motor vehicle manufacturers or import distributors.

(4) The adoption of chapter 274, Laws of 2006 does not imply that a vehicle protection product warranty was insurance prior to October 1, 2006. [2006 c 274 § 21.]

(2008 Ed.)

48.110.903 Severability—2006 c 274. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 274 § 22.]

48.110.904 Effective date—2006 c 274. This act takes effect October 1, 2006. [2006 c 274 § 24.]

Chapter 48.111 RCW

HOME HEATING FUEL SERVICE CONTRACTS

Sections

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48.111.005 Findings—Purpose. The legislature finds that certain service contracts involving providers of home heating fuel and homeowners are in the public interest. The legislature further finds that the existing statutory provisions regulating service contracts are more burdensome than is necessary to safeguard homeowners from the risk that a contract obligor will close or be unable to fulfill their contract obligations. The legislature declares that it is necessary to establish separate standards that will safeguard certain homeowners from possible losses arising from the cessation of business of a home heating fuel company or the mismanagement of funds paid for home heating fuel service contracts. The purpose of this chapter is to create a legal framework within which home heating fuel service contracts may be sold in this state and set forth requirements for conducting a service contract business. [2006 c 36 § 1.]

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

(1) "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.

(4) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a customer-owned home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

(5) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(6) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(7) "Provider fee" means the consideration paid by a consumer for a home heating fuel service contract.

(8) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider to provide reimbursement to the service contract provider or to pay on behalf of the service contract provider all contractual obligations incurred by the service contract provider under the terms of the insured service contracts issued or sold by the service contract provider.

(9) "Home heating fuel service contract holder" or "contract holder" means a person who is the purchaser or holder of a home heating fuel service contract.

(10) "Home heating fuel service contract provider" or "contract provider" means a person who is providing home heating fuel delivery services to the customer and is contractually obligated to the home heating fuel service contract holder under the terms of the service contract.

(11) "Home heating fuel service contract seller" means the person who sells the home heating fuel service contract to the consumer.

(12) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services. [2006 c 36 § 2.]

48.111.020 Registration required—Application—Required information—Grounds for refusal—Annual renewal.

(1) A person shall not act as, or offer to act as, or hold himself or herself out to be a home heating fuel service contract provider in this state, nor may a home heating fuel service contract be sold to a consumer in this state, unless the contract provider has a valid registration as a home heating fuel service contract provider issued by the commissioner.

(2) Applicants to be a home heating fuel service contract provider shall make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the home heating fuel service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agree-

ment, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the contract provider's executive officer or officers directly responsible for the contract provider's home heating fuel service contract business;

(c) Annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant;

(d) An application fee of one hundred dollars, which must be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

(3) The commissioner may refuse to issue a registration if the commissioner determines that the home heating fuel service contract provider, or any individual responsible for the conduct of the affairs of the contract provider under subsection (2)(b) of this section, is not competent, trustworthy, or financially responsible.

(4) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on July 1st upon application of the home heating fuel service contract provider and payment of a fee of twenty-five dollars, which must be deposited into the general fund. If not so renewed, the registration expires on June 30th next preceding.

(5) A home heating fuel service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs. [2007 c 80 § 1; 2006 c 36 § 3.]

48.111.030 Filing of reports—Investigations—Confidentiality.

(1) Every registered home heating fuel service contract provider that is assuring its faithful performance of its obligations to its contract holders by complying with RCW 48.111.040(2)(b) shall file an annual report for the preceding calendar year with the commissioner on or before March 1st of each year, or within any extension of time the commissioner for good cause may grant. The report must be in the form and contain those matters as the commissioner prescribes and must be verified by at least two officers of the home heating fuel service contract provider.

(2) As part of an investigation by the commissioner, the commissioner may require a home heating fuel service contract provider to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. Monthly financial statements must be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. These monthly financial reports must be the internal financial statements of the service contract provider. The monthly financial reports that are filed with the commissioner constitute information that might be damaging to the service contract provider if made available to its competitors,

and therefore shall be kept confidential by the commissioner. This information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner. [2006 c 36 § 4.]

48.111.040 Obligations of contract provider. (1)

Home heating fuel service contracts may not be issued, sold, or offered for sale in this state or sold to consumers in this state unless the contract provider has:

(a) Provided a receipt for, or other written evidence of, the purchase of the home heating fuel service contract to the contract holder; and

(b) Provided a copy of the home heating fuel service contract to the service contract holder within a reasonable period of time from the date of purchase.

(2) In order to assure the faithful performance of a home heating fuel service contract provider's obligations to its contract holders, every home heating fuel service contract provider is responsible for complying with the requirements of one of the following:

(a) Insure all home heating fuel service contracts under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner; or

(b)(i) Maintain a funded reserve account for its obligations under its home heating service contracts issued and outstanding in this state. The reserves may not be less than forty percent of the gross consideration received, less claims paid, on the sale of the home heating fuel service contract for all in-force contracts. The reserve account is subject to examination and review by the insurance commissioner; and

(ii) Place in trust with the commissioner a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than ten thousand dollars, consisting of one of the following:

(A) A surety bond issued by an insurer holding a certificate of authority from the commissioner;

(B) Securities of the type eligible for deposit by authorized insurers in this state;

(C) Cash;

(D) An evergreen letter of credit issued by a qualified financial institution;

(E) A pledged certificate of deposit issued by a qualified financial institution; or

(F) Another form of security prescribed by rule by the commissioner.

(3) Home heating fuel service contracts must require the contract provider to permit the contract holder to return the home heating fuel service contract within thirty days of the date the home heating fuel service contract was delivered to the contract holder, or within a longer time period permitted under the home heating fuel service contract. Upon return of the home heating fuel service contract to the contract provider within the applicable period, if no claim has been made under the home heating fuel service contract prior to the return to the contract provider, the home heating fuel service contract is void and the contract provider shall refund to the contract holder, or credit the account of the contract holder with the full purchase price of the home heating fuel service

contract. The right to void the home heating fuel service contract provided in this subsection is not transferable and applies only to the original contract purchaser. A ten percent penalty per month must be added to a refund of the purchase price that is not paid or credited within thirty days after return of the home heating fuel service contract to the contract provider.

(4) Except for home heating fuel service contract providers, persons marketing, selling, or offering to sell home heating service contracts for providers are exempt from the registration requirements of this chapter.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of home heating fuel service contracts by contract providers and related contract sellers, administrators, and other persons complying with this chapter are exempt from the other provisions of this title, except chapter 48.04 RCW and as otherwise provided in this chapter. [2006 c 36 § 5.]

48.111.050 Reimbursement insurance policies insuring home heating fuel service contracts. (1)

Reimbursement insurance policies insuring home heating fuel service contracts issued, sold, or offered for sale in this state or sold to consumers in this state must state that the insurer that issued the reimbursement insurance policy shall reimburse or pay on behalf of the contract provider all sums the contract provider is legally obligated to pay, including but not limited to the refund of the full purchase price of the contract to the contract holder or shall provide the service which the contract provider is legally obligated to perform according to the contract provider's contractual obligations under the home heating fuel service contracts issued or sold by the contract provider.

(2) The reimbursement insurance policy must fully insure the obligations of the contract provider, rather than partially insure, or insure only in the event of contract provider default.

(3) The reimbursement insurance policy must state that the contract holder is entitled to apply directly to the reimbursement insurance company. [2006 c 36 § 6.]

48.111.053 Termination of reimbursement insurance policies. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with RCW 48.18.290 has been given to the home heating fuel service contract provider and has been delivered to the commissioner. The termination of a reimbursement insurance policy does not reduce the issuer's responsibility for home heating fuel service contracts issued by contract providers prior to the effective date of the termination. [2006 c 36 § 10.]

48.111.055 Insurer issuing reimbursement insurance policy—Contract provider is agent. (1)

Home heating fuel service contract providers are the agent of the insurer that issued the reimbursement insurance policy for purposes of obligating the insurer to contract holders in accordance with the home heating fuel service contract and this chapter. Payment of the provider fee by the consumer to the home heating fuel service contract seller, contract provider, or administra-

tor constitutes payment by the consumer to the home heating fuel service contract provider and to the insurer that issued the reimbursement insurance policy. In cases when a contract provider is acting as an administrator and enlists other contract providers, the contract provider acting as the administrator shall notify the insurer of the existence and identities of the other contract providers.

(2) This chapter does not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification or subrogation against a home heating fuel service contract provider if the issuer pays or is obligated to pay the contract holder sums that the contract provider was obligated to pay under the provisions of the home heating fuel service contract. [2006 c 36 § 11.]

48.111.060 Home heating fuel service contracts—Form—Required contents. (1) Home heating fuel service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state or sold to residents of this state must be written, printed, or typed in clear, understandable language that is easy to read, and disclose the requirements set forth in this section, as applicable.

(2) Home heating fuel service contracts insured under a reimbursement insurance policy must not be issued, sold, or offered for sale in this state or sold to residents of this state unless the home heating fuel service contract conspicuously contains a statement in substantially the following form: "Obligations of the home heating fuel service contract provider under this contract are insured under a contract reimbursement insurance policy." The home heating fuel service contract must also conspicuously state the name and address of the issuer of the reimbursement insurance policy and state that the contract holder is entitled to apply directly to the reimbursement insurance company.

(3) Service contracts not insured under a reimbursement insurance policy must contain a statement in substantially the following form: "Obligations of the home heating fuel service contract provider under this contract are backed by the full faith and credit of the home heating fuel service contract provider."

(4) Home heating fuel service contracts must state the name and address of the contract provider and must identify any administrator if different from the contract provider, the contract seller, and the contract holder to the extent that the name of the contract holder has been furnished by the contract holder. The identities of the parties are not required to be preprinted on the home heating fuel service contract and may be added to the home heating fuel service contract at the time of sale.

(5) Home heating fuel service contracts must state the purchase price of the contract and the terms under which the home heating fuel service contract is sold. The purchase price is not required to be preprinted on the home heating fuel service contract and may be negotiated at the time of sale.

(6) Home heating fuel service contracts must state the procedure to obtain service or to file a claim, including but not limited to the procedures for obtaining prior approval for repair work, the toll-free telephone number if prior approval is necessary for service, and the procedure for obtaining emergency repairs performed outside of normal business hours or provide for twenty-four hour telephone assistance.

(7) Home heating fuel service contracts must state the existence of any deductible amount, if applicable.

(8) Home heating fuel service contracts must specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(9) Home heating fuel service contracts must state any restrictions governing the transferability of the service contract, if applicable.

(10) Home heating fuel service contracts must state the terms, restrictions, or conditions governing cancellation of the home heating fuel service contract prior to the termination or expiration date of the home heating fuel service contract by either the contract provider or by the contract holder, which rights can be no more restrictive than provided in RCW 48.111.040. The contract provider of the home heating fuel service contract shall mail a written notice to the contract holder at the last known address of the contract holder contained in the records of the contract provider at least twenty-one days prior to cancellation by the contract provider. The notice must state the effective date of the cancellation and the true and actual reason for the cancellation.

(11) Home heating fuel service contracts must set forth the obligations and duties of the contract holder, including but not limited to the duty to protect against any further damage and any requirement to follow owner's manual instructions.

(12) Home heating fuel service contracts must state whether or not the home heating fuel service contract provides for or excludes consequential damages or preexisting conditions.

(13) Home heating fuel service contracts must not contain a provision that requires that any civil action brought in connection with the home heating fuel service contract must be brought in the courts of a jurisdiction other than this state. Home heating service contracts that authorize binding arbitration to resolve claims or disputes may allow for arbitration proceedings to be held at a location in closest proximity to the contract holder's permanent residence. [2006 c 36 § 7.]

48.111.070 Name of contract provider—Use of legal name—False or misleading statements—Restrictions on requirement to purchase service contracts. (1) A home heating fuel service contract provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other home heating fuel service contract provider. This subsection does not apply to a company that was using any of the prohibited language in its name prior to June 7, 2006. However, a company using the prohibited language in its name shall conspicuously disclose in its home heating fuel service contracts the following statement: "This agreement is not an insurance contract."

(2) Every home heating fuel service contract provider shall conduct its business in its own legal name, unless the commissioner has approved the use of another name.

(3) A home heating fuel service contract provider or its representative shall not in its contracts or literature make, permit, or cause to be made any false or misleading state-

ment, or deliberately omit any material statement that would be considered misleading if omitted.

(4) A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller shall not require the purchase of a home heating fuel service contract as a condition of a loan or a condition for the sale of any property. [2006 c 36 § 8.]

48.111.080 Recordkeeping of contract provider—Requirements—Form. (1) The home heating fuel service contract provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(2) The contract provider's accounts, books, and records must include the following:

(a) Copies of each type of home heating fuel service contract sold;

(b) The name and address of each contract holder, to the extent that the name and address have been furnished by the contract holder; and

(c) Written claim files that contain at least the dates, amounts, and descriptions of claims related to the service contracts.

(3) The records required under this chapter may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If the records are maintained in other than hard copy, the records must be capable of duplication to legible hard copy.

(4) A home heating fuel service contract provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state. [2006 c 36 § 9.]

48.111.090 Commissioner may conduct investigations. (1) The commissioner may conduct investigations of home heating fuel service contract providers, administrators, home heating fuel service contract sellers, insurers, and other persons to enforce this chapter and protect home heating fuel service contract holders in this state. Upon request of the commissioner, the contract provider shall make all accounts, books, and records concerning home heating fuel service contracts sold by the contract provider available to the commissioner that are necessary to enable the commissioner to determine compliance or noncompliance with this chapter.

(2) The commissioner may take actions under RCW 48.02.080 or 48.04.050 that are necessary or appropriate to enforce this chapter and the commissioner's rules and orders, and to protect home heating fuel service contract holders in this state. [2006 c 36 § 12.]

48.111.100 Denial, suspension, or revocation of registration—Immediate suspension without notice or hearing—Fine. (1) The commissioner may, subject to chapter 48.04 RCW, deny, suspend, or revoke the registration of a home heating fuel service contract provider if the commissioner finds that the contract provider:

(a) Has violated this chapter or the commissioner's rules and orders;

(b) Has refused to be investigated or to produce its accounts, records, and files for investigation, or if any of its

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officers have refused to give information with respect to its affairs or refused to perform any other legal obligation as to an investigation, when required by the commissioner;

(c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused home heating fuel service contract holders to accept less than the amount due them or caused home heating fuel service contract holders to employ attorneys or bring suit against the contract provider to secure full payment or settlement of claims;

(d) Is affiliated with or under the same general management or interlocking directorate or ownership as another home heating fuel service contract provider that unlawfully transacts business in this state without having a registration;

(e) At any time fails to meet any qualification for which issuance of the registration could have been refused had that failure then existed and been known to the commissioner;

(f) Is under suspension or revocation in another state with respect to its home heating fuel service contract business;

(g) Has made a material misstatement in its application for registration;

(h) Has obtained or attempted to obtain a registration through misrepresentation or fraud;

(i) Has, in the transaction of business under its registration, used fraudulent, coercive, or dishonest practices;

(j) Has failed to pay any judgment rendered against it in this state regarding a home heating fuel service contract within sixty days after the judgment has become final; or

(k) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a property or finance-related felony.

(2) The commissioner may, without advance notice or hearing thereon, immediately suspend the registration of a home heating fuel service contract provider if the commissioner finds that any of the following circumstances exist:

(a) The provider is insolvent;

(b) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the home heating fuel service contract provider has been commenced in any state; or

(c) The financial condition or business practices of the home heating fuel service contract provider otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) If the commissioner finds that grounds exist for the suspension or revocation of a registration issued under this chapter, the commissioner may, in lieu of suspension or revocation, impose a fine upon the home heating fuel service contract provider in an amount not more than one thousand dollars per violation. [2006 c 36 § 13.]

48.111.110 Rules. The commissioner may adopt rules to implement and administer this chapter. [2006 c 36 § 14.]

48.111.900 Application. This chapter applies to all home heating fuel service contracts sold or offered for sale after October 1, 2006. [2006 c 36 § 15.]

48.111.901 Severability—2006 c 36. If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 36 § 18.]

Chapter 48.115 RCW RENTAL CAR INSURANCE

Sections

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48.115.001 Short title. (Effective until July 1, 2009.)

This chapter may be known and cited as the rental car insurance limited agent license act. [2002 c 273 § 1.]

48.115.001 Short title. (Effective July 1, 2009.) This chapter may be known and cited as the rental car specialty insurance producer license act. [2008 c 217 § 85; 2002 c 273 § 1.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.005 Definitions. (Effective until July 1, 2009.)

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

(1) "Endorsee" means an unlicensed employee or agent of a rental car agent who meets the requirements of this chapter.

(2) "Person" means an individual or a business entity.

(3) "Rental agreement" means any written master, corporate, group, or individual agreement setting forth the terms and conditions governing the use of a rental car rented or leased by a rental car company.

(4) "Rental car" means any motor vehicle that is intended to be rented or leased for a period of thirty consecutive days or less by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either of the following:

(a) A private passenger motor vehicle, including a passenger van, recreational vehicle, minivan, or sports utility vehicle; or

(b) A cargo vehicle, including a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand pounds.

(5) "Rental car agent" means any rental car company that is licensed to offer, sell, or solicit rental car insurance under this chapter.

(6) "Rental car company" means any person in the business of renting rental cars to the public, including a franchisee.

(7) "Rental car insurance" means insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars, whether at the rental office or by preselection of coverage in master, corporate, group, or individual agreements that: (a) Is nontransferable; (b) applies only to the rental car that is the subject of the rental agreement; and (c) is limited to the following kinds of insurance:

(i) Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(ii) Liability insurance, including uninsured or underinsured motorist coverage, whether offered separately or in combination with other liability insurance, that provides protection to the renters and to other authorized drivers of a rental car for liability arising from the operation of the rental car during the rental period;

(iii) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period; and

(iv) Roadside assistance and emergency sickness protection insurance.

(8) "Renter" means any person who obtains the use of a vehicle from a rental car company under the terms of a rental agreement. [2002 c 273 § 2.]

48.115.005 Definitions. (Effective July 1, 2009.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Endorsee" means an unlicensed employee or agent of a rental car insurance producer who meets the requirements of this chapter.

(2) "Person" means an individual or a business entity.

(3) "Rental agreement" means any written master, corporate, group, or individual agreement setting forth the terms and conditions governing the use of a rental car rented or leased by a rental car company.

(4) "Rental car" means any motor vehicle that is intended to be rented or leased for a period of thirty consecutive days or less by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either of the following:

(a) A private passenger motor vehicle, including a passenger van, recreational vehicle, minivan, or sports utility vehicle; or

(b) A cargo vehicle, including a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand pounds.

(5) "Rental car insurance producer" means any rental car company that is licensed to offer, sell, or solicit rental car insurance under this chapter.

(6) "Rental car company" means any person in the business of renting rental cars to the public, including a franchisee.

(7) "Rental car insurance" means insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars, whether at the rental office or by preselection of coverage in master, corporate, group, or individual agreements that: (a) Is nontransferable; (b) applies only to the rental car that is the subject of the rental agreement; and (c) is limited to the following kinds of insurance:

(i) Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(ii) Liability insurance, including uninsured or underinsured motorist coverage, whether offered separately or in combination with other liability insurance, that provides protection to the renters and to other authorized drivers of a rental car for liability arising from the operation of the rental car during the rental period;

(iii) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period; and

(iv) Roadside assistance and emergency sickness protection insurance.

(8) "Renter" means any person who obtains the use of a vehicle from a rental car company under the terms of a rental agreement. [2008 c 217 § 86; 2002 c 273 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.010 License required. (Effective until July 1, 2009.) (1) A rental car company, or officer, director, employee, or agent of a rental car company, may not offer, sell, or solicit the purchase of rental car insurance unless that person is licensed under chapter 48.17 RCW or is in compliance with this chapter.

(2) The commissioner may issue a license to a rental car company that is in compliance with this chapter authorizing the rental car company to act as a rental car agent under this chapter, in connection with and incidental to rental agreements, on behalf of any insurer authorized to write rental car insurance in this state. [2002 c 273 § 3.]

48.115.010 License required. (Effective July 1, 2009.) (1) A rental car company, or officer, director, employee, or agent of a rental car company, may not offer, sell, or solicit the purchase of rental car insurance unless that person is licensed under chapter 48.17 RCW or is in compliance with this chapter.

(2) The commissioner may issue a license to a rental car company that is in compliance with this chapter authorizing the rental car company to act as a rental car insurance producer under this chapter, in connection with and incidental to rental agreements, on behalf of any insurer authorized to write rental car insurance in this state. [2008 c 217 § 87; 2002 c 273 § 3.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.015 Licensing rental car companies as rental car agents. (Effective until July 1, 2009.) A rental car company may apply to be licensed as a rental car agent under, and if in compliance with, this chapter by filing the following documents with the commissioner:

(1) A written application for licensure, signed by the applicant or by an officer of the applicant, in the form prescribed by the commissioner that includes a listing of all locations at which the rental car company intends to offer, sell, or solicit rental car insurance; and

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(2)(a) A certificate by the insurer that is to be named in the rental car agent license, stating that: (i) The insurer has satisfied itself that the named applicant is trustworthy and competent to act as its rental car agent, limited to this purpose; (ii) the insurer has reviewed the endorsee training and education program required by RCW 48.115.020(4) and believes that it satisfies the statutory requirements; and (iii) the insurer will appoint the applicant to act as its rental car agent to offer, sell, or solicit rental car insurance, if the license for which the applicant is applying is issued by the commissioner.

(b) The certification shall be subscribed by an authorized representative of the insurer on a form prescribed by the commissioner. [2002 c 273 § 4.]

48.115.015 Licensing rental car companies as rental car insurance producers. (Effective July 1, 2009.) A rental car company may apply to be licensed as a rental car insurance producer under, and if in compliance with, this chapter by filing the following documents with the commissioner:

(1) A written application for licensure, signed by the applicant or by an officer of the applicant, in the form prescribed by the commissioner that includes a listing of all locations at which the rental car company intends to offer, sell, or solicit rental car insurance; and

(2)(a) A certificate by the insurer that is to be named in the rental car insurance producer license, stating that: (i) The insurer has satisfied itself that the named applicant is trustworthy and competent to act as its rental car insurance producer, limited to this purpose; (ii) the insurer has reviewed the endorsee training and education program required by RCW 48.115.020(4) and believes that it satisfies the statutory requirements; and (iii) the insurer will appoint the applicant to act as its rental car insurance producer to offer, sell, or solicit rental car insurance, if the license for which the applicant is applying is issued by the commissioner.

(b) The certification shall be subscribed by an authorized representative of the insurer on a form prescribed by the commissioner. [2008 c 217 § 88; 2002 c 273 § 4.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.020 Rental car agent endorsees—Duties of rental car agent—Training—Transaction records. (Effective until July 1, 2009.) (1) An employee or agent of a rental car agent may be an endorsee authorized to offer, sell, or solicit rental car insurance under the authority of the rental car agent license, if all of the following conditions have been satisfied:

(a) The employee or agent is eighteen years of age or older;

(b) The employee or agent is a trustworthy person and has not committed any act set forth in RCW 48.17.530;

(c) The employee or agent has completed a training and education program;

(d) The rental car company, at the time it submits its rental car agent license application, also submits a list of the names of all endorsees to its rental car agent license on forms prescribed by the commissioner. The list shall be updated and submitted to the commissioner quarterly on a calendar year

basis. Each list shall be retained by the rental car company for a period of three years from submission; and

(e) The rental car company or its agent submits to the commissioner with its initial rental car agent license application, and annually thereafter, a certification subscribed by an officer of the rental car company on a form prescribed by the commissioner, stating all of the following:

(i) No person other than an endorsee offers, sells, or solicits rental car insurance on its behalf or while working as an employee or agent of the rental car agent; and

(ii) All endorsees have completed the training and education program under subsection (4) of this section.

(2) A rental car agent's endorsee may only act on behalf of the rental car agent in the offer, sale, or solicitation of a rental car insurance. A rental car agent is responsible for, and must supervise, all actions of its endorsees related to the offering, sale, or solicitation of rental car insurance. The conduct of an endorsee acting within the scope of his or her employment or agency is the same as the conduct of the rental car agent for purposes of this chapter.

(3) The manager at each location of a rental car agent, or the direct supervisor of the rental car agent's endorsees at each location, must be an endorsee of that rental car agent and is responsible for the supervision of each additional endorsee at that location. Each rental car agent shall identify the endorsee who is the manager or direct supervisor at each location in the endorsee list that it submits under subsection (1)(d) of this section.

(4) Each rental car agent shall provide a training and education program for each endorsee prior to allowing an endorsee to offer, sell, or solicit rental car insurance. Details of the program must be submitted to the commissioner, along with the license application, for approval prior to use, and resubmitted for approval of any changes prior to use. This training program shall meet the following minimum standards:

(a) Each endorsee shall receive instruction about the kinds of insurance authorized under this chapter that may be offered for sale to prospective renters; and

(b) Each endorsee shall receive training about the requirements and limitations imposed on car rental agents and endorsees under this chapter. The training must include specific instruction that the endorsee is prohibited by law from making any statement or engaging in any conduct express or implied, that would lead a consumer to believe that the:

(i) Purchase of rental car insurance is required in order for the renter to rent a motor vehicle;

(ii) Renter does not have insurance policies in place that already provide the coverage being offered by the rental car company under this chapter; or

(iii) Endorsee is qualified to evaluate the adequacy of the renter's existing insurance coverages.

(5) The training and education program submitted to the commissioner is approved if no action is taken within thirty days of its submission.

(6) An endorsee's authorization to offer, sell, or solicit rental car insurance expires when the endorsee's employment with the rental car company is terminated.

(7) The rental car agent shall retain for a period of one year from the date of each transaction records which enable it

to identify the name of the endorsee involved in each rental transaction when a renter purchases rental car insurance. [2002 c 273 § 5.]

48.115.020 Rental car insurance producer endorsees—Duties of rental car insurance producer—Training—Transaction records. (Effective July 1, 2009.) (1) An employee or agent of a rental car insurance producer may be an endorsee authorized to offer, sell, or solicit rental car insurance under the authority of the rental car insurance producer license, if all of the following conditions have been satisfied:

(a) The employee or agent is eighteen years of age or older;

(b) The employee or agent is a trustworthy person and has not committed any act set forth in RCW 48.17.530;

(c) The employee or agent has completed a training and education program;

(d) The rental car company, at the time it submits its rental car insurance producer license application, also submits a list of the names of all endorsees to its rental car insurance producer license on forms prescribed by the commissioner. The list shall be updated and submitted to the commissioner quarterly on a calendar year basis. Each list shall be retained by the rental car company for a period of three years from submission; and

(e) The rental car company or its agent submits to the commissioner with its initial rental car insurance producer license application, and annually thereafter, a certification subscribed by an officer of the rental car company on a form prescribed by the commissioner, stating all of the following:

(i) No person other than an endorsee offers, sells, or solicits rental car insurance on its behalf or while working as an employee or agent of the rental car insurance producer; and

(ii) All endorsees have completed the training and education program under subsection (4) of this section.

(2) A rental car insurance producer's endorsee may only act on behalf of the rental car insurance producer in the offer, sale, or solicitation of a rental car insurance. A rental car insurance producer is responsible for, and must supervise, all actions of its endorsees related to the offering, sale, or solicitation of rental car insurance. The conduct of an endorsee acting within the scope of his or her employment or agency is the same as the conduct of the rental car insurance producer for purposes of this chapter.

(3) The manager at each location of a rental car insurance producer, or the direct supervisor of the rental car insurance producer's endorsees at each location, must be an endorsee of that rental car insurance producer and is responsible for the supervision of each additional endorsee at that location. Each rental car insurance producer shall identify the endorsee who is the manager or direct supervisor at each location in the endorsee list that it submits under subsection (1)(d) of this section.

(4) Each rental car insurance producer shall provide a training and education program for each endorsee prior to allowing an endorsee to offer, sell, or solicit rental car insurance. Details of the program must be submitted to the commissioner, along with the license application, for approval prior to use, and resubmitted for approval of any changes

prior to use. This training program shall meet the following minimum standards:

(a) Each endorsee shall receive instruction about the kinds of insurance authorized under this chapter that may be offered for sale to prospective renters; and

(b) Each endorsee shall receive training about the requirements and limitations imposed on rental car insurance producers and endorsees under this chapter. The training must include specific instruction that the endorsee is prohibited by law from making any statement or engaging in any conduct express or implied, that would lead a consumer to believe that the:

(i) Purchase of rental car insurance is required in order for the renter to rent a motor vehicle;

(ii) Renter does not have insurance policies in place that already provide the coverage being offered by the rental car company under this chapter; or

(iii) Endorsee is qualified to evaluate the adequacy of the renter's existing insurance coverages.

(5) The training and education program submitted to the commissioner is approved if no action is taken within thirty days of its submission.

(6) An endorsee's authorization to offer, sell, or solicit rental car insurance expires when the endorsee's employment with the rental car company is terminated.

(7) The rental car insurance producer shall retain for a period of one year from the date of each transaction records which enable it to identify the name of the endorsee involved in each rental transaction when a renter purchases rental car insurance. [2008 c 217 § 89; 2002 c 273 § 5.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.025 Restrictions on offer, sale, or solicitation—Consumer information. (Effective until July 1, 2009.) Insurance may not be offered, sold, or solicited under this section, unless:

(1) The rental period of the rental car agreement is thirty consecutive days or less;

(2) At every location where rental agreements are executed, the rental car agent or endorsee provides brochures or other written materials to each renter who purchases rental car insurance that clearly, conspicuously, and in plain language:

(a) Summarize, clearly and correctly, the material terms, exclusions, limitations, and conditions of coverage offered to renters, including the identity of the insurer;

(b) Describe the process for filing a claim in the event the renter elects to purchase coverage, including a toll-free telephone number to report a claim;

(c) Provide the rental car agent's name, address, telephone number, and license number, as well as the commissioner's consumer hotline number;

(d) Inform the consumer that the rental car insurance offered, sold, or solicited by the rental car agent may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(e) Inform the consumer that the purchase by the renter of the rental car insurance is not required in order to rent a rental car from the rental car agent; and

(f) Inform the consumer that the rental car agent and the rental car agent's endorsees are not qualified to evaluate the adequacy of the renter's existing insurance coverages;

(3) The purchaser of rental car insurance acknowledges in writing the receipt of the brochures or written materials required by subsection (2) of this section;

(4) Evidence of the rental car insurance coverage is stated on the face of the rental agreement;

(5) All costs for the rental car insurance are separately itemized in the rental agreement;

(6) When the rental car insurance is not the primary source of coverage, the consumer is informed in writing in the form required by subsection (2) of this section that their personal insurance will serve as the primary source of coverage; and

(7) For transactions conducted by electronic means, the rental car agent must comply with the requirements of this section, and the renter must acknowledge in writing or by electronic signature the receipt of the following disclosures:

(a) The insurance policies offered by the rental car agent may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(b) The purchase by the renter of rental car insurance is not required in order to rent a rental car from the rental car agent; and

(c) The rental car agent and the rental car agent's endorsees are not qualified to evaluate the adequacy of the renter's existing insurance coverages. [2002 c 273 § 6.]

48.115.025 Restrictions on offer, sale, or solicitation—Consumer information. (Effective July 1, 2009.) Insurance may not be offered, sold, or solicited under this section, unless:

(1) The rental period of the rental car agreement is thirty consecutive days or less;

(2) At every location where rental agreements are executed, the rental car insurance producer or endorsee provides brochures or other written materials to each renter who purchases rental car insurance that clearly, conspicuously, and in plain language:

(a) Summarize, clearly and correctly, the material terms, exclusions, limitations, and conditions of coverage offered to renters, including the identity of the insurer;

(b) Describe the process for filing a claim in the event the renter elects to purchase coverage, including a toll-free telephone number to report a claim;

(c) Provide the rental car insurance producer's name, address, telephone number, and license number, as well as the commissioner's consumer hotline number;

(d) Inform the consumer that the rental car insurance offered, sold, or solicited by the rental car insurance producer may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(e) Inform the consumer that the purchase by the renter of the rental car insurance is not required in order to rent a rental car from the rental car insurance producer; and

(f) Inform the consumer that the rental car insurance producer and the rental car insurance producer's endorsees are

not qualified to evaluate the adequacy of the renter's existing insurance coverages;

(3) The purchaser of rental car insurance acknowledges in writing the receipt of the brochures or written materials required by subsection (2) of this section;

(4) Evidence of the rental car insurance coverage is stated on the face of the rental agreement;

(5) All costs for the rental car insurance are separately itemized in the rental agreement;

(6) When the rental car insurance is not the primary source of coverage, the consumer is informed in writing in the form required by subsection (2) of this section that their personal insurance will serve as the primary source of coverage; and

(7) For transactions conducted by electronic means, the rental car insurance producer must comply with the requirements of this section, and the renter must acknowledge in writing or by electronic signature the receipt of the following disclosures:

(a) The insurance policies offered by the rental car insurance producer may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(b) The purchase by the renter of rental car insurance is not required in order to rent a rental car from the rental car insurance producer; and

(c) The rental car insurance producer and the rental car insurance producer's endorsees are not qualified to evaluate the adequacy of the renter's existing insurance coverages. [2008 c 217 § 90; 2002 c 273 § 6.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.030 Rental car agent prohibitions. (Effective until July 1, 2009.) A rental car agent may not:

(1) Offer, sell, or solicit the purchase of insurance except in conjunction with and incidental to rental car agreements;

(2) Advertise, represent, or otherwise portray itself or any of its employees or agents as licensed insurers, insurance agents, or insurance brokers;

(3) Pay any person, including a rental car agent endorsee, any compensation, fee, or commission that is dependent primarily on the placement of insurance under the license issued under this chapter;

(4) Make any statement or engage in any conduct, express or implied, that would lead a customer to believe that the:

(a) Insurance policies offered by the rental car agent do not provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(b) Purchase by the renter of rental car insurance is required in order to rent a rental car from the rental car agent; and

(c) Rental car agent or the rental car agent's endorsees are qualified to evaluate the adequacy of the renter's existing insurance coverages. [2002 c 273 § 7.]

48.115.030 Rental car insurance producer prohibitions. (Effective July 1, 2009.) A rental car insurance producer may not:

(1) Offer, sell, or solicit the purchase of insurance except in conjunction with and incidental to rental car agreements;

(2) Advertise, represent, or otherwise portray itself or any of its employees or agents as licensed insurers or insurance producers;

(3) Pay any person, including a rental car insurance producer endorsee, any compensation, fee, or commission that is dependent primarily on the placement of insurance under the license issued under this chapter;

(4) Make any statement or engage in any conduct, express or implied, that would lead a customer to believe that the:

(a) Insurance policies offered by the rental car insurance producer do not provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(b) Purchase by the renter of rental car insurance is required in order to rent a rental car from the rental car insurance producer; and

(c) Rental car insurance producer or the rental car insurance producer's endorsees are qualified to evaluate the adequacy of the renter's existing insurance coverages. [2008 c 217 § 91; 2002 c 273 § 7.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.035 Enforcement—Commissioner may revoke, suspend, or refuse to issue or renew license. (Effective until July 1, 2009.) (1) Every rental car agent licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of car rental insurance.

(2)(a) In the event of a violation of this chapter by a rental car agent, the commissioner may revoke, suspend, or refuse to issue or renew any rental car agent's license that is issued or may be issued under this chapter for any cause specified in any other provision of this title, or for any of the following causes:

(i) For any cause that the issuance of this license could have been refused had it then existed and been known to the commissioner;

(ii) If the licensee or applicant willfully violates or knowingly participates in a violation of this title or any proper order or rule of the commissioner;

(iii) If the licensee or applicant has obtained or attempted to obtain a license through willful misrepresentation or fraud;

(iv) If the licensee or applicant has misappropriated or converted funds that belong to, or should be paid to, another person as a result of, or in connection with, a car rental or insurance transaction;

(v) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effects of any insurance contract, or has engaged, or is about to engage, in any fraudulent transaction;

(vi) If the licensee or applicant or officer of the licensee or applicant has been convicted by final judgment of a felony;

(vii) If the licensee or applicant is shown to be, and is determined by the commissioner, incompetent or untrustworthy, or a source of injury and loss to the public; and

(viii) If the licensee has dealt with, or attempted to deal with, insurances, or has exercised powers relative to insurance outside the scope of the car rental agent license or other insurance licenses.

(b) If any natural person named under a firm or corporate car rental agent license, or application therefore, commits or has committed any act, or fails or has failed to perform any duty, that constitutes grounds for the commissioner to revoke, suspend, or refuse to issue or renew the license or application for license, the commissioner may revoke, suspend, refuse to renew, or refuse to issue the license or application for a license of the corporation or firm.

(c) Any conduct of an applicant or licensee that constitutes grounds for disciplinary action under this title may be addressed under this section regardless of where the conduct took place.

(d) The holder of any license that has been revoked or suspended shall surrender the license to the commissioner at the commissioner's request.

(e) After notice and hearing the commissioner may impose other penalties, including suspending the transaction of insurance at specific rental locations where violations of this section have occurred and imposing fines on the manager or supervisor at each location responsible for the supervision and conduct of each endorsee, as the commissioner determines necessary or convenient to carry out the purpose of this chapter.

(3) The commissioner may suspend, revoke, or refuse to renew any car rental agent license by an order served by mail or personal service upon the licensee not less than fifteen days prior to its effective date. The order is subject to the right of the licensee to a hearing under chapter 48.04 RCW.

(4) The commissioner may temporarily suspend a license by an order served by mail or personal service upon the licensee not less than three days prior to its effective date. However, the order must contain a notice of revocation and include a finding that the public safety or welfare imperatively requires emergency action. These suspensions may continue only until proceedings for revocation are concluded. The commissioner may also temporarily suspend a license in cases when proceedings for revocation are pending if it is found that the public safety or welfare imperatively requires emergency action.

(5) Service by mail under this section means posting in the United States mail, addressed to the licensee at the most recent address shown in the commissioner's licensing records for the licensee. Service by mail is complete upon deposit in the United States mail.

(6) If any person sells insurance in connection with or incidental to rental car agreements, or holds himself or herself or a company out as a rental car agent, without satisfying the requirements of this chapter, the commissioner is authorized to issue a cease and desist order. [2002 c 273 § 8.]

48.115.035 Enforcement—Commissioner may revoke, suspend, or refuse to issue or renew license. (Effective July 1, 2009.) (1) Every rental car insurance producer licensed under this chapter shall promptly reply in writ-

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ing to an inquiry of the commissioner relative to the business of rental car insurance.

(2)(a) In the event of a violation of this chapter by a rental car insurance producer, the commissioner may revoke, suspend, or refuse to issue or renew any rental car insurance producer's license that is issued or may be issued under this chapter for any cause specified in any other provision of this title, or for any of the following causes:

(i) For any cause that the issuance of this license could have been refused had it then existed and been known to the commissioner;

(ii) If the licensee or applicant willfully violates or knowingly participates in a violation of this title or any proper order or rule of the commissioner;

(iii) If the licensee or applicant has obtained or attempted to obtain a license through willful misrepresentation or fraud;

(iv) If the licensee or applicant has misappropriated or converted funds that belong to, or should be paid to, another person as a result of, or in connection with, a rental car or insurance transaction;

(v) If the licensee or applicant has, with intent to deceive, materially misrepresented the terms or effects of any insurance contract, or has engaged, or is about to engage, in any fraudulent transaction;

(vi) If the licensee or applicant or officer of the licensee or applicant has been convicted by final judgment of a felony;

(vii) If the licensee or applicant is shown to be, and is determined by the commissioner, incompetent or untrustworthy, or a source of injury and loss to the public; and

(viii) If the licensee has dealt with, or attempted to deal with, insurances, or has exercised powers relative to insurance outside the scope of the rental car insurance producer license or other insurance licenses.

(b) If any natural person named under a firm or corporate rental car insurance producer license, or application therefore, commits or has committed any act, or fails or has failed to perform any duty, that constitutes grounds for the commissioner to revoke, suspend, or refuse to issue or renew the license or application for license, the commissioner may revoke, suspend, refuse to renew, or refuse to issue the license or application for a license of the corporation or firm.

(c) Any conduct of an applicant or licensee that constitutes grounds for disciplinary action under this title may be addressed under this section regardless of where the conduct took place.

(d) The holder of any license that has been revoked or suspended shall surrender the license to the commissioner at the commissioner's request.

(e) After notice and hearing the commissioner may impose other penalties, including suspending the transaction of insurance at specific rental locations where violations of this section have occurred and imposing fines on the manager or supervisor at each location responsible for the supervision and conduct of each endorsee, as the commissioner determines necessary or convenient to carry out the purpose of this chapter.

(3) The commissioner may suspend, revoke, or refuse to renew any rental car insurance producer license by an order served by mail or personal service upon the licensee not less than fifteen days prior to its effective date. The order is sub-

ject to the right of the licensee to a hearing under chapter 48.04 RCW.

(4) The commissioner may temporarily suspend a license by an order served by mail or personal service upon the licensee not less than three days prior to its effective date. However, the order must contain a notice of revocation and include a finding that the public safety or welfare imperatively requires emergency action. These suspensions may continue only until proceedings for revocation are concluded. The commissioner may also temporarily suspend a license in cases when proceedings for revocation are pending if it is found that the public safety or welfare imperatively requires emergency action.

(5) Service by mail under this section means posting in the United States mail, addressed to the licensee at the most recent address shown in the commissioner's licensing records for the licensee. Service by mail is complete upon deposit in the United States mail.

(6) If any person sells insurance in connection with or incidental to rental car agreements, or holds himself or herself or a company out as a rental car insurance producer, without satisfying the requirements of this chapter, the commissioner is authorized to issue a cease and desist order. [2008 c 217 § 92; 2002 c 273 § 8.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.040 Treatment of moneys collected from renters purchasing insurance. (Effective until July 1, 2009.) A rental car agent is not required to treat moneys collected from renters purchasing rental car insurance as funds received in a fiduciary capacity, if:

(1) The charges for rental car insurance coverage are itemized and ancillary to a rental transaction; and

(2) The insurer has consented in writing, signed by an officer of the insurer, that premiums need not be segregated from funds received by the rental car agent. [2002 c 273 § 9.]

48.115.040 Treatment of moneys collected from renters purchasing insurance. (Effective July 1, 2009.) A rental car insurance producer is not required to treat moneys collected from renters purchasing rental car insurance as funds received in a fiduciary capacity, if:

(1) The charges for rental car insurance coverage are itemized and ancillary to a rental transaction; and

(2) The insurer has consented in writing, signed by an officer of the insurer, that premiums need not be segregated from funds received by the rental car insurance producer. [2008 c 217 § 93; 2002 c 273 § 9.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.115.045 Rule making. The commissioner may adopt rules necessary to implement this chapter, including rules establishing licensing fees to defray the cost of administering this chapter. [2002 c 273 § 10.]

48.115.900 Captions not law. Captions used in this act are not any part of the law. [2002 c 273 § 12.]

Chapter 48.120 RCW

SPECIALTY PRODUCER LICENSES— COMMUNICATIONS EQUIPMENT OR SERVICES

Sections

48.120.005	Definitions.
48.120.010	License required—Application.
48.120.015	Scope of license—Authorization.
48.120.020	Issuance of insurance—Restrictions—Conduct of employees and authorized representatives.
48.120.025	Statutes governing vendor misconduct—Rules necessary to implement chapter.

48.120.005 Definitions. (Effective until July 1, 2009.)

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

(1) "Communications equipment" means handsets, pagers, personal digital assistants, portable computers, automatic answering devices, batteries, and their accessories or other devices used to originate or receive communications signals or service approved for coverage by rule of the commissioner, and also includes services related to the use of the devices.

(2) "Communications equipment insurance program" means an insurance program as described in RCW 48.120.015.

(3) "Communications service" means the service necessary to send, receive, or originate communications signals.

(4) "Customer" means a person or entity purchasing or leasing communications equipment or communications services from a vendor.

(5) "Specialty producer license" means a license issued under RCW 48.120.010 that authorizes a vendor to offer or sell insurance as provided in RCW 48.120.015.

(6) "Supervising agent" means an agent licensed under RCW 48.17.060 who provides training as described in RCW 48.120.020 and is affiliated to a licensed vendor.

(7) "Vendor" means a person or entity resident or with offices in this state in the business of leasing, selling, or providing communications equipment or communications service to customers.

(8) "Appointing insurer" means the insurer appointing the vendor as its agent under a specialty producer license. [2002 c 357 § 1.]

48.120.005 Definitions. (Effective July 1, 2009.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Communications equipment" means handsets, pagers, personal digital assistants, portable computers, automatic answering devices, batteries, and their accessories or other devices used to originate or receive communications signals or service approved for coverage by rule of the commissioner, and also includes services related to the use of the devices.

(2) "Communications equipment insurance program" means an insurance program as described in RCW 48.120.015.

(3) "Communications service" means the service necessary to send, receive, or originate communications signals.

(4) "Customer" means a person or entity purchasing or leasing communications equipment or communications services from a vendor.

(5) "Specialty producer license" means a license issued under RCW 48.120.010 that authorizes a vendor to offer or sell insurance as provided in RCW 48.120.015.

(6) "Supervising agent" means an appointed insurance producer licensed under RCW 48.17.090 who provides training as described in RCW 48.120.020 and is affiliated to a licensed vendor.

(7) "Vendor" means a person or entity resident or with offices in this state in the business of leasing, selling, or providing communications equipment or communications service to customers.

(8) "Appointing insurer" means the insurer appointing the vendor as its agent under a specialty producer license. [2008 c 217 § 94; 2002 c 357 § 1.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.120.010 License required—Application. (Effective until July 1, 2009.) (1) A vendor that intends to offer insurance under RCW 48.120.015 must file a specialty producer license application with the commissioner. Before the commissioner issues such a license, the vendor must be appointed as the agent of one or more authorized appointing insurers under a vendor's specialty producer license.

(2) Upon receipt of an application, if the commissioner is satisfied that the application is complete, the commissioner may issue a specialty producer license to the vendor. [2002 c 357 § 2.]

48.120.010 License required—Application. (Effective July 1, 2009.) (1) A vendor that intends to offer insurance under RCW 48.120.015 must file a specialty producer license application with the commissioner. Before the commissioner issues such a license, the vendor must be appointed as the insurance producer of one or more authorized appointing insurers under a vendor's specialty producer license.

(2) Upon receipt of an application, if the commissioner is satisfied that the application is complete, the commissioner may issue a specialty producer license to the vendor. [2008 c 217 § 95; 2002 c 357 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.120.015 Scope of license—Authorization. A specialty producer license authorizes a vendor and its employees and authorized representatives to offer and sell to, enroll in, and bill and collect premiums from customers for insurance covering communications equipment on a master, corporate, group, or individual policy basis. [2002 c 357 § 3.]

48.120.020 Issuance of insurance—Restrictions—Conduct of employees and authorized representatives.

(1) A vendor issued a specialty producer license may not issue insurance under RCW 48.120.015 unless:

(a) At every location where customers are enrolled in communications equipment insurance programs, written material regarding the program is made available to prospective customers; and

(b) The communications equipment insurance program is operated with the participation of a supervising agent who, with authorization and approval from the appointing insurer,

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supervises a training program for employees of the licensed vendor.

(2) Employees and authorized representatives of a vendor issued a specialty producer license may only act on behalf of the vendor in the offer, sale, solicitation, or enrollment of customers in a communications equipment insurance program. The conduct of these employees and authorized representatives within the scope of their employment or agency is the same as conduct of the vendor for purposes of this title. [2002 c 357 § 4.]

48.120.025 Statutes governing vendor misconduct—Rules necessary to implement chapter. (1) A vendor issued a specialty producer license under this chapter is subject to RCW 48.17.540 through 48.17.560.

(2) The commissioner may adopt rules necessary for the implementation of this chapter, including, but not limited to, rules governing:

(a) The specialty producer license application process, including any forms required to be used;

(b) The standards for approval and the required content of written materials required under RCW 48.120.020(1)(a);

(c) The approval and required content of training materials required under RCW 48.120.020(1)(b);

(d) Establishing license fees to defray the cost of administering the specialty producer licensure program;

(e) Establishing requirements for the remittance of premium funds to the supervising agent under authority from the program insurer; and

(f) Determining the applicability or nonapplicability of other provisions of this title to this chapter. [2002 c 357 § 5.]

Chapter 48.125 RCW

SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Sections

48.125.003	Short title.
48.125.005	Purposes.
48.125.010	Definitions.
48.125.020	Certificate of authority required.
48.125.030	Certificate of authority—Requirements for issuance.
48.125.040	Certificate of authority—Continued compliance with certain conditions—Commissioner's discretion.
48.125.050	Certificate of authority—Application—Form—Documentation.
48.125.060	Surplus required—Amount—Enforcement.
48.125.070	Contribution rates.
48.125.080	Certificate of authority—Granting or denying application.
48.125.090	Reporting requirements.
48.125.100	Failure to comply with chapter—Sanctions.
48.125.110	Certificate of authority—Failure to obtain.
48.125.120	Policy must contain specific notice.
48.125.130	Additional compliance requirements.
48.125.140	Examination of operations—Commissioner's powers—Definition of affiliate.
48.125.150	Chapter not applicable.
48.125.160	Taxable amounts—Participant contributions.
48.125.200	Prostate cancer screening.
48.125.900	Severability—2004 c 260.
48.125.901	Effective date—2004 c 260.

48.125.003 Short title. This chapter may be cited as the "self-funded multiple employer welfare arrangement regulation act." [2004 c 260 § 1.]

48.125.005 Purposes. The purposes of this chapter are to:

- (1) Provide for the authorization and registration of self-funded multiple employer welfare arrangements;
- (2) Regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;
- (3) Provide reporting requirements for self-funded multiple employer welfare arrangements; and
- (4) Provide for sanctions against self-funded multiple employer welfare arrangements organized, operated, providing benefits, or maintained in this state that do not comply with this chapter. [2004 c 260 § 2.]

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

(1) "Bona fide association" means an association of employers that has been in existence for a period of not less than ten years prior to sponsoring a self-funded multiple employer welfare arrangement, during which time the association has engaged in substantial activities relating to the common interests of member employers, and that continues to engage in substantial activities in addition to sponsoring an arrangement. However, an association that was formed and began sponsoring an arrangement prior to October 1, 1995, is not subject to the requirement that the association be in existence for ten years prior to sponsoring an arrangement.

(2) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more other persons or who contracts with one or more persons, the essence of which is the personal labor of that person or persons.

(3) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(4) "Incurred claims" means the value of all amounts paid or payable under a multiple employer welfare arrangement determined by contract to be a liability with an incurred claims date during the valuation period. It includes all payments during the valuation period plus a reasonable estimate of unpaid claims liabilities.

(5) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but does not include an arrangement, plan, program, or interlocal agreement of or between any political subdivisions of this state, any federal agencies, or any contractors or subcontractors with federal agencies at a federal government facility within this state.

(6) "Qualified actuary" means an individual who:

- (a) Is a member in good standing of the American academy of actuaries; and
- (b) Is qualified to sign statements of actuarial opinion for health annual statements in accordance with the American academy of actuaries qualification standards for actuaries signing the statements.

(7) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer welfare

arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under this title.

(8) "Surplus" means the excess of the assets of a self-funded multiple employer welfare arrangement over the liabilities of the arrangement. The assets and liabilities should be determined in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law. [2004 c 260 § 3.]

48.125.020 Certificate of authority required. (1) Except as provided in subsection (3) of this section, a person may not establish, operate, provide benefits, or maintain a self-funded multiple employer welfare arrangement in this state unless the arrangement first obtains a certificate of authority from the commissioner.

(2) An arrangement is considered to be established, operated, providing benefits, or maintained in this state if (a) one or more of the employer members participating in the arrangement is either domiciled in or maintains a place of business in this state, or (b) the activities of the arrangement or employer members fall under the scope of RCW 48.01.020.

(3) An arrangement established, operated, providing benefits, or maintained in this state prior to December 31, 2003, has until April 1, 2005, to file a substantially complete application for a certificate of authority. An arrangement that files a substantially complete application for a certificate of authority by that date is allowed to continue to operate without a certificate of authority until the commissioner approves or denies the arrangement's application for a certificate of authority. [2004 c 260 § 4.]

48.125.030 Certificate of authority—Requirements for issuance. (*Effective until July 1, 2009.*) The commissioner may not issue a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the satisfaction of the commissioner that the following requirements have been satisfied by the arrangement:

(1) The employers participating in the arrangement are members of a bona fide association;

(2) The employers participating in the arrangement exercise control over the arrangement, as follows:

(a) Subject to (b) of this subsection, control exists if the board of directors of the bona fide association or the employers participating in the arrangement have the right to elect at least seventy-five percent of the individuals designated in the arrangement's organizational documents as having control over the operations of the arrangement and the individuals designated in the arrangement's organizational documents in fact exercise control over the operation of the arrangement; and

(b) The use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operation of the arrangement;

(3) In this state, the arrangement provides only health care services;

(4) In this state, the arrangement provides or arranges benefits for health care services in compliance with those provisions of this title that mandate particular benefits or offerings and with provisions that require access to particular types or categories of health care providers and facilities;

(5) In this state, the arrangement provides or arranges benefits for health care services in compliance with RCW 48.43.500 through 48.43.535, 48.43.545, and 48.43.550;

(6) The arrangement provides health care services to not less than twenty employers and not less than seventy-five employees;

(7) The arrangement may not solicit participation in the arrangement from the general public. However, the arrangement may employ licensed insurance agents who receive a commission, unlicensed individuals who do not receive a commission, and may contract with a licensed insurance producer who may be paid a commission or other remuneration, for the purpose of enrolling and renewing the enrollments of employers in the arrangement;

(8) The arrangement has been in existence and operated actively for a continuous period of not less than ten years as of December 31, 2003, except for an arrangement that has been in existence and operated actively since December 31, 2000, and is sponsored by an association that has been in existence more than twenty-five years; and

(9) The arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company. [2004 c 260 § 5.]

48.125.030 Certificate of authority—Requirements for issuance. (*Effective July 1, 2009.*) The commissioner may not issue a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the satisfaction of the commissioner that the following requirements have been satisfied by the arrangement:

(1) The employers participating in the arrangement are members of a bona fide association;

(2) The employers participating in the arrangement exercise control over the arrangement, as follows:

(a) Subject to (b) of this subsection, control exists if the board of directors of the bona fide association or the employers participating in the arrangement have the right to elect at least seventy-five percent of the individuals designated in the arrangement's organizational documents as having control over the operations of the arrangement and the individuals designated in the arrangement's organizational documents in fact exercise control over the operation of the arrangement; and

(b) The use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operation of the arrangement;

(3) In this state, the arrangement provides only health care services;

(4) In this state, the arrangement provides or arranges benefits for health care services in compliance with those provisions of this title that mandate particular benefits or

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offerings and with provisions that require access to particular types or categories of health care providers and facilities;

(5) In this state, the arrangement provides or arranges benefits for health care services in compliance with RCW 48.43.500 through 48.43.535, 48.43.545, and 48.43.550;

(6) The arrangement provides health care services to not less than twenty employers and not less than seventy-five employees;

(7) The arrangement may not solicit participation in the arrangement from the general public. However, the arrangement may employ licensed insurance producers who receive a commission, unlicensed individuals who do not receive a commission, and may contract with a licensed insurance producer who may be paid a commission or other remuneration, for the purpose of enrolling and renewing the enrollments of employers in the arrangement;

(8) The arrangement has been in existence and operated actively for a continuous period of not less than ten years as of December 31, 2003, except for an arrangement that has been in existence and operated actively since December 31, 2000, and is sponsored by an association that has been in existence more than twenty-five years; and

(9) The arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company. [2008 c 217 § 96; 2004 c 260 § 5.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.125.040 Certificate of authority—Continued compliance with certain conditions—Commissioner's discretion. (1) In addition to the requirements under RCW 48.125.030, self-funded multiple employer welfare arrangements are subject to the following requirements:

(a) Arrangements must maintain a calendar year for operations and reporting purposes;

(b) Arrangements must satisfy one of the following requirements:

(i)(A) The arrangement must deposit two hundred thousand dollars with the commissioner to be used for the payment of claims in the event that the arrangement becomes insolvent; and

(B) The arrangement must submit to the commissioner a written plan of operation that, in the reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

(ii) The arrangement demonstrates to the reasonable satisfaction of the commissioner the ability of the arrangement to remain financially solvent, for which purpose the commissioner may consider:

(A) The pro forma financial statements of the arrangement;

(B) The types and levels of excess of loss insurance coverage, including the attachment points of the coverage and whether the points are reflected as annual or monthly levels;

(C) Whether a deposit is required for each employee covered under the arrangement equal to at least one month's cost of providing benefits under the arrangement;

(D) The experience of the individuals who will be involved in the management of the arrangement, including employees, independent contractors, and consultants; and

(E) Other factors as reasonably determined by the commissioner to be relevant to a determination of whether the arrangement is able to operate in a financially solvent manner.

(2) The commissioner may require that the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement provide that employers participating in the arrangement are subject to pro rata assessment for all liabilities of the arrangement.

(3) Self-funded multiple employer welfare arrangements with fewer than one thousand covered persons are required to have aggregate stop loss coverage, with an attachment point of one hundred twenty-five percent of expected claims. If the arrangement is allowed to assess the participating employers to cover actual or projected claims in excess of plan assets, then the attachment point shall be increased by the amount of the allowable assessments. If the required attachment point exceeds one hundred seventy-five percent of expected claims, aggregate stop loss coverage shall be waived. Arrangements with one thousand covered persons or more are not required to have aggregate stop loss coverage.

(4) The arrangement must demonstrate continued compliance with respect to the conditions set forth in this section as a condition of receiving and maintaining a certificate of authority. The commissioner may waive continued compliance with respect to the conditions in this section at any time after the commissioner has granted a certificate of authority to an arrangement. [2004 c 260 § 6.]

48.125.050 Certificate of authority—Application—Form—Documentation. A self-funded multiple employer welfare arrangement must apply for a certificate of authority on a form prescribed by the commissioner and must submit the application, together with the following documents, to the commissioner:

(1) A copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

(2) A copy of the summary plan description or summary plan descriptions of the arrangement, including those filed or required to be filed with the United States department of labor, together with any amendments to the description;

(3) Evidence of coverage of or letters of intent to participate executed by at least twenty employers providing allowable benefits to at least seventy-five employees;

(4) A copy of the arrangement's most recent year's financial statements that must include, at a minimum, a balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion signed by a qualified actuary stating that the unpaid claim liability of the arrangement satisfies the standards under this title;

(5) Proof that the arrangement maintains or will maintain fidelity bonds required by the United States department of labor under the employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et seq.;

(6) A copy of any excess of loss insurance coverage policies maintained or proposed to be maintained by the arrangement;

(7) Biographical reports on forms prescribed by the national association of insurance commissioners evidencing the general trustworthiness and competence of each individual who is serving or who will serve as an officer, director, trustee, employee, or fiduciary of the arrangement;

(8) Fingerprint cards and current fees payable to the Washington state patrol to perform a state and national criminal history background check of any person who exercises control over the financial dealings and operations of the self-funded multiple employer welfare arrangement, including collection of employer contributions, investment of assets, payment of claims, rate setting, and claims adjudication. The fingerprints and any additional information may be submitted to the federal bureau of investigation and any results of the check must be returned to the office of the insurance commissioner. The results may be disseminated to any governmental agency or entity authorized to receive them; and

(9) A statement executed by a representative of the arrangement certifying, to the best knowledge and belief of the representative, that:

(a) The arrangement is in compliance with RCW 48.125.030;

(b) The arrangement is in compliance with the requirements of the employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et seq., or a statement of any requirements with which the arrangement is not in compliance and a statement of proposed corrective actions; and

(c) The arrangement is in compliance with RCW 48.125.060 and 48.125.070. [2004 c 260 § 7.]

48.125.060 Surplus required—Amount—Enforcement. Self-funded multiple employer welfare arrangements must maintain continuously a surplus equal to at least ten percent of the next twelve months projected incurred claims or two million dollars, whichever is greater. The commissioner may proceed against self-funded multiple employer welfare arrangements that fail to maintain the level of surplus required by this section in any manner that the commissioner is authorized to proceed against a health care service contractor that failed to maintain minimum net worth. [2004 c 260 § 8.]

48.125.070 Contribution rates. A self-funded multiple employer welfare arrangement must establish and maintain contribution rates for participation under the arrangement that satisfy either of the following requirements:

(1) Contribution rates must equal or exceed the sum of projected incurred claims for the year, plus all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in the surplus of the arrangement for the prior year, minus an amount equal to the surplus of the arrangement in excess of the minimum required level of surplus; or

(2) Contribution rates must equal or exceed a funding level established by a report prepared by a qualified actuary. [2004 c 260 § 9.]

48.125.080 Certificate of authority—Granting or denying application. (1) The commissioner shall grant or deny an application for a certificate of authority within one

hundred eighty days of the date that a completed application, together with the items designated in RCW 48.125.050, is submitted to the commissioner.

(2) The commissioner shall grant the application of an arrangement that satisfies the applicable requirements of RCW 48.125.030 through 48.125.070.

(3) The commissioner shall deny the application of an arrangement that does not satisfy the applicable requirements of RCW 48.125.030 through 48.125.070. Denial of an application for a certificate of authority is subject to appeal under chapter 34.05 RCW.

(4) A certificate of authority granted to an arrangement is effective unless revoked by the commissioner under RCW 48.125.100. [2004 c 260 § 10.]

48.125.090 Reporting requirements. (1) A self-funded multiple employer welfare arrangement must comply with the reporting requirements of this section.

(2) Every arrangement holding a certificate of authority from the commissioner must file its financial statements as required by this title and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law.

(3) Every arrangement must comply with the provisions of chapters 48.12 and 48.13 RCW.

(4) Every domestic arrangement holding a certificate of authority shall annually, on or before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of the thirty-first day of December of the preceding year. The statement forms must be those forms approved by the national association of insurance commissioners for health insurance. The statement must be verified by the oaths of at least two officers of the arrangement. Additional information may be required by this title or by the request of the commissioner.

(5) Every arrangement must report their annual and other statements in the same manner required of other insurers by rule of the commissioner.

(6) The arrangement must file with the commissioner a copy of the arrangement's internal revenue service form 5500 together with all attachments to the form, at the time required for filing the form. [2006 c 25 § 10; 2004 c 260 § 11.]

48.125.100 Failure to comply with chapter—Sanctions. (1) The commissioner may impose sanctions against a self-funded multiple employer welfare arrangement that fails to comply with this chapter. The maximum fine may not exceed ten thousand dollars for each violation.

(2) The commissioner may issue a notice of intent to revoke the certificate of authority of a self-funded multiple employer welfare arrangement that fails to comply with RCW 48.125.060, 48.125.070, or 48.125.090. If, within sixty days of receiving notice under this subsection, the arrangement fails to file with the commissioner a plan to bring the arrangement into compliance with RCW 48.125.060, 48.125.070, or 48.125.090, the commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate of authority is subject to appeal under chapter 34.05 RCW.

(3) An arrangement that fails to maintain the level of surplus required by RCW 48.125.060 is subject to the sanctions authorized in RCW 48.44.160 through 48.44.166. [2004 c 260 § 12.]

48.125.110 Certificate of authority—Failure to obtain. A self-funded multiple employer welfare arrangement organized, operated, providing benefits, or maintained in this state without a certificate of authority is in violation of this title. [2004 c 260 § 13.]

48.125.120 Policy must contain specific notice. Each policy issued by a self-funded multiple employer welfare arrangement must contain, in ten-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by a self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for a self-funded multiple employer welfare arrangement." [2004 c 260 § 14.]

48.125.130 Additional compliance requirements. A self-funded multiple employer welfare arrangement is subject to RCW 48.43.300 through 48.43.370, the rehabilitation provisions under chapter 48.31 RCW, and chapter 48.99 RCW. [2004 c 260 § 15.]

48.125.140 Examination of operations—Commissioner's powers—Definition of affiliate. (1) The commissioner may make an examination of the operations of any self-funded multiple employer welfare arrangement as often as he or she deems necessary in order to carry out the purposes of this chapter.

(2) Every self-funded multiple employer welfare arrangement shall submit its books and records relating to its operation for financial condition and market conduct examinations and in every way facilitate them. For the purpose of examinations, the commissioner may issue subpoenas, administer oaths, and examine the officers and principals of the [self-funded] multiple employer welfare arrangement.

(3) The commissioner may elect to accept and rely on audit reports made by an independent certified public accountant for the self-funded multiple employer welfare arrangement in the course of that part of the commissioner's examination covering the same general subject matter as the audit. The commissioner may incorporate the audit report in his or her report of the examination.

(4)(a) The commissioner may also examine any affiliate of the self-funded multiple employer welfare arrangement. An examination of an affiliate is limited to the activities or operations of the affiliate that may impact the financial position of the arrangement.

(b) For the purposes of this section, "affiliate" has the same meaning as defined in RCW 48.31C.010.

(5) Whenever an examination is made, all of the provisions of chapter 48.03 RCW not inconsistent with this chapter shall be applicable. In lieu of making an examination

himself or herself, the commissioner may, in the case of a foreign self-funded multiple employer welfare arrangement, accept an examination report of the applicant by the regulatory official in its state of domicile. In the case of a domestic self-funded multiple employer welfare arrangement, the commissioner may accept an examination report of the applicant by the regulatory official of a state that has already licensed the arrangement. [2004 c 260 § 16.]

48.125.150 Chapter not applicable. This chapter does not apply to:

- (1) Single employer entities;
- (2) Taft-Hartley plans; or
- (3) Self-funded multiple employer welfare arrangements that do not provide coverage for health care services. [2004 c 260 § 17.]

48.125.160 Taxable amounts—Participant contributions. Participant contributions used to determine the taxable amounts in this state under RCW 48.14.0201 shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090. [2004 c 260 § 18.]

48.125.200 Prostate cancer screening. (1) Each self-funded multiple employer welfare arrangement established, operated, providing benefits, or maintained in this state after December 31, 2006, that provides coverage for hospital or medical expenses shall provide coverage for prostate cancer screening, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant.

(2) This section shall not be construed to prevent the application of standard policy provisions applicable to other benefits, such as deductible or copayment provisions. This section does not limit the authority of a self-funded multiple employer welfare arrangement to negotiate rates and contract with specific providers for the delivery of prostate cancer screening services. [2006 c 367 § 6.]

48.125.900 Severability--2004 c 260. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 260 § 28.]

48.125.901 Effective date--2004 c 260. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]. [2004 c 260 § 29.]

Chapter 48.130 RCW

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Sections

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- 48.130.120 Compact, commission, compact amendments—When effective.
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- 48.130.140 Effect of compact—Other state laws—Binding on compacting states, when.
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- 48.130.901 Construction—2005 c 92.

48.130.005 Purposes—Insurance commissioner represents state. Under the terms and conditions of this chapter, the state of Washington seeks to join with other states and establish the interstate insurance product regulation compact and thus become a member of the interstate insurance product regulation commission. The insurance commissioner is hereby designated to serve as the representative of this state to the commission. The purposes of the compact under this chapter are, through means of joint and cooperative action among the compacting states:

- (1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products;
- (2) To develop uniform standards for insurance products covered under the compact;
- (3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;
- (4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
- (5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;
- (6) To create the interstate insurance product regulation commission; and
- (7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance. [2005 c 92 § 1.]

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

(1) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

(2) "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.

(3) "Compact" means the compact set forth in this chapter.

(4) "Compacting state" means any state which has enacted the compact and which has not withdrawn under RCW 48.130.130(1) or been terminated under RCW 48.130.130(2).

(5) "Commission" means the interstate insurance product regulation commission established in RCW 48.130.020.

(6) "Commissioner" means the insurance commissioner or the chief insurance regulatory official of a state including but not limited to commissioner, superintendent, director, or administrator.

(7) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.

(8) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the compact.

(9) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee.

(10) "Noncompacting state" means any state which is not at the time a compacting state.

(11) "Operating procedures" mean procedures adopted by the commission implementing a rule, uniform standard, or a provision of the compact.

(12) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

(13) "Rule" means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed under RCW 48.130.060, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(14) "State" means any state, district, or territory of the United States of America.

(15) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.

(16) "Uniform standard" means a standard adopted by the commission for a product line, under RCW 48.130.060, and includes all of the product requirements in aggregate. However, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission. [2005 c 92 § 2.]

48.130.020 Commission created. (1) The compacting states hereby create and establish a joint public agency known as the interstate insurance product regulation commission. Under RCW 48.130.030, the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards. However, it is not intended for the commission to be the exclusive entity for receipt and review of

insurance product filings. This section does not prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities except as otherwise specifically provided in the compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. [2005 c 92 § 3.]

48.130.030 Commission's powers. The commission shall have the following powers:

(1) To adopt rules, under RCW 48.130.060, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(2) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission. However, a compacting state shall have the right to opt out of such uniform standard under RCW 48.130.060, to the extent and in the manner provided in this compact. Any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products;

(3) To receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting

states to the extent and in the manner provided in the compact;

(5) To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

(6) To adopt operating procedures, under RCW 48.130.060, which shall be binding in the compacting states to the extent and in the manner provided in the compact;

(7) To bring and prosecute legal proceedings or actions in its name as the commission. However, the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(9) To establish and maintain offices;

(10) To purchase and maintain insurance and bonds;

(11) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state;

(12) To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. However, the commission shall strive to avoid any appearance of impropriety;

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. However, the commission shall strive to avoid any appearance of impropriety;

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;

(18) To provide for dispute resolution among compacting states;

(19) To advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of the compact;

(20) To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

(21) To establish a budget and make expenditures;

(22) To borrow money;

(23) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;

(24) To provide and receive information from, and to cooperate with, law enforcement agencies;

(25) To adopt and use a corporate seal; and

(26) To perform such other functions as may be necessary or appropriate to achieve the purposes of the compact consistent with the state regulation of the business of insurance. [2005 c 92 § 4.]

48.130.040 Commission membership—Management and legislative committees—Liability. (1)(a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. This section does not affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this chapter to the contrary, no action of the commission with respect to the adoption of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(i) Establishing the fiscal year of the commission;

(ii) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(iii) Providing reasonable standards and procedures for: (A) The establishment and meetings of other committees; and (B) governing any general or specific delegation of any authority or function of the commission;

(iv) Providing reasonable procedures for calling and conducting meetings of the commission that consists [consist] of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting. As soon as practicable, the commission must make public: (A) A copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed; and (B) votes taken during such meeting;

(v) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(vi) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(vii) Adopting a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact and after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the compacting states.

(2)(a) A management committee comprising no more than fourteen members shall be established as follows:

(i) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year;

(ii) Four members from those compacting states with at least two percent of the market based on the premium volume described under (a)(i) of this subsection, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) Four members from those compacting states with less than two percent of the market, based on the premium volume described under (a)(i) of this subsection, with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(i) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard. However, a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(iii) Overseeing the offices of the commission; and

(iv) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

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(3)(a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee. However, the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(4) The commission shall maintain its corporate books and records in accordance with the bylaws.

(5)(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection (5)(a) does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection (5)(b) does not prohibit that person from retaining his or her own counsel. Also, the actual or alleged act, error, or omission may not have resulted from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, the actual or alleged act, error, or omission may not have resulted from the intentional or willful and wanton misconduct of that person. [2005 c 92 § 5.]

48.130.050 Commission actions—Voting. (1) The commission shall meet and take such actions as are consistent with the provisions of the compact and the bylaws.

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(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws. [2005 c 92 § 6.]

48.130.060 Commission rule making—Uniform standards and operating procedures—States may opt out. (1)

The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of the compact. In the event the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this chapter, then such an action by the commission shall be invalid and have no force and effect.

(2) Rules and operating procedures shall be made pursuant to a rule-making process that conforms to the model state administrative procedure act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) A uniform standard shall become effective ninety days after its adoption by the commission or such later date as the commission may determine. However, a compacting state may opt out of a uniform standard as provided in this section. "Opt out" means any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(4)(a) A compacting state may opt out of a uniform standard, either by legislation or regulation adopted by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by rule, it must: (i) Give written notice to the commission no later than ten business days after the uniform standard is adopted, or at the time the state becomes a compacting state; and (ii) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

(b) The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this chapter; and

(ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

(c) A compacting state may, at the time of its enactment of the compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in the compact. Such an opt out shall be effective at the time of enactment of the compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(5) If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under RCW 48.130.130 for withdrawals.

(6) If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission. However, a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rule-making process has been terminated.

(7) Not later than thirty days after a rule or operating procedure is adopted, any person may file a petition for judicial review of the rule or operating procedure. However, the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority. [2005 c 92 § 7.]

48.130.070 Commission rule making—Confidentiality of information and records—Compliance with compact. (1) The commission shall adopt rules establishing com-

ditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission. However, disclosure to the commission does not waive or otherwise affect any confidentiality requirement. Also, except as otherwise expressly provided in this chapter, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in RCW 48.130.130.

(4) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization under this subsection (4)(b) does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests. [2005 c 92 § 8.]

48.130.080 Dispute resolution. The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or

between compacting states and noncompacting states, and the commission shall adopt an operating procedure providing for resolution of such disputes. [2005 c 92 § 9.]

48.130.090 Commission approval of product—Filing—Rule making. (1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. This chapter does not restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. The commission shall adopt rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business. [2005 c 92 § 10.]

48.130.100 Commission disapproval of product—Appeal. (1) Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with RCW 48.130.020(4).

(2) The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (1) of this section. [2005 c 92 § 11.]

48.130.110 Commission expenses—Budget—Tax exempt—Accounting. (1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in RCW 48.130.060.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request. However, any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) A compacting state does not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held under this chapter. [2005 c 92 § 12.]

48.130.120 Compact, commission, compact amendments—When effective. (1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states. However, the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states unless and until all

compacting states enact the amendment into law. [2005 c 92 § 13.]

48.130.130 Withdrawal from compact, how—Default by state—Dissolution of compact. (1)(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state. However, a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in (e) of this subsection.

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2)(a) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under the compact, the bylaws, or adopted rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by the compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and ben-

efits conferred by the compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily under subsection (1) of this section.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3)(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws. [2005 c 92 § 14.]

48.130.140 Effect of compact—Other state laws—Binding on compacting states, when. (1)(a) The compact does not prevent the enforcement of any other law of a compacting state, except as provided in (b) of this subsection.

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. However, no action taken by the commission shall abrogate or restrict: (i) The access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

(2)(a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are

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delegated by law in effect at the time the compact becomes effective. [2005 c 92 § 15.]

48.130.900 Severability—2005 c 92. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 92 § 16.]

48.130.901 Construction—2005 c 92. This chapter shall be liberally construed. [2005 c 92 § 17.]

Chapter 48.135 RCW

INSURANCE FRAUD PROGRAM

Sections

48.135.005	Purpose.
48.135.007	When chapter not applicable.
48.135.010	Definitions.
48.135.020	Insurance fraud program established—Commissioner's powers and duties.
48.135.030	Program operating costs.
48.135.040	Program implementation—Commissioner's authority—Limited authority peace officers.
48.135.050	Furnishing and disclosing insurance fraud knowledge and information.
48.135.060	Disclosure of documents, materials, or other information—Exemptions.
48.135.070	Insurance company as victim—Restitution.
48.135.080	Required statement on all insurance applications and claim forms.
48.135.090	Insurance fraud advisory board—Membership.
48.135.100	Program report—Contents.
48.135.110	Rules.
48.135.900	Severability—2006 c 284.
48.135.901	Effective date—2006 c 284.

48.135.005 Purpose. The purpose of this chapter and sections 14 through 17, chapter 284, Laws of 2006 is to confront the problem of insurance fraud in this state by making a concerted effort to detect insurance fraud, reduce the occurrence of fraud through criminal enforcement and deterrence, require restitution of fraudulently obtained insurance benefits and expenses incurred by an insurer in investigating fraudulent claims, and reduce the amount of premium dollars used to pay fraudulent claims. The primary focus of the insurance fraud program is on organized fraudulent activities committed against insurance companies. [2006 c 284 § 1.]

48.135.007 When chapter not applicable. This chapter does not:

(1) Preempt the authority or relieve the duty of any other general authority law enforcement agencies to investigate, examine, and prosecute suspected violations of law;

(2) Prevent or prohibit a person from voluntarily disclosing any information concerning insurance fraud to any law enforcement agency other than the commissioner; or

(3) Limit any of the powers granted elsewhere in this title to the commissioner to investigate and examine possible violations of the law and to take appropriate action. [2006 c 284 § 9.]

48.135.010 Definitions. (*Effective until July 1, 2009.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Insurance fraud" means an act or omission committed by a person who, knowingly, and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:

(a) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, broker, or its agent, false information as part of, in support of, or concerning a fact material to one or more of the following:

- (i) An application for the issuance or renewal of an insurance policy;
- (ii) The rating of an insurance policy or contract;
- (iii) A claim for payment or benefit pursuant to an insurance policy;
- (iv) Premiums paid on an insurance policy;
- (v) Payments made in accordance with the terms of an insurance policy; or
- (vi) The reinstatement of an insurance policy;

(b) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance; or

(c) Attempting to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

The definition of insurance fraud is for illustrative purposes only under this chapter to describe the nature of the behavior to be reported and investigated, and is not intended in any manner to create or modify the definition of any existing criminal acts nor to create or modify the burdens of proof in any criminal prosecution brought as a result of an investigation under this chapter.

(2) "Insurer" means an insurance company authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health care maintenance organization registered under chapter 48.46 RCW. [2006 c 284 § 2.]

48.135.010 Definitions. (Effective July 1, 2009.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Insurance fraud" means an act or omission committed by a person who, knowingly, and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:

(a) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer or insurance producer, false information as part of, in support of, or concerning a fact material to one or more of the following:

- (i) An application for the issuance or renewal of an insurance policy;
- (ii) The rating of an insurance policy or contract;
- (iii) A claim for payment or benefit pursuant to an insurance policy;
- (iv) Premiums paid on an insurance policy;
- (v) Payments made in accordance with the terms of an insurance policy; or
- (vi) The reinstatement of an insurance policy;

(b) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other

property of an insurer or person engaged in the business of insurance; or

(c) Attempting to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

The definition of insurance fraud is for illustrative purposes only under this chapter to describe the nature of the behavior to be reported and investigated, and is not intended in any manner to create or modify the definition of any existing criminal acts nor to create or modify the burdens of proof in any criminal prosecution brought as a result of an investigation under this chapter.

(2) "Insurer" means an insurance company authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health care maintenance organization registered under chapter 48.46 RCW. [2008 c 217 § 97; 2006 c 284 § 2.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.135.020 Insurance fraud program established—Commissioner's powers and duties.

(1) There is established an insurance fraud program within the office of the insurance commissioner. The commissioner may employ supervisory, legal, and investigative personnel for the program, who must be qualified by training and experience in the areas of detection, investigation, or prosecution of fraud in which the insurance industry is a victim. The chief of the fraud program is a full-time position that is appointed by the commissioner. The chief serves at the pleasure of the commissioner. The commissioner shall provide office space, equipment, supplies, investigators, clerical staff, and other staff that are necessary for the program to carry out its duties and responsibilities under this chapter.

(2) The commissioner may fund one or more state patrol officers to work with the insurance fraud program and the funding for the officers must be paid out of the budget of the insurance fraud program.

(3) The commissioner may fund one or more assistant attorneys general and support staff to work with the insurance fraud program and the funding for the assistant attorneys general and support staff must be paid out of the budget of the insurance fraud program.

(4) The commissioner may make grants to or reimburse local prosecuting attorneys to assist in the prosecution of insurance fraud. The grants must be paid out of the budget of the insurance fraud program. The commissioner may investigate and seek prosecution of crimes involving insurance fraud upon the request of or with the concurrence of the county prosecuting attorney of the jurisdiction in which the offense has occurred. Before such a prosecution, the commissioner and the county in which the offense occurred shall reach an agreement regarding the payment of all costs, including expert witness fees, and defense attorneys' fees associated with any such prosecution.

(5) Staff levels for this program, until June 30, 2010, shall not exceed 8.0 full-time equivalents. [2006 c 284 § 3.]

48.135.030 Program operating costs. The annual cost of operating the fraud program is funded from the insurance

commissioner's regulatory account under RCW 48.02.190 subject to appropriation by the legislature. [2006 c 284 § 4.]

48.135.040 Program implementation—Commissioner's authority—Limited authority peace officers. (1) The commissioner may:

(a) Employ and train personnel to achieve the purposes of this chapter and to employ legal counsel, investigators, auditors, and clerical support personnel and other personnel as the commissioner determines necessary from time to time to accomplish the purposes of this chapter;

(b) Initiate inquiries and conduct investigations when the commissioner has cause to believe that insurance fraud has been, is being, or is about to be committed;

(c) Conduct independent examinations of alleged insurance fraud;

(d) Review notices, reports, or complaints of suspected insurance fraud activities from federal, state, and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and any other person to determine whether the reports require further investigation;

(e) Share records and evidence with federal, state, or local law enforcement or regulatory agencies, and enter into interagency agreements;

(f) Conduct investigations outside this state. If the information the commissioner seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the commissioner to examine at the place where the information is located. The commissioner may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the commissioner, and the commissioner may respond to similar requests from officials of other states;

(g) Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner deems relevant or material to an inquiry concerning insurance fraud;

(h) Report incidents of alleged insurance fraud disclosed by its investigations to the appropriate prosecutorial authority, including but not limited to the attorney general and to any other appropriate law enforcement, administrative, regulatory, or licensing agency;

(i) Assemble evidence, prepare charges, and work closely with any prosecutorial authority having jurisdiction to pursue prosecution of insurance fraud; and

(j) Undertake independent studies to determine the extent of fraudulent insurance acts.

(2) The fraud program investigators who have obtained certification as a peace officer under RCW 43.101.095 have the powers and status of a limited authority Washington peace officer. [2006 c 284 § 5.]

48.135.050 Furnishing and disclosing insurance fraud knowledge and information. (1) Any insurer or licensee of the commissioner that has reasonable belief that an act of insurance fraud which is or may be a crime under Washington law has been, is being, or is about to be commit-

ted shall furnish and disclose the knowledge and information to the commissioner or the national insurance crime bureau, the national association of insurance commissioners, or similar organization, who shall disclose the information to the commissioner, and cooperate fully with any investigation conducted by the commissioner.

(2) Any person that has a reasonable belief that an act of insurance fraud which is or may be a crime under Washington law has been, is being, or is about to be committed; or any person who collects, reviews, or analyzes information concerning insurance fraud which is or may be a crime under Washington law may furnish and disclose any information in its possession concerning such an act to the commissioner or to an authorized representative of an insurer that requests the information for the purpose of detecting, prosecuting, or preventing insurance fraud. [2006 c 284 § 6.]

48.135.060 Disclosure of documents, materials, or other information—Exemptions. (1) Documents, materials, or other information as described in subsection (3), (4), or both of this section are exempt from public inspection and copying under chapters 42.17 and 42.56 RCW. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.

(2) The commissioner:

(a) May share documents, materials, or other information, including the documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, (iii) the national insurance crime bureau, and (iv) an insurer with respect to whom the suspected fraudulent claim may be perpetrated;

(b) May receive documents, materials, or information from (i) the national association of insurance commissioners and its affiliates and subsidiaries, (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, (iii) the national insurance crime bureau, and (iv) an insurer with respect to whom the suspected fraudulent claim may be perpetrated and any such documents, materials, or information as described in subsection (3), (4), or both of this section are exempt from public inspection and copying; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(3) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, the fraud program of the office of the insurance commissioner, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy, are exempt under subsection (1) of this section.

(4) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, and penology agencies, or the fraud program of the office of the insurance commissioner, if disclosure would endanger any person's life, physical safety, or property, is exempt under subsection (1) of this

section. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern.

(5) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing documents, materials, or information as authorized in subsection (2) of this section.

(6) Documents, materials, or other information that is in the possession of persons other than the commissioner that would otherwise not be confidential by law or privileged do not become confidential by law or privileged by providing the documents, materials, or other information to the commissioner. [2006 c 284 § 7.]

48.135.070 Insurance company as victim—Restitution. In a criminal prosecution for any crime under Washington law in which the insurance company is a victim, the insurance company is entitled to be considered as a victim in any restitution ordered by the court under RCW 9.94A.753, as part of the criminal penalty imposed against the defendant convicted for such a violation. [2006 c 284 § 8.]

48.135.080 Required statement on all insurance applications and claim forms. No later than six months after July 1, 2006, or when the insurer has used all its existing paper application and claim forms which were in its possession on July 1, 2006, whichever is later, all applications for insurance, and all claim forms regardless of the form of transmission provided and required by an insurer or required by law as condition of payment of a claim, must contain a statement, permanently affixed to the application or claim form, that clearly states in substance the following:

"It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits."

The lack of a statement required in this section does not constitute a defense in any criminal prosecution nor any civil action. [2006 c 284 § 10.]

48.135.090 Insurance fraud advisory board—Membership. The commissioner shall appoint an insurance fraud advisory board. The board shall consist of ten members. Five members shall be representatives from the insurance industry doing business in this state, at least one of which shall be from a Washington domestic insurer, two members shall represent consumers, one member shall represent the national insurance crime bureau or successor organization, one member shall represent prosecutors, and one member shall represent other law enforcement agencies. The members of the board serve four-year terms and until their successors are appointed and qualified. Three of the original members must be appointed to serve an initial term of four years, three must be appointed to serve an initial term of three years, two must be appointed to serve an initial term of two years, and two must be appointed to serve an initial term of one year. The members of the board receive no compensation. The board shall advise the commissioner and the legislature with respect to the effectiveness, resources allocated to the

fraud program, the source of the funding for the program, and before June 30, 2010, if the staffing level restriction in RCW 48.135.020(5) should be renewed. [2006 c 284 § 11.]

48.135.100 Program report—Contents. The commissioner shall prepare a periodic report of the activities of the fraud program. The report shall, at a minimum, include information as to the number of cases reported to the commissioner, the number of cases referred for prosecution, the number of convictions obtained, the amount of money recovered, and any recommendations of the insurance advisory board. [2006 c 284 § 12.]

48.135.110 Rules. The commissioner may adopt rules to implement and administer this chapter. [2006 c 284 § 13.]

48.135.900 Severability—2006 c 284. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 284 § 19.]

48.135.901 Effective date—2006 c 284. This act takes effect July 1, 2006. [2006 c 284 § 21.]

Chapter 48.140 RCW

MEDICAL MALPRACTICE CLOSED CLAIM REPORTING

Sections

48.140.010	Definitions.
48.140.020	Closed claim reporting requirements.
48.140.030	Closed claim reports—Information requirements.
48.140.040	Statistical summaries.
48.140.050	Annual report.
48.140.060	Rules.
48.140.070	Model statistical reporting standards—Report to legislature.
48.140.080	Reporting requirements under RCW 48.19.370 not affected.
48.140.900	Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8.

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

(1) "Claim" means a demand for monetary damages for injury or death caused by medical malpractice, and a voluntary indemnity payment for injury or death caused by medical malpractice made in the absence of a demand for monetary damages.

(2) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.

(3) "Closed claim" means a claim that has been settled or otherwise disposed of by the insuring entity, self-insurer, facility, or provider. A claim may be closed with or without an indemnity payment to a claimant.

(4) "Commissioner" means the insurance commissioner.

(5) "Economic damages" has the same meaning as in RCW 4.56.250(1)(a).

(6) "Health care facility" or "facility" means a clinic, diagnostic center, hospital, laboratory, mental health center, nursing home, office, surgical facility, treatment facility, or

similar place where a health care provider provides health care to patients, and includes entities described in RCW 7.70.020(3).

(7) "Health care provider" or "provider" has the same meaning as in RCW 7.70.020 (1) and (2).

(8) "Insuring entity" means:

- (a) An insurer;
- (b) A joint underwriting association;
- (c) A risk retention group; or
- (d) An unauthorized insurer that provides surplus lines coverage.

(9) "Medical malpractice" means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services that is actionable under chapter 7.70 RCW.

(10) "Noneconomic damages" has the same meaning as in RCW 4.56.250(1)(b).

(11) "Self-insurer" means any health care provider, facility, or other individual or entity that assumes operational or financial risk for claims of medical malpractice. [2006 c 8 § 201.]

48.140.020 Closed claim reporting requirements. (1)

For claims closed on or after January 1, 2008:

(a) Every insuring entity or self-insurer that provides medical malpractice insurance to any facility or provider in Washington state must report each medical malpractice closed claim to the commissioner.

(b) If a claim is not covered by an insuring entity or self-insurer, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties.

Instances in which a claim may not be covered by an insuring entity or self-insurer include, but are not limited to, situations in which the:

- (i) Facility or provider did not buy insurance or maintained a self-insured retention that was larger than the final judgment or settlement;
- (ii) Claim was denied by an insuring entity or self-insurer because it did not fall within the scope of the insurance coverage agreement; or
- (iii) Annual aggregate coverage limits had been exhausted by other claim payments.

(c) If a facility or provider is insured by a risk retention group and the risk retention group refuses to report closed claims and asserts that the federal liability risk retention act (95 Stat. 949; 15 U.S.C. Sec. 3901 et seq.) preempts state law, the facility or provider must report all data required by this chapter on behalf of the risk retention group.

(d) If a facility or provider is insured by an unauthorized insurer and the unauthorized insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider must report all data required by this chapter on behalf of the unauthorized insurer.

(2) Beginning in 2009, reports required under subsection (1) of this section must be filed by March 1st, and include data for all claims closed in the preceding calendar year and any adjustments to data reported in prior years. The commissioner may adopt rules that require insuring entities, self-

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insurers, facilities, or providers to file closed claim data electronically.

(3) The commissioner may impose a fine of up to two hundred fifty dollars per day against any insuring entity, except a risk retention group, that violates the requirements of this section.

(4) The department of health, department of licensing, or department of social and health services may require a provider or facility to take corrective action to assure compliance with the requirements of this section. [2007 c 32 § 1; 2006 c 8 § 202.]

48.140.030 Closed claim reports—Information requirements. Reports required under RCW 48.140.020 must contain the following information in a form and coding protocol prescribed by the commissioner that, to the extent possible and still fulfill the purposes of this chapter, are consistent with the format for data reported to the national practitioner data bank:

- (1) Claim and incident identifiers, including:
 - (a) A claim identifier assigned to the claim by the insuring entity, self-insurer, facility, or provider; and
 - (b) An incident identifier if companion claims have been made by a claimant. For the purposes of this section, "companion claims" are separate claims involving the same incident of medical malpractice made against other providers or facilities;
- (2) The medical specialty of the provider who was primarily responsible for the incident of medical malpractice that led to the claim;
- (3) The type of health care facility where the medical malpractice incident occurred;
- (4) The primary location within a facility where the medical malpractice incident occurred;
- (5) The geographic location, by city and county, where the medical malpractice incident occurred;
- (6) The injured person's sex and age on the incident date;
- (7) The severity of malpractice injury using the national practitioner data bank severity scale;
- (8) The dates of:
 - (a) The incident that was the proximate cause of the claim;
 - (b) Notice to the insuring entity, self-insurer, facility, or provider;
 - (c) Suit, if filed;
 - (d) Final indemnity payment, if any; and
 - (e) Final action by the insuring entity, self-insurer, facility, or provider to close the claim;
- (9) Settlement information that identifies the timing and final method of claim disposition, including:
 - (a) Claims settled by the parties;
 - (b) Claims disposed of by a court, including the date disposed; or
 - (c) Claims disposed of by alternative dispute resolution, such as arbitration, mediation, private trial, and other common dispute resolution methods; and
 - (d) Whether the settlement occurred before or after trial, if a trial occurred;
- (10) Specific information about the indemnity payments and defense expenses, as follows:

(a) For claims disposed of by a court that result in a verdict or judgment that itemizes damages:

- (i) The total verdict or judgment;
- (ii) If there is more than one defendant, the total indemnity paid by or on behalf of this facility or provider;
- (iii) Economic damages;
- (iv) Noneconomic damages; and
- (v) Allocated loss adjustment expense, including but not limited to court costs, attorneys' fees, and costs of expert witnesses; and

(b) For claims that do not result in a verdict or judgment that itemizes damages:

- (i) The total amount of the settlement;
- (ii) If there is more than one defendant, the total indemnity paid by or on behalf of this facility or provider;
- (iii) Paid and estimated economic damages; and
- (iv) Allocated loss adjustment expense, including but not limited to court costs, attorneys' fees, and costs of expert witnesses;

(11) The reason for the medical malpractice claim. The reporting entity must use the same allegation group and act or omission codes used for mandatory reporting to the national practitioner data bank; and

(12) Any other claim-related data the commissioner determines to be necessary to monitor the medical malpractice marketplace, if such data are reported:

- (a) To the national practitioner data bank; or
- (b) Voluntarily by members of the physician insurers association of America as part of the association's data-sharing project. [2006 c 8 § 203.]

48.140.040 Statistical summaries. The commissioner must prepare aggregate statistical summaries of closed claims based on data submitted under RCW 48.140.020.

(1) At a minimum, the commissioner must summarize data by calendar year and calendar/incident year. The commissioner may also decide to display data in other ways if the commissioner:

- (a) Protects information as required under RCW 48.140.060(2); and
- (b) Exempts from disclosure data described in *RCW 42.56.400(11).

(2) The summaries must be available by April 30th of each year, unless the commissioner notifies legislative committees by March 15th that data are not available and informs the committees when the summaries will be completed.

(3) Information included in an individual closed claim report submitted by an insuring entity, self-insurer, provider, or facility under this chapter is confidential and exempt from public disclosure, and the commissioner must not make these data available to the public. [2006 c 8 § 204.]

***Reviser's note:** RCW 42.56.400 was amended by 2007 c 197 § 7, changing subsection (11) to subsection (10).

48.140.050 Annual report. Beginning in 2010, the commissioner must prepare an annual report that summarizes and analyzes the closed claim reports for medical malpractice filed under RCW 48.140.020 and 7.70.140 and the annual financial reports filed by authorized insurers writing medical malpractice insurance in this state. The commissioner must complete the report by June 30th, unless the commissioner

notifies legislative committees by June 1st that data are not available and informs the committees when the summaries will be completed.

(1) The report must include:

(a) An analysis of reported closed claims from prior years for which data are collected. The analysis must show:

- (i) Trends in the frequency and severity of claim payments;
- (ii) A comparison of economic and noneconomic damages;
- (iii) A distribution of allocated loss adjustment expenses and other legal expenses;
- (iv) The types of medical malpractice for which claims have been paid; and
- (v) Any other information the commissioner finds relevant to trends in medical malpractice closed claims if the commissioner:

(A) Protects information as required under RCW 48.140.060(2); and

(B) Exempts from disclosure data described in *RCW 42.56.400(11);

(b) An analysis of the medical malpractice insurance market in Washington state, including:

(i) An analysis of the financial reports of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;

(ii) A loss ratio analysis of medical malpractice insurance written in Washington state; and

(iii) A profitability analysis of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;

(c) A comparison of loss ratios and the profitability of medical malpractice insurance in Washington state to other states based on financial reports filed with the national association of insurance commissioners and any other source of information the commissioner deems relevant; and

(d) A summary of the rate filings for medical malpractice that have been approved by the commissioner for the prior calendar year, including an analysis of the trend of direct incurred losses as compared to prior years.

(2) The commissioner must post reports required by this section on the internet no later than thirty days after they are due.

(3) The commissioner may adopt rules that require insuring entities and self-insurers required to report under RCW 48.140.020 and subsection (1)(a) of this section to report data related to:

(a) The frequency and severity of closed claims for the reporting period; and

(b) Any other closed claim information that helps the commissioner monitor losses and claim development patterns in the Washington state medical malpractice insurance market. [2006 c 8 § 205.]

***Reviser's note:** RCW 42.56.400 was amended by 2007 c 197 § 7, changing subsection (11) to subsection (10).

48.140.060 Rules. The commissioner must adopt all rules needed to implement this chapter. The rules must:

(1) Identify which insuring entity or self-insurer has the primary obligation to report a closed claim when more than one insuring entity or self-insurer is providing medical malpractice liability coverage to a single health care provider or a single health care facility that has been named in a claim;

(2) Protect information that, alone or in combination with other data, could result in the ability to identify a claimant, health care provider, health care facility, or self-insurer involved in a particular claim or collection of claims; and

(3) Specify standards and methods for the reporting by claimants, insuring entities, self-insurers, facilities, and providers. [2006 c 8 § 206.]

48.140.070 Model statistical reporting standards—Report to legislature. (1) If the national association of insurance commissioners adopts revised model statistical reporting standards for medical malpractice insurance, the commissioner must analyze the new reporting standards and report this information to the legislature, as follows:

(a) An analysis of any differences between the model reporting standards and:

(i) RCW 48.140.010 through 48.140.060; and

(ii) Any statistical plans that the commissioner has adopted under RCW 48.19.370; and

(b) Recommendations, if any, about legislative changes necessary to implement the model reporting standards.

(2) The commissioner must submit the report required under subsection (1) of this section to the following legislative committees by the first day of December in the year after the national association of insurance commissioners adopts new model medical malpractice reporting standards:

(a) The house of representatives committees on health care; financial institutions and insurance; and judiciary; and

(b) The senate committees on health and long-term care; financial institutions, housing and consumer protection; and judiciary. [2006 c 8 § 207.]

48.140.080 Reporting requirements under RCW 48.19.370 not affected. This chapter does not amend or modify the statistical reporting requirements that apply to insurers under RCW 48.19.370. [2006 c 8 § 208.]

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

Chapter 48.150 RCW

DIRECT PATIENT-PROVIDER PRIMARY HEALTH CARE

Sections

48.150.005	Public policy.
48.150.010	Definitions.
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48.150.030	Direct fee—Monthly basis—Designated contact person.
48.150.040	Prohibited and authorized practices.
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48.150.060	Direct practices are not insurers.
48.150.070	Conduct of business—Prohibitions.
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48.150.090	Chapter violations.
48.150.100	Annual statements—Commissioner's report.

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48.150.110 Direct agreement requirements—Disclaimer.

48.150.120 Commissioner's study—Report to legislature.

48.150.005 Public policy. It is the public policy of Washington to promote access to medical care for all citizens and to encourage innovative arrangements between patients and providers that will help provide all citizens with a medical home.

Washington needs a multipronged approach to provide adequate health care to many citizens who lack adequate access to it. Direct patient-provider practices, in which patients enter into a direct relationship with medical practitioners and pay a fixed amount directly to the health care provider for primary care services, represent an innovative, affordable option which could improve access to medical care, reduce the number of people who now lack such access, and cut down on emergency room use for primary care purposes, thereby freeing up emergency room facilities to treat true emergencies. [2007 c 267 § 1.]

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

(1) "Direct patient-provider primary care practice" and "direct practice" means a provider, group, or entity that meets the following criteria in (a), (b), (c), and (d) of this subsection:

(a)(i) A health care provider who furnishes primary care services through a direct agreement;

(ii) A group of health care providers who furnish primary care services through a direct agreement; or

(iii) An entity that sponsors, employs, or is otherwise affiliated with a group of health care providers who furnish only primary care services through a direct agreement, which entity is wholly owned by the group of health care providers or is a nonprofit corporation exempt from taxation under section 501(c)(3) of the internal revenue code, and is not otherwise regulated as a health care service contractor, health maintenance organization, or disability insurer under Title 48 RCW. Such entity is not prohibited from sponsoring, employing, or being otherwise affiliated with other types of health care providers not engaged in a direct practice;

(b) Enters into direct agreements with direct patients or parents or legal guardians of direct patients;

(c) Does not accept payment for health care services provided to direct patients from any entity subject to regulation under Title 48 RCW, plans administered under chapter 41.05, 70.47, or 70.47A RCW, or self-insured plans; and

(d) Does not provide, in consideration for the direct fee, services, procedures, or supplies such as prescription drugs, hospitalization costs, major surgery, dialysis, high level radiology (CT, MRI, PET scans or invasive radiology), rehabilitation services, procedures requiring general anesthesia, or similar advanced procedures, services, or supplies.

(2) "Direct patient" means a person who is party to a direct agreement and is entitled to receive primary care services under the direct agreement from the direct practice.

(3) "Direct fee" means a fee charged by a direct practice as consideration for being available to provide and providing primary care services as specified in a direct agreement.

(4) "Direct agreement" means a written agreement entered into between a direct practice and an individual direct patient, or the parent or legal guardian of the direct patient or a family of direct patients, whereby the direct practice charges a direct fee as consideration for being available to provide and providing primary care services to the individual direct patient. A direct agreement must (a) describe the specific health care services the direct practice will provide; and (b) be terminable at will upon written notice by the direct patient.

(5) "Health care provider" or "provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law.

(6) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(7) "Primary care" means routine health care services, including screening, assessment, diagnosis, and treatment for the purpose of promotion of health, and detection and management of disease or injury.

(8) "Network" means the group of participating providers and facilities providing health care services to a particular health carrier's health plan or to plans administered under chapter 41.05, 70.47, or 70.47A RCW. [2007 c 267 § 3.]

48.150.020 Prohibition on discrimination. Except as provided in RCW 48.150.050, no direct practice shall decline to accept any person solely on account of race, religion, national origin, the presence of any sensory, mental, or physical disability, education, economic status, or sexual orientation. [2007 c 267 § 4.]

48.150.030 Direct fee—Monthly basis—Designated contact person. (1) A direct practice must charge a direct fee on a monthly basis. The fee must represent the total amount due for all primary care services specified in the direct agreement and may be paid by the direct patient or on his or her behalf by others.

(2) A direct practice must:

(a) Maintain appropriate accounts and provide data regarding payments made and services received to direct patients upon request; and

(b) Either:

(i) Bill patients at the end of each monthly period; or

(ii) If the patient pays the monthly fee in advance, promptly refund to the direct patient all unearned direct fees following receipt of written notice of termination of the direct agreement from the direct patient. The amount of the direct fee considered earned shall be a proration of the monthly fee as of the date the notice of termination is received.

(3) If the patient chooses to pay more than one monthly direct fee in advance, the funds must be held in a trust account and paid to the direct practice as earned at the end of each month. Any unearned direct fees held in trust following receipt of termination of the direct agreement shall be promptly refunded to the direct patient. The amount of the direct fee earned shall be a proration of the monthly fee for the then current month as of the date the notice of termination is received.

(4) The direct fee schedule applying to an existing direct patient may not be increased over the annual negotiated amount more frequently than annually. A direct practice shall provide advance notice to existing patients of any change within the fee schedule applying to those existing direct patients. A direct practice shall provide at least sixty days' advance notice of any change in the fee.

(5) A direct practice must designate a contact person to receive and address any patient complaints.

(6) Direct fees for comparable services within a direct practice shall not vary from patient to patient based on health status or sex. [2007 c 267 § 5.]

48.150.040 Prohibited and authorized practices. (1) Direct practices may not:

(a) Enter into a participating provider contract as defined in RCW 48.44.010 or 48.46.020 with any carrier or with any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, to provide health care services through a direct agreement except as set forth in subsection (2) of this section;

(b) Submit a claim for payment to any carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, for health care services provided to direct patients as covered by their agreement;

(c) With respect to services provided through a direct agreement, be identified by a carrier or any carrier's contractor or subcontractor, or plans administered under chapter 41.05, 70.47, or 70.47A RCW, as a participant in the carrier's or any carrier's contractor or subcontractor network for purposes of determining network adequacy or being available for selection by an enrollee under a carrier's benefit plan; or

(d) Pay for health care services covered by a direct agreement rendered to direct patients by providers other than the providers in the direct practice or their employees, except as described in subsection (2)(b) of this section.

(2) Direct practices and providers may:

(a) Enter into a participating provider contract as defined by RCW 48.44.010 and 48.46.020 or plans administered under chapter 41.05, 70.47, or 70.47A RCW for purposes other than payment of claims for services provided to direct patients through a direct agreement. Such providers shall be subject to all other provisions of the participating provider contract applicable to participating providers including but not limited to the right to:

(i) Make referrals to other participating providers;

(ii) Admit the carrier's members to participating hospitals and other health care facilities;

(iii) Prescribe prescription drugs; and

(iv) Implement other customary provisions of the contract not dealing with reimbursement of services;

(b) Pay for charges associated with the provision of routine lab and imaging services provided in connection with wellness physical examinations. In aggregate such payments per year per direct patient are not to exceed fifteen percent of the total annual direct fee charged that direct patient. Exceptions to this limitation may occur in the event of short-term equipment failure if such failure prevents the provision of care that should not be delayed; and

(c) Charge an additional fee to direct patients for supplies, medications, and specific vaccines provided to direct patients that are specifically excluded under the agreement, provided the direct practice notifies the direct patient of the additional charge, prior to their administration or delivery. [2007 c 267 § 6.]

48.150.050 Acceptance or discontinuation of patients—Nonemployer third-party payments. (1) Direct practices may not decline to accept new direct patients or discontinue care to existing patients solely because of the patient's health status. A direct practice may decline to accept a patient if the practice has reached its maximum capacity, or if the patient's medical condition is such that the provider is unable to provide the appropriate level and type of health care services in the direct practice. So long as the direct practice provides the patient notice and opportunity to obtain care from another physician, the direct practice may discontinue care for direct patients if: (a) The patient fails to pay the direct fee under the terms required by the direct agreement; (b) the patient has performed an act that constitutes fraud; (c) the patient repeatedly fails to comply with the recommended treatment plan; (d) the patient is abusive and presents an emotional or physical danger to the staff or other patients of the direct practice; or (e) the direct practice discontinues operation as a direct practice.

(2) Direct practices may accept payment of direct fees directly or indirectly from nonemployer third parties. [2007 c 267 § 7.]

48.150.060 Direct practices are not insurers. Direct practices, as defined in RCW 48.150.010, who comply with this chapter are not insurers under RCW 48.01.050, health carriers under chapter 48.43 RCW, health care service contractors under chapter 48.44 RCW, or health maintenance organizations under chapter 48.46 RCW. [2007 c 267 § 8.]

48.150.070 Conduct of business—Prohibitions. A person shall not make, publish, or disseminate any false, deceptive, or misleading representation or advertising in the conduct of the business of a direct practice, or relative to the business of a direct practice. [2007 c 267 § 9.]

48.150.080 Misrepresenting the terms of a direct agreement. A person shall not make, issue, or circulate, or cause to be made, issued, or circulated, a misrepresentation of the terms of any direct agreement, or the benefits or advantages promised thereby, or use the name or title of any direct agreement misrepresenting the nature thereof. [2007 c 267 § 10.]

48.150.090 Chapter violations. Violations of this chapter constitute unprofessional conduct enforceable under RCW 18.130.180. [2007 c 267 § 11.]

48.150.100 Annual statements—Commissioner's report. (1) Direct practices must submit annual statements, beginning on October 1, 2007, to the office of [the] insurance commissioner specifying the number of providers in each practice, total number of patients being served, the average

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direct fee being charged, providers' names, and the business address for each direct practice. The form and content for the annual statement must be developed in a manner prescribed by the commissioner.

(2) A health care provider may not act as, or hold himself or herself out to be, a direct practice in this state, nor may a direct agreement be entered into with a direct patient in this state, unless the provider submits the annual statement in subsection (1) of this section to the commissioner.

(3) The commissioner shall report annually to the legislature on direct practices including, but not limited to, participation trends, complaints received, voluntary data reported by the direct practices, and any necessary modifications to this chapter. The initial report shall be due December 1, 2009. [2007 c 267 § 12.]

48.150.110 Direct agreement requirements—Disclaimer. (1) A direct agreement must include the following disclaimer: "This agreement does not provide comprehensive health insurance coverage. It provides only the health care services specifically described." The direct agreement may not be sold to a group and may not be entered with a group of subscribers. It must be an agreement between a direct practice and an individual direct patient. Nothing prohibits the presentation of marketing materials to groups of potential subscribers or their representatives.

(2) A comprehensive disclosure statement shall be distributed to all direct patients with their participation forms. Such disclosure must inform the direct patients of their financial rights and responsibilities to the direct practice as provided for in this chapter, encourage that direct patients obtain and maintain insurance for services not provided by the direct practice, and state that the direct practice will not bill a carrier for services covered under the direct agreement. The disclosure statement shall include contact information for the office of the insurance commissioner. [2007 c 267 § 13.]

48.150.120 Commissioner's study—Report to legislature. By December 1, 2012, the commissioner shall submit a study of direct care practices to the appropriate committees of the senate and house of representatives. The study shall include an analysis of the extent to which direct care practices:

(1) Improve or reduce access to primary health care services by recipients of medicare and medicaid, individuals with private health insurance, and the uninsured;

(2) Provide adequate protection for consumers from practice bankruptcy, practice decisions to drop participants, or health conditions not covered by direct care practices;

(3) Increase premium costs for individuals who have health coverage through traditional health insurance;

(4) Have an impact on a health carrier's ability to meet network adequacy standards set by the commissioner or state health purchasing agencies; and

(5) Cover a population that is different from individuals covered through traditional health insurance.

The study shall also examine the extent to which individuals and families participating in a direct care practice maintain health coverage for health conditions not covered by the direct care practice. The commissioner shall recommend to

the legislature whether the statutory authority for direct care practices to operate should be continued, modified, or repealed. [2007 c 267 § 14.]

Title 49

LABOR REGULATIONS

Chapters

- 49.04 Apprenticeship.
- 49.08 Arbitration of disputes.
- 49.12 Industrial welfare.
- 49.17 Washington industrial safety and health act.
- 49.19 Safety—Health care settings.
- 49.22 Safety—Crime prevention.
- 49.24 Health and safety—Underground workers.
- 49.26 Health and safety—Asbestos.
- 49.28 Hours of labor.
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- 49.32 Injunctions in labor disputes.
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- 49.38 Theatrical enterprises.
- 49.40 Seasonal labor.
- 49.44 Violations—Prohibited practices.
- 49.46 Minimum wage act.
- 49.48 Wages—Payment—Collection.
- 49.52 Wages—Deductions—Contributions—Rebates.
- 49.56 Wages—Priorities—Preferences.
- 49.60 Discrimination—Human rights commission.
- 49.64 Employee benefit plans.
- 49.66 Health care activities.
- 49.70 Worker and community right to know act.
- 49.74 Affirmative action.
- 49.76 Domestic violence leave.
- 49.77 Military family leave act.
- 49.78 Family leave.
- 49.86 Family leave insurance.

Reviser's note: Throughout this title, "director of labor and industries" has been substituted for "commissioner of labor," such office having been abolished by the administrative code of 1921 (1921 c 7 §§ 3, 80, and 135).

Apprentices to be paid prevailing wage on public works: RCW 39.12.021.

Collective bargaining with employees of city-owned utilities: RCW 35.22.350.

Community renewal law: Chapter 35.81 RCW.

Department of labor and industries: Chapter 43.22 RCW.

Elevators, lifting devices and moving walks: Chapter 70.87 RCW.

Employee benefit plans when private utility acquired: RCW 54.04.130.

Employment agencies: Chapter 19.31 RCW.

Industrial products of prisoners: RCW 72.01.150, chapter 72.60 RCW.

Job protection for members of state militia: RCW 38.40.050.

Labor and employment of prisoners: Chapter 72.64 RCW.

Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.

Marine employees—Public employment relations: Chapter 47.64 RCW.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.

Promotional printing contracts of apple, fruit, dairy products commissions—Conditions of employment: RCW 15.24.086.

Public employees' collective bargaining, arbitration of disputes: RCW 41.56.100.

Public employment: Title 41 RCW.

Sheriff's office, civil service: Chapter 41.14 RCW.

Unemployment compensation: Title 50 RCW.

Unfair practices—Consumer protection—Act does not impair labor organizations: RCW 19.86.070.

Workers' compensation: Title 51 RCW.

Youth development and conservation corps: RCW 79A.05.500.

Chapter 49.04 RCW APPRENTICESHIP

Sections

- 49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties.
- 49.04.030 Supervisor of apprenticeship—Duties.
- 49.04.040 Apprenticeship committees—Composition—Duties.
- 49.04.050 Apprenticeship program standards.
- 49.04.060 Apprenticeship agreements.
- 49.04.070 Limitation.
- 49.04.080 On-the-job training agreements and projects—Supervisor to promote.
- 49.04.090 On-the-job training agreements and projects—Agreements with federal agencies.
- 49.04.100 Apprenticeship programs—Civil rights act advancement.
- 49.04.110 Woman and racial minority representation in apprenticeship programs—Noncompliance.
- 49.04.120 Woman and racial minority representation—Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs.
- 49.04.130 Woman and racial minority representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs.
- 49.04.141 Transportation opportunities—Report.
- 49.04.150 Associate degree pathway.
- 49.04.160 Student opportunities—Findings.
- 49.04.170 Student opportunities—Centers of excellence, colleges to provide information.
- 49.04.180 Student opportunities—Educational outreach program—Appropriate activities.
- 49.04.190 Student opportunities—Building and construction-related apprenticeships—Grants—Report.
- 49.04.900 Severability—1941 c 231.
- 49.04.910 Chapter not affected by certain laws against discrimination in employment because of age.

Apprenticeship agreements, inmates of state school for girls (Maple Lane school): RCW 72.20.090.

Child labor: RCW 26.28.060, 26.28.070.

49.04.010 Apprenticeship council created—Composition—Terms—Compensation—Duties. The director of labor and industries shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. The governor shall appoint a public member to the apprenticeship council for a three-year term. The appointment of the public member is subject to confirmation by the senate. Each member shall hold office until a successor is appointed and has qualified and any vacancy shall be filled by appointment for the unexpired portion of the term. A des-

igned representative from each of the following: The workforce training and education coordinating board, state board for community and technical colleges, employment security department, and United States department of labor, apprenticeship, training, employer, and labor services, shall be ex officio members of the apprenticeship council. Ex officio members shall have no vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated in accordance with RCW 43.03.240. The apprenticeship council is authorized to approve apprenticeship programs, and establish apprenticeship program standards as rules, including requirements for apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The council shall consider recommendations from the state board for community and technical colleges on matters of apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The rules for apprenticeship instructor qualifications shall either be by reference or reasonably similar to the applicable requirements established by or pursuant to chapter 28B.50 RCW. The council is further authorized to issue such rules as may be necessary to carry out the intent and purposes of this chapter, including a procedure to resolve an impasse should a tie vote of the council occur, and perform such other duties as are hereinafter imposed.

Not less than once a year the apprenticeship council shall make a report to the director of labor and industries of its activities and findings which shall be available to the public. [2001 c 204 § 1; 1984 c 287 § 97; 1982 1st ex.s. c 39 § 2; 1979 ex.s. c 37 § 1; 1977 c 75 § 72; 1975-'76 2nd ex.s. c 34 § 143; 1967 c 6 § 1; 1961 c 114 § 1; 1941 c 231 § 1; Rem. Supp. 1941 § 7614-3. Formerly RCW 49.04.010 and 49.04.020.]

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

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

49.04.030 Supervisor of apprenticeship—Duties.

Subject to the confirmation of the state apprenticeship council by a majority vote, the director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote apprenticeship programs conforming to the standards established under this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state apprenticeship committees; (3) when authorized by the apprenticeship council, register apprenticeship agreements that are in the best interests of the apprentice and conform with standards established under this chapter; (4) keep a record of apprenticeship agreements and upon successful completion issue certificates of completion of apprenticeship; and (5) terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements.

The supervisor may act to bring about the settlement of differences arising out of the apprenticeship agreement where

such differences cannot be adjusted locally. The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the supervisor of apprenticeship in the execution of the supervisor's functions under this chapter. [2001 c 204 § 2; 1979 ex.s. c 37 § 2; 1961 c 114 § 2; 1941 c 231 § 2; Rem. Supp. 1941 § 7614-4.]

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

49.04.040 Apprenticeship committees—Composition—Duties. Upon July 22, 2001, all newly approved apprenticeship programs must be represented by either a unilateral or joint apprenticeship committee. Apprenticeship committees must conform to this chapter, the rules adopted by the apprenticeship council, and 29 C.F.R. Part 29 and must be approved by the apprenticeship council. Apprenticeship committees may be approved whenever the apprentice training needs justify such establishment. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen:

(1) From names submitted by the respective local or state employer and employee organizations served by the apprenticeship committee; or

(2) In a manner which selects representatives of management and nonmanagement served by the apprenticeship committee. The council may act as the apprentice representative when the council determines there is no feasible method to choose nonmanagement representatives.

Apprenticeship committees shall devise standards for apprenticeship programs and operate such programs in accordance with the standards established by this chapter and by council-adopted rules. The council and supervisor may provide aid and technical assistance to apprenticeship program sponsors and applicants, or potential applicants. [2001 c 204 § 3; 1941 c 231 § 3; Rem. Supp. 1941 § 7614-5.]

49.04.050 Apprenticeship program standards. To be eligible for registration, apprenticeship program standards must conform to the rules adopted by the apprenticeship council. [2001 c 204 § 4; 1979 ex.s. c 37 § 3; 1961 c 114 § 3; 1941 c 231 § 4; Rem. Supp. 1941 § 7614-6.]

49.04.060 Apprenticeship agreements. For the purposes of this chapter an apprenticeship agreement is a written agreement between an apprentice and either the apprentice's employer or employers, or an apprenticeship committee acting as agent for an employer or employers, containing the terms and conditions of the employment and training of the apprentice. [2001 c 204 § 5; 1941 c 231 § 5; Rem. Supp. 1941 § 7614-7.]

49.04.070 Limitation. The provisions of this chapter shall apply to a person, firm, corporation or craft only after such person, firm, corporation or craft has voluntarily elected to conform with its provisions. [1941 c 231 § 6; Rem. Supp. 1941 § 7614-8.]

49.04.080 On-the-job training agreements and projects—Supervisor to promote. Under the supervision of the director of labor and industries and with the advice and

guidance of the apprenticeship council, the supervisor of apprenticeship shall encourage and promote the making of such other types of on-the-job training agreements and projects, in addition to apprenticeship agreements, as the supervisor shall find meritorious. [2001 c 204 § 6; 1963 c 172 § 1.]

49.04.090 On-the-job training agreements and projects—Agreements with federal agencies. The director of labor and industries shall have authority to enter into and perform, through the supervisor of apprenticeship, agreements with appropriate federal departments or agencies for the development, administration and servicing of on-the-job training projects. Further, the director of labor and industries, through the supervisor of apprenticeship, shall have power to receive and administer funds provided by the federal government for such purposes. [1963 c 172 § 2.]

49.04.100 Apprenticeship programs—Civil rights act advancement. As provided by the rules adopted by the apprenticeship council, apprenticeship programs entered into under authority of this chapter with five or more apprentices shall conform with 29 C.F.R. Part 30 to the extent required by federal law while advancing the nondiscriminatory principles of the Washington state civil rights act, RCW 49.60.400. [2001 c 204 § 7; 1995 c 67 § 7; 1990 c 72 § 1; 1985 c 6 § 17; 1969 ex.s. c 183 § 2.]

Purpose—Construction—1990 c 72; 1969 ex.s. c 183: "It is the policy of the legislature and the purpose of this act to provide every citizen in this state a reasonable opportunity to enjoy employment and other associated rights, benefits, privileges, and to help women and racial minorities realize in a greater measure the goals upon which this nation and this state were founded. All the provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carry out the above declaration of policy." [1990 c 72 § 5; 1969 ex.s. c 183 § 1.]

Severability—1969 ex.s. c 183: "If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 183 § 8.]

49.04.110 Woman and racial minority representation in apprenticeship programs—Noncompliance. When it shall appear to the department of labor and industries that any apprenticeship program referred to in RCW 49.04.100 has failed to comply with the woman or racial minority representation requirement hereinabove in such section referred to by January 1, 1970, which fact shall be determined by reports the department may request or in such other manner as it shall see fit, then the same shall be deemed prima facie evidence of noncompliance with RCW 49.04.100 through 49.04.130 and thereafter no state funds or facilities shall be expended upon such program: PROVIDED, That prior to such withdrawal of funds evidence shall be received and state funds or facilities shall not be denied if there is a showing of a genuine effort to comply with the provisions of RCW 49.04.100 through 49.04.130 as to entrance of women and racial minorities into the program. The director shall notify the appropriate federal authorities if there is noncompliance with the woman and racial minority representation qualification under any apprenticeship program as provided for in RCW 49.04.100 through 49.04.130. [1990 c 72 § 2; 1969 ex.s. c 183 § 3.]

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49.04.120 Woman and racial minority representation—Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs. Every community college, vocational school, or high school carrying on a program of vocational education shall make every effort to enlist woman and racial minority representation in the apprenticeship programs within the state and are authorized to carry out such purpose in such ways as they shall see fit. [1990 c 72 § 3; 1969 ex.s. c 183 § 4.]

49.04.130 Woman and racial minority representation—Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs. Every employer and employee organization as well as the apprenticeship council and local and state apprenticeship committees and vocational schools shall make every effort to enlist woman and racial minority representation in the apprenticeship programs of the state and shall be aided therein by the department of labor and industries insofar as such department may be able to do so without undue interference with its other powers and duties. In addition, the legislature, in fulfillment of the public welfare, mandates those involved in apprenticeship training with the responsibility of making every effort to see that woman and racial minority representatives in such programs pursue the same to a successful conclusion. [1990 c 72 § 4; 1969 ex.s. c 183 § 5.]

49.04.141 Transportation opportunities—Report. The apprenticeship council shall work with the department of transportation, local transportation jurisdictions, local and statewide joint apprenticeships, other apprenticeship programs, representatives of labor and business organizations with interest and expertise in the transportation workforce, and representatives of the state's universities and community and vocational colleges to establish technical apprenticeship opportunities specific to the needs of transportation. The council shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2003. The report must include, but not be limited to, findings and recommendations regarding the establishment of transportation technical training programs within the community and vocational college system and in the state universities. [2003 c 363 § 202.]

Findings—Intent—2003 c 363 §§ 201 through 206: "(1) The legislature finds that a skilled technical workforce is necessary for maintaining, preserving, and improving Washington's transportation system. The Blue Ribbon Commission on Transportation found that state and local transportation agencies are showing signs of a workforce that is insufficiently skilled to operate the transportation system at its highest level. Sections 201 through 206 of this act are intended to explore methods for fostering a stronger industry in transportation planning and engineering.

(2) It is the intent of the legislature that the state prevailing wage process operate efficiently, that the process allow contractors and workers to be paid promptly, and that new technologies and innovative outreach methods be used to enhance wage surveys in order to better reflect current wages in counties across the state.

(3) The legislature finds that in order to enhance the prevailing wage process it is appropriate for all intent and affidavit fees paid by contractors be dedicated to the sole purpose of administering the state prevailing wage program.

(4) To accomplish the intent of this section and in order to enhance the response of businesses and labor representatives to the prevailing wage sur-

vey process, the department of labor and industries shall undertake the following activities:

(a) Establish a goal of conducting surveys for each trade every three years;

(b) Actively promote increased response rates from all survey recipients in every county both urban and rural. The department shall provide public education and technical assistance to businesses, labor representatives, and public agencies in order to promote a better understanding of prevailing wage laws and increased participation in the prevailing wage survey process;

(c) Actively work with businesses, labor representatives, public agencies, and others to ensure the integrity of information used in the development of prevailing wage rates, and ensure uniform compliance with requirements of sections 201 through 206 of this act;

(d) Maintain a timely processing of intents and affidavits, with a target processing time no greater than seven working days from receipt of completed forms;

(e) Develop and implement electronic processing of intents and affidavits and promote the efficient and effective use of technology to improve the services provided by the prevailing wage program." [2003 c 363 § 201.]

Part headings not law—Severability—2003 c 363: See notes following RCW 47.28.241.

49.04.150 Associate degree pathway. (1) An apprenticeship committee may recommend to its community or technical college partner or partners that an associate degree pathway be developed for the committee's program.

(2) In consultation with the state board for community and technical colleges, the apprenticeship committee and the college or colleges involved with the program shall consider the extent apprentices in the program are likely to pursue an associate degree and the extent a pathway could reduce redundancy of course requirements between the apprenticeship and a degree.

(3) If the apprenticeship committee and the college or colleges involved with the program determine that a pathway would be beneficial for apprentices and assist them in obtaining an associate degree, the apprenticeship committee may request that a pathway be established as provided in RCW 28B.50.890. [2003 c 128 § 2.]

Findings—2003 c 128: "The legislature finds that:

(1) Apprenticeships are very rigorous and highly structured programs with specific academic and work training requirements;

(2) There is a misperception that apprenticeships are only for noncollege bound students; and

(3) The state should expand opportunities for individuals to progress from an apprenticeship to college by creating pathways that build on the apprenticeship experience and permit apprentices to earn an associate degree." [2003 c 128 § 1.]

49.04.160 Student opportunities—Findings. (1) The legislature finds that it is in the public interest of the state to encourage and facilitate the formation of cooperative relationships between business and labor and educational institutions that provide for the development and expansion of programs of educational skills training consistent with employment needs.

(2) Further, the legislature finds that it is in the state's interest to make students aware of the educational training programs and career employment opportunities.

(3) Therefore, the following shall be implemented to expand opportunities for secondary school students to prepare for technical careers and related apprenticeships:

(a) Centers of excellence and other colleges with a high density of apprenticeship programs shall act as brokers of relevant information and resources as provided for in RCW 49.04.170;

(b) An educational outreach program coordinated by the Washington state apprenticeship and training council as provided for in RCW 49.04.180; and

(c) The development of direct-entry programs for graduating secondary students, approved and overseen by the Washington state apprenticeship and training council as provided for in RCW 49.04.190. [2006 c 161 § 1.]

Effective date—2006 c 161: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2006." [2006 c 161 § 7.]

49.04.170 Student opportunities—Centers of excellence, colleges to provide information. (1) Centers of excellence, as designated by the state board for community and technical colleges, and other colleges identified by the state board for community and technical colleges in consultation with the Washington state apprenticeship and training council as having a high density of apprenticeship programs, shall act as a broker of relevant information and resources on available grants, scholarship opportunities, job openings, and industries of growth.

(2) The Washington state apprenticeship and training council, in conjunction with the office of the superintendent of public instruction, shall aid all local school districts in meeting the goals of chapter 161, Laws of 2006. [2006 c 161 § 2.]

Effective date—2006 c 161: See note following RCW 49.04.160.

49.04.180 Student opportunities—Educational outreach program—Appropriate activities. (1) Within existing resources, the Washington state apprenticeship and training council, in conjunction with individual state-approved apprenticeship training programs and the office of the superintendent of public instruction, shall lead and coordinate an educational outreach program for middle and secondary school students, parents, and educators about apprenticeship and career opportunities and communicate workforce projections to the office of the superintendent of public instruction for distribution to all local school districts.

(2) Appropriate activities of the Washington state apprenticeship and training council under this section include assistance with curriculum development, the establishment of practical learning opportunities for students, and seeking the advice and participation of industry and labor interests. [2006 c 161 § 3.]

Effective date—2006 c 161: See note following RCW 49.04.160.

49.04.190 Student opportunities—Building and construction-related apprenticeships—Grants—Report. (1) Within existing resources, the Washington state apprenticeship and training council shall approve and oversee direct-entry programs for graduating secondary students into building and construction-related apprenticeships by:

(a) Assisting individual school districts in using and leveraging existing resources; and

(b) Developing guidelines, including guidelines that ensure that graduating secondary school students will receive appropriate education and training and will have the opportunity to transition to local apprenticeship programs. The guidelines must be developed with input from apprenticeship

coordinators, the office of the superintendent of public instruction, the state board for community and technical colleges, the workforce training and education coordinating board, and other interested stakeholders for direct-entry programs.

(2) The Washington state apprenticeship and training council shall award up to ten incentive grants for the 2006-07 school year, based on guidelines established under subsection (1)(b) of this section, to school districts statewide solely for personnel to negotiate and implement agreements with local apprenticeship programs based upon state apprenticeship use requirements, as described in RCW 39.04.320, to accept graduating secondary school students with appropriate training into apprenticeship programs. The council shall make every effort to award the grants evenly across the state.

(3) Beginning December 1, 2006, the Washington state apprenticeship and training council shall provide an annual report to the governor and the education and commerce and labor committees of the legislature. The report shall include:

(a) The guidelines established under subsection (1)(b) of this section;

(b) The names of the school districts receiving incentive grants under subsection (2) of this section;

(c) The results of negotiations between school districts receiving incentive grants and local apprenticeship programs;

(d) A list of apprenticeship programs that have agreed, pursuant to negotiated agreements, to accept qualified graduating secondary students; and

(e) The number of qualified graduating secondary students entering into apprenticeship programs each year through direct-entry programs. [2006 c 161 § 4.]

Effective date—2006 c 161: See note following RCW 49.04.160.

49.04.900 Severability—1941 c 231. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby. [1941 c 231 § 8; no RRS.]

49.04.910 Chapter not affected by certain laws against discrimination in employment because of age. The amendments made by chapter 100, Laws of 1961 shall not be construed as modifying chapter 231, Laws of 1941 as amended, or as applying to any standards established thereunder or employment pursuant to any bona fide agreements entered into thereunder. [1961 c 100 § 6.]

Reviser's note: (1) Chapter 100, Laws of 1961 amended RCW 49.60.180, 49.60.190, 49.60.200 and reenacted RCW 49.60.310 to include age as an element of discrimination, and such chapter added a new section codified as RCW 49.44.090 relating to unfair practices in employment because of age.

(2) Chapter 231, Laws of 1941 is the apprenticeship law codified in chapter 49.04 RCW.

Chapter 49.08 RCW

ARBITRATION OF DISPUTES

Sections

- 49.08.010 Duty of director—Mediation—Board of arbitration selected—Board's findings final.
- 49.08.020 Procedure for arbitration.

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- 49.08.030 Service of process.
- 49.08.040 Compensation and travel expenses of arbitrators.
- 49.08.050 Failure to arbitrate—Statement of facts—Publicity.
- 49.08.060 Tender on exhaustion of available funds.

Arbitration, uniform act: Chapter 7.04A RCW.

Collective bargaining with employees of city-owned utilities: RCW 35.22.350.

Marine employees—Public employment relations: Chapter 47.64 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.08.010 Duty of director—Mediation—Board of arbitration selected—Board's findings final. It shall be the duty of the chairman of the public employment relations commission upon application of any employer or employee having differences, as soon as practicable, to visit the location of such differences and to make a careful inquiry into the cause thereof and to advise the respective parties, what, if anything, ought to be done or submitted to by both to adjust said dispute and should said parties then still fail to agree to a settlement through said chairman, then said chairman shall endeavor to have said parties consent in writing to submit their differences to a board of arbitrations to be chosen from citizens of the state as follows, to wit: Said employer shall appoint one and said employees acting through a majority, one, and these two shall select a third, these three to constitute the board of arbitration and the findings of said board of arbitration to be final. [1975 1st ex.s. c 296 § 36; 1903 c 58 § 1; RRS § 7667.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Public employment relations commission: Chapter 41.58 RCW.

49.08.020 Procedure for arbitration. The proceedings of said board of arbitration shall be held before the chairman of the public employment relations commission who shall act as moderator or chairman, without the privilege of voting, and who shall keep a record of the proceedings, issue subpoenas and administer oaths to the members of said board, and any witness said board may deem necessary to summon. [1975 1st ex.s. c 296 § 37; 1903 c 58 § 2; RRS § 7668.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

49.08.030 Service of process. Any notice or process issued by the board herein created, shall be served by any sheriff, coroner or constable to whom the same may be directed, or in whose hands the same may be placed for service. [1903 c 58 § 3; RRS § 7669.]

49.08.040 Compensation and travel expenses of arbitrators. Such arbitrators shall receive five dollars per day for each day actually engaged in such arbitration and travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended to be paid upon certificates of the director of labor and industries out of the fund appropriated for the purpose or at the disposal of the department of labor and industries applicable to such expenditure. [1975-'76 2nd ex.s. c 34 § 144; 1903 c 58 § 4; RRS § 7670.]

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

49.08.050 Failure to arbitrate—Statement of facts—Publicity. Upon the failure of the director of labor and industries

tries, in any case, to secure the creation of a board of arbitration, it shall become his duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any sworn statement made to the director of labor and industries under this provision shall be for public use and shall be given publicly in such newspapers as desire to use it. [1903 c 58 § 5; RRS § 7671.]

49.08.060 Tender on exhaustion of available funds.

There is hereby appropriated out of the state treasury from funds not otherwise appropriated the sum of three thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this chapter. In case the funds herein provided are exhausted and either party to a proposed arbitration shall tender the necessary expenses for conducting said arbitration, then it shall be the duty of the director of labor and industries to request the opposite party to arbitrate such differences in accordance with the provisions of this chapter. [1903 c 58 § 6; RRS § 7672.]

Chapter 49.12 RCW INDUSTRIAL WELFARE

Sections

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49.12.901	Severability—1991 c 303.
49.12.902	Effective date—1991 c 303 §§ 3-7.

Reviser's note: Throughout this chapter, the words "the committee" have been substituted for "the industrial welfare commission" or "the commission."

The industrial welfare commission was abolished and its powers and duties transferred to a new agency by the administrative code of 1921. In particular, 1921 c 7 § 135 abolished the commission while 1921 c 7 § 82 created an unnamed committee "which shall have the power and it shall be its duty:

(1) To exercise all the powers and perform all the duties now vested in, and required to be performed by, the industrial welfare commission."

1921 c 7 § 82 was codified by the 1941 Code Committee as RCW 43.22.280, wherein the Code Committee revised the wording of the session law to designate the unnamed committee as the "industrial welfare committee." The committee was apparently commonly known by that name, but such designation has no foundation in the statutes. RCW 43.22.280 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the industrial welfare committee were transferred to the director of labor and industries. See RCW 43.22.282.

Child labor: RCW 26.28.060, 26.28.070.

Food and beverage establishment workers' permits: Chapter 69.06 RCW.

Hours of labor: Chapter 49.28 RCW.

49.12.005 Definitions. For the purposes of this chapter:

(1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries, or the director's designated representative.

(3)(a) Before May 20, 2003, "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees but does not include the state, any state institution, any state agency, political subdivision of the state, or any municipal corporation or quasi-municipal corporation. However, for the purposes of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370, 49.12.450, and 49.12.460 only, "employer" also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(b) On and after May 20, 2003, "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. However, this chapter and the rules adopted there-

under apply to these public employers only to the extent that this chapter and the rules adopted thereunder do not conflict with: (i) Any state statute or rule; and (ii) respect to political subdivisions of the state and any municipal or quasi-municipal corporation, any local resolution, ordinance, or rule adopted under the authority of the local legislative authority before April 1, 2003.

(4) "Employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(5) "Conditions of labor" means and includes the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(6) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a minor is defined to be a person of either sex under the age of eighteen years. [2003 c 401 § 2; 1998 c 334 § 1; 1994 c 164 § 13; 1988 c 236 § 8; 1973 2nd ex.s. c 16 § 1.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

Construction—1998 c 334: See note following RCW 49.12.450.

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.010 Declaration. The welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect. [1973 2nd ex.s. c 16 § 2; 1913 c 174 § 1; RRS § 7623.]

49.12.020 Conditions of employment—Wages. It shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health; and it shall be unlawful to employ workers in any industry within the state of Washington at wages which are not adequate for their maintenance. [1973 2nd ex.s. c 16 § 3; 1913 c 174 § 2; RRS § 7624.]

49.12.033 Administration and enforcement of chapter by director of labor and industries. See RCW 43.22.270(5).

49.12.041 Investigation of wages, hours and working conditions—Statements, inspections authorized. It shall be the responsibility of the director to investigate the wages, hours and conditions of employment of all employees, including minors, except as may otherwise be provided in chapter 16, Laws of 1973 2nd ex. sess. The director, or the director's authorized representative, shall have full authority to require statements from all employers, relative to wages, hours and working conditions and to inspect the books, records and physical facilities of all employers subject to chapter 16, Laws of 1973 2nd ex. sess. Such examinations

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shall take place within normal working hours, within reasonable limits and in a reasonable manner. [1994 c 164 § 14; 1973 2nd ex.s. c 16 § 5.]

49.12.050 Employer's record of employees. Every employer shall keep a record of the names of all employees employed by him, and shall on request permit the director to inspect such record. [1994 c 164 § 15; 1973 2nd ex.s. c 16 § 14; 1913 c 174 § 7; RRS § 7626.]

49.12.091 Investigation information—Findings—Rules prescribing minimum wages, working conditions.

After an investigation has been conducted by the department of wages, hours and conditions of labor subject to chapter 16, Laws of 1973 2nd ex. sess., the director shall be furnished with all information relative to such investigation of wages, hours and working conditions, including current statistics on wage rates in all occupations subject to the provisions of chapter 16, Laws of 1973 2nd ex. sess. Within a reasonable time thereafter, if the director finds that in any occupation, trade or industry, subject to chapter 16, Laws of 1973 2nd ex. sess., the wages paid to employees are inadequate to supply the necessary cost of living, but not to exceed the state minimum wage as prescribed in RCW 49.46.020, as now or hereafter amended, or that the conditions of labor are detrimental to the health of employees, the director shall have authority to prescribe rules and regulations for the purpose of adopting minimum wages for occupations not otherwise governed by minimum wage requirements fixed by state or federal statute, or a rule or regulation adopted under such statute, and, at the same time have the authority to prescribe rules and regulations fixing standards, conditions and hours of labor for the protection of the safety, health and welfare of employees for all or specified occupations subject to chapter 16, Laws of 1973 2nd ex. sess. Thereafter, the director shall conduct a public hearing in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW, for the purpose of the adoption of rules and regulations fixing minimum wages and standards, conditions and hours of labor subject to the provisions of chapter 16, Laws of 1973 2nd ex. sess. After such rules become effective, copies thereof shall be supplied to employers who may be affected by such rules and such employers shall post such rules, where possible, in such place or places, reasonably accessible to all employees of such employer. After the effective date of such rules, it shall be unlawful for any employer in any occupation subject to chapter 16, Laws of 1973 2nd ex. sess. to employ any person for less than the rate of wages specified in such rules or under conditions and hours of labor prohibited for any occupation specified in such rules: PROVIDED, That this section shall not apply to sheltered workshops. [1994 c 164 § 16; 1973 2nd ex.s. c 16 § 6.]

49.12.101 Hearing. Whenever wages, standards, conditions and hours of labor have been established by rule and regulation of the director, the director may upon application of either employers or employees conduct a public hearing for the purpose of the adoption, amendment or repeal of rules and regulations adopted under the authority of chapter 16,

Laws of 1973 2nd ex. sess. [1994 c 164 § 17; 1973 2nd ex.s. c 16 § 7.]

49.12.105 Variance order—Application—Issuance—Contents—Termination. An employer may apply to the director for an order for a variance from any rule or regulation establishing a standard for wages, hours, or conditions of labor adopted by the director under this chapter. The director shall issue an order granting a variance if the director determines or decides that the applicant for the variance has shown good cause for the lack of compliance. Any order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, standards and processes which the employer must adopt and utilize to the extent they differ from the standard in question. At any time the director may terminate and revoke such order, provided the employer was notified by the director of the termination at least thirty days prior to said termination. [1994 c 164 § 18; 1973 2nd ex.s. c 16 § 8.]

49.12.110 Exceptions to minimum scale—Special certificate or permit. For any occupation in which a minimum wage has been established, the director may issue to an employer, a special certificate or permit for an employee who is physically or mentally handicapped to such a degree that he or she is unable to obtain employment in the competitive labor market, or to a trainee or learner not otherwise subject to the jurisdiction of the apprenticeship council, a special certificate or permit authorizing the employment of such employee for a wage less than the legal minimum wage; and the director shall fix the minimum wage for said person, such special certificate or permit to be issued only in such cases as the director may decide the same is applied for in good faith and that such certificate or permit shall be in force for such length of time as the director shall decide and determine is proper. [1994 c 164 § 19; 1977 ex.s. c 80 § 35; 1973 2nd ex.s. c 16 § 13; 1913 c 174 § 13; RRS § 7632.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

49.12.121 Wages and working conditions of minors—Special rules—Work permits. (1) The department may at any time inquire into wages, hours, and conditions of labor of minors employed in any trade, business, or occupation in the state of Washington and may adopt special rules for the protection of the safety, health, and welfare of minor employees. However, the rules may not limit the hours per day or per week, or other specified work period, that may be worked by minors who are emancipated by court order.

(2) The department shall issue work permits to employers for the employment of minors, after being assured the proposed employment of a minor meets the standards for the health, safety, and welfare of minors as set forth in the rules adopted by the department. No minor person shall be employed in any occupation, trade, or industry subject to chapter 16, Laws of 1973 2nd ex. sess., unless a work permit has been properly issued, with the consent of the parent, guardian, or other person having legal custody of the minor and with the approval of the school which such minor may then be attending. However, the consent of a parent, guard-

ian, or other person, or the approval of the school which the minor may then be attending, is unnecessary if the minor is emancipated by court order.

(3) The minimum wage for minors shall be as prescribed in RCW 49.46.020. [1993 c 294 § 9; 1989 c 1 § 3 (Initiative Measure No. 518, approved November 8, 1988); 1973 2nd ex.s. c 16 § 15.]

Effective date—1993 c 294: See RCW 13.64.900.

Effective date—1989 c 1 (Initiative Measure No. 518): See note following RCW 49.46.010.

49.12.123 Work permit for minor required. In implementing state policy to assure the attendance of children in the public schools it shall be required of any person, firm or corporation employing any minor under the age of eighteen years to obtain a work permit as set forth in RCW 49.12.121 and keep such permit on file during the employment of such minor, and upon termination of such employment of such minor to return such permit to the department of labor and industries. [1991 c 303 § 8; 1983 c 3 § 156; 1973 c 51 § 3.]

Severability—1973 c 51: See note following RCW 28A.225.010.

49.12.124 Actors or performers—Work permits and variances for minors. For all minors employed as actors or performers in film, video, audio, or theatrical productions, the department shall issue a permit under RCW 49.12.121 and a variance under RCW 49.12.105 upon finding that the terms of the employment sufficiently protect the minor's health, safety, and welfare. The findings shall be based on information provided to the department including, but not limited to, the minor's working conditions and planned work schedule, adult supervision of the minor, and any planned educational programs. [1994 c 62 § 2.]

49.12.130 Witness protected—Penalty. Any employer who discharges, or in any other manner discriminates against any employee because such employee has testified or is about to testify, or because such employer believes that said employee may testify in any investigation or proceedings relative to the enforcement of RCW 49.12.010 through 49.12.180, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of from twenty-five dollars to one hundred dollars for each such misdemeanor. [1913 c 174 § 16; RRS § 7635.]

49.12.140 Complaint of noncompliance. Any worker or the parent or guardian of any minor to whom RCW 49.12.010 through 49.12.180 applies may complain to the director that the wages paid to the workers are less than the minimum rate and the director shall investigate the same and proceed under RCW 49.12.010 through 49.12.180 in behalf of the worker. [1994 c 164 § 20; 1913 c 174 § 17 1/2; RRS § 7637.]

49.12.150 Civil action to recover underpayment. If any employee shall receive less than the legal minimum wage, except as hereinbefore provided in RCW 49.12.110, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the

court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account. [1913 c 174 § 18; RRS § 7638.]

49.12.170 Penalty. Except as otherwise provided in RCW 49.12.390 or 49.12.410, any employer employing any person for whom a minimum wage or standards, conditions, and hours of labor have been specified, at less than said minimum wage, or under standards, or conditions of labor or at hours of labor prohibited by the rules and regulations of the director; or violating any other of the provisions of chapter 16, Laws of 1973 2nd ex. sess., shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one thousand dollars. [1994 c 164 § 21; 1991 c 303 § 6; 1973 2nd ex.s. c 16 § 16; 1913 c 174 § 17; RRS § 7636.]

Witnesses protected—Penalty: RCW 49.12.130.

49.12.175 Wage discrimination due to sex prohibited—Penalty—Civil recovery. Any employer in this state, employing both males and females, who shall discriminate in any way in the payment of wages as between sexes or who shall pay any female a less wage, be it time or piece work, or salary, than is being paid to males similarly employed, or in any employment formerly performed by males, shall be guilty of a misdemeanor. If any female employee shall receive less compensation because of being discriminated against on account of her sex, and in violation of this section, she shall be entitled to recover in a civil action the full amount of compensation that she would have received had she not been discriminated against. In such action, however, the employer shall be credited with any compensation which has been paid to her upon account. A differential in wages between employees based in good faith on a factor or factors other than sex shall not constitute discrimination within the meaning of RCW 49.12.010 through 49.12.180. [1943 c 254 § 1; Rem. Supp. 1943 § 7636-1. Formerly RCW 49.12.210.]

49.12.180 Annual report. The director shall report annually to the governor on its investigations and proceedings. [1994 c 164 § 22; 1977 c 75 § 73; 1913 c 174 § 20; RRS § 7640.]

49.12.185 Exemptions from chapter. Chapter 16, Laws of 1973 2nd ex. sess. shall not apply to newspaper vendors or carriers and domestic or casual labor in or about private residences and agricultural labor as defined in RCW 50.04.150, as now or hereafter amended. [1973 2nd ex.s. c 16 § 17.]

49.12.187 Collective bargaining rights not affected. This chapter shall not be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment. However, rules adopted under this chapter regarding appropriate rest and meal periods as applied to employees in the construction trades may be superseded by a collective bargaining agreement negotiated under

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the national labor relations act, 29 U.S.C. Sec. 151 et seq., if the terms of the collective bargaining agreement covering such employees specifically require rest and meal periods and prescribe requirements concerning those rest and meal periods.

Employees of public employers may enter into collective bargaining contracts, labor/management agreements, or other mutually agreed to employment agreements that specifically vary from or supersede, in part or in total, rules adopted under this chapter regarding appropriate rest and meal periods. [2003 c 401 § 3; 2003 c 146 § 1; 1973 2nd ex.s. c 16 § 18.]

Reviser's note: This section was amended by 2003 c 146 § 1 and by 2003 c 401 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Intent—2003 c 401: "The legislature finds that the enactment of chapter 236, Laws of 1988 amended the definition of employer under the industrial welfare act, chapter 49.12 RCW, to ensure that the family care provisions of that act applied to the state and political subdivisions. The legislature further finds that this amendment of the definition of employer may be interpreted as creating an ambiguity as to whether the other provisions of chapter 49.12 RCW have applied to the state and its political subdivisions. The purpose of this act is to make retroactive, remedial, curative, and technical amendments to clarify the intent of chapter 49.12 RCW and chapter 236, Laws of 1988 and resolve any ambiguity. It is the intent of the legislature to establish that, prior to May 20, 2003, chapter 49.12 RCW and the rules adopted thereunder did not apply to the state or its agencies and political subdivisions except as expressly provided for in RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370, 49.12.450, and 49.12.460." [2003 c 401 § 1.]

Effective date—2003 c 401: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 401 § 6.]

49.12.200 Women may pursue any calling open to men. That hereafter in this state every avenue of employment shall be open to women; and any business, vocation, profession and calling followed and pursued by men may be followed and pursued by women, and no person shall be disqualified from engaging in or pursuing any business, vocation, profession, calling or employment or excluded from any premises or place of work or employment on account of sex. [1963 c 229 § 1; 1890 p 519 § 1; RRS § 7620.]

Qualifications of electors: State Constitution Art. 6 § 1 (Amendment 63).

Sex equality—Rights and responsibility: State Constitution Art. 31 §§ 1, 2 (Amendment 61).

49.12.240 Employee inspection of personnel file. Every employer shall, at least annually, upon the request of an employee, permit that employee to inspect any or all of his or her own personnel file(s). [1985 c 336 § 1.]

Destruction or retention of information relating to state employee misconduct: RCW 41.06.450 through 41.06.460.

49.12.250 Employee inspection of personnel file—Erroneous or disputed information. (1) Each employer shall make such file(s) available locally within a reasonable period of time after the employee requests the file(s).

(2) An employee annually may petition that the employer review all information in the employee's personnel file(s) that are regularly maintained by the employer as a part of his business records or are subject to reference for information given to persons outside of the company. The

employer shall determine if there is any irrelevant or erroneous information in the file(s), and shall remove all such information from the file(s). If an employee does not agree with the employer's determination, the employee may at his or her request have placed in the employee's personnel file a statement containing the employee's rebuttal or correction. Nothing in this subsection prevents the employer from removing information more frequently.

(3) A former employee shall retain the right of rebuttal or correction for a period not to exceed two years. [1985 c 336 § 2.]

49.12.260 Employee inspection of personnel file—Limitations. RCW 49.12.240 and 49.12.250 do not apply to the records of an employee relating to the investigation of a possible criminal offense. RCW 49.12.240 and 49.12.250 do not apply to information or records compiled in preparation for an impending lawsuit which would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts. [1985 c 336 § 3.]

49.12.265 Sick leave, time off—Care of family members—Definitions. The definitions in this section apply throughout RCW 49.12.270 through 49.12.295 unless the context clearly requires otherwise.

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Grandparent" means a parent of a parent of an employee.

(3) "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(4) "Parent-in-law" means a parent of the spouse of an employee.

(5) "Sick leave or other paid time off" means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. If paid time is not allowed to an employee for illness, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability under a plan, fund, program, or practice that is: (a) Not covered by the employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et seq.; and (b) not established or maintained through the purchase of insurance.

(6) "Spouse" means a husband or wife, as the case may be. [2005 c 499 § 1; 2002 c 243 § 2.]

Effective date—2002 c 243: "This act takes effect January 1, 2003." [2002 c 243 § 4.]

49.12.270 Sick leave, time off—Care of family members. (1) If, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off, then an employer shall allow an employee to use any or all of the employee's choice of sick leave or other paid time off to care

for: (a) A child of the employee with a health condition that requires treatment or supervision; or (b) a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition. An employee may not take advance leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave.

(2) Use of leave other than sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable. [2002 c 243 § 1; 1988 c 236 § 3.]

Effective date—2002 c 243: See note following RCW 49.12.265.

Legislative findings—1988 c 236: "The legislature recognizes the changing nature of the workforce brought about by increasing numbers of working mothers, single parent households, and dual career families. The legislature finds that the needs of families must be balanced with the demands of the workplace to promote family stability and economic security. The legislature further finds that it is in the public interest for employers to accommodate employees by providing reasonable leaves from work for family reasons. In order to promote family stability, economic security, and the public interest, the legislature hereby establishes a minimum standard for family care. Nothing contained in this act shall prohibit any employer from establishing family care standards more generous than the minimum standards set forth in this act." [1988 c 236 § 1.]

Effective date—1988 c 236: "This act shall take effect on September 1, 1988." [1988 c 236 § 12.]

Implementation—1988 c 236: "Prior to September 1, 1988, the department of labor and industries may take such steps as are necessary to ensure that chapter 236, Laws of 1988 is implemented on September 1, 1988." [1988 c 236 § 10.]

Severability—1988 c 236: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 236 § 11.]

49.12.275 Sick leave, time off—Care of family members—Poster required. The department shall develop and furnish to each employer a poster which describes an employer's obligations and an employee's rights under RCW 49.12.270 through 49.12.295. The poster must include notice about any state law, rule, or regulation governing maternity disability leave and indicate that federal or local ordinances, laws, rules, or regulations may also apply. The poster must also include a telephone number and an address of the department to enable employees to obtain more information regarding RCW 49.12.270 through 49.12.295. Each employer must display this poster in a conspicuous place. Every employer shall also post its leave policies, if any, in a conspicuous place. Nothing in this section shall be construed to create a right to continued employment. [1988 c 236 § 2.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.280 Sick leave, time off—Care of family members—Administration and enforcement. The department shall administer and investigate violations of RCW 49.12.270 and 49.12.275. [1988 c 236 § 4.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.285 Sick leave, time off—Care of family members—Monetary penalties. The department may issue a notice of infraction if the department reasonably believes that an employer has failed to comply with RCW 49.12.270 or 49.12.275. The form of the notice of infraction shall be adopted by rule pursuant to chapter 34.05 RCW. An employer who is found to have committed an infraction under RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed two hundred dollars for each violation. An employer who repeatedly violates RCW 49.12.270 or 49.12.275 may be assessed a monetary penalty not to exceed one thousand dollars for each violation. For purposes of this section, the failure to comply with RCW 49.12.275 as to an employee or the failure to comply with RCW 49.12.270 as to a period of leave sought by an employee shall each constitute separate violations. An employer has twenty days to appeal the notice of infraction. Any appeal of a violation determined to be an infraction shall be heard and determined by an administrative law judge. Monetary penalties collected under this section shall be deposited into the general fund. [1988 c 236 § 5.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.287 Sick leave, time off—Care of family members—Discharge of employee not permitted. An employer shall not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee: (1) Has exercised, or attempted to exercise, any right provided under RCW 49.12.270 through 49.12.295; or (2) has filed a complaint, testified, or assisted in any proceeding under RCW 49.12.270 through 49.12.295. [2002 c 243 § 3.]

Effective date—2002 c 243: See note following RCW 49.12.265.

49.12.290 Sick leave, time off—Care of family members—Collective bargaining agreement not reduced. Nothing in RCW 49.12.270 through 49.12.295 shall be construed to reduce any provision in a collective bargaining agreement. [1988 c 236 § 6.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.295 Sick leave, time off—Care of family members—Notification of employers. The department shall notify all employers of the provisions of RCW 49.12.270 through 49.12.290. [1988 c 236 § 7.]

Legislative findings—Effective date—Implementation—Severability—1988 c 236: See notes following RCW 49.12.270.

49.12.300 House-to-house sales by minor—Registration of employer. (1) No person under sixteen years of age may be employed in house-to-house sales unless the department grants a variance permitting specific employment under criteria adopted by department rule.

(2) No person sixteen or seventeen years of age may be employed in house-to-house sales unless the employer:

(a) Obtains and maintains a validated registration certificate issued by the department. Application for registration shall be made on a form prescribed by the director, which shall include but not be limited to:

(i) The employer's name, permanent address, and telephone number;

(ii) The employer's social security number and industrial insurance number or, in lieu of these numbers, the employer's unified business identifier account number; and

(iii) A description of the work to be performed by persons aged sixteen or seventeen and the working conditions under which the work will be performed;

(b) Provides each employee sixteen or seventeen years of age, before beginning work, an identification card in a form prescribed by the director. The card shall include, but not be limited to, a picture of the employee, the employee's name, the name and address of the employer, a statement that the employer is registered with the department of labor and industries, and the registration number. The person employed in house-to-house sales shall show the identification card to each customer or potential customer of the person;

(c) Ensures supervision by a person aged twenty-one years or over during all working hours, with each supervisor responsible for no more than five persons; and

(d) If transporting an employee sixteen or seventeen years of age to another state, obtains the express written consent of the employee's parent or legal guardian.

(3) An employer may not employ a person sixteen or seventeen years of age in house-to-house sales after the hour of nine p.m.

(4) The department shall adopt by rule procedures for the renewal, denial, or revocation of registrations required by this section. [1989 c 216 § 1.]

49.12.310 House-to-house sales by minor—Advertising by employer—Penalty. (1) Any person advertising to employ a person in house-to-house sales with an advertisement specifically prescribing a minimum age requirement that is under the age of twenty-one shall:

(a) Register with the department as provided in RCW 49.12.300(2)(a); and

(b) Include the following information in any advertisement:

(i) The registration number required by subsection (1)(a) of this section;

(ii) The specific nature of the employment and the product or services to be sold; and

(iii) The average monthly compensation paid in the previous six months to new employees, taking into account any deductions made pursuant to the employment contract.

(2) Advertising to recruit or employ a person in house-to-house sales shall not be false, misleading, or deceptive.

(3) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. The remedies and sanctions provided under chapter 19.86 RCW shall not preclude application of other available remedies and sanctions.

(4) No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement may be subject to penalties by reason of dissemination of any false, misleading, or deceptive advertisement, or for an advertisement that fails to meet the requirements of subsection (1) of this section, unless he or she has refused on the request of the director to furnish the name and

address of the person purchasing the advertising. [1989 c 216 § 2.]

49.12.320 Definitions. For the purposes of RCW 49.12.300 and 49.12.310:

(1) "Employ" includes to engage, suffer, or permit to work, but does not include voluntary or donated services performed for no compensation, or without expectation or contemplation of compensation as the adequate consideration for the services performed, for an educational, charitable, religious, state or local government body or agency, or nonprofit organization, or services performed by a newspaper vendor or a person in the employ of his or her parent or stepparent.

(2) "House-to-house sales" includes a sale or other transaction in consumer goods, the demonstration of products or equipment, the obtaining of orders for consumer goods, or the obtaining of contracts for services, in which the employee personally solicits the sale or transaction at a place other than the place of business of the employer. [1989 c 216 § 3.]

49.12.330 Rules. The department shall adopt rules to implement RCW 49.12.300 through 49.12.320. [1989 c 216 § 4.]

49.12.350 Parental leave—Legislative findings. The legislature finds that employers often distinguish between biological parents, and adoptive parents and stepparents in their employee leave policies. Many employers who grant leave to their employees to care for a newborn child either have no policy or establish a more restrictive policy regarding whether an adoptive parent or stepparent can take similar leave. The legislature further finds that many employers establish different leave policies for men and women regarding the care of a newborn or newly placed child. The legislature recognizes that the bonding that occurs between a parent and child is important to the nurturing of that child, regardless of whether the parent is the child's biological parent and regardless of the gender of the parent. For these reasons, the legislature declares that it is the public policy of this state to require that employers who grant leave to their employees to care for a newborn child make the same leave available upon the same terms for adoptive parents and stepparents, men and women. [1989 1st ex.s. c 11 § 22.]

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.360 Parental leave—Discrimination prohibited. (1) An employer must grant an adoptive parent or a stepparent, at the time of birth or initial placement for adoption of a child under the age of six, the same leave under the same terms as the employer grants to biological parents. As a term of leave, an employer may restrict leave to those living with the child at the time of birth or initial placement.

(2) An employer must grant the same leave upon the same terms for men as it does for women.

(3) The department shall administer and investigate violations of this section. Notices of infraction, penalties, and appeals shall be administered in the same manner as violations under RCW 49.12.285.

(4) For purposes of this section, "leave" means any leave from employment granted to care for a newborn or a newly adopted child at the time of placement for adoption.

(5) Nothing in this section requires an employer to:

(a) Grant leave equivalent to maternity disability leave;

or

(b) Establish a leave policy to care for a newborn or newly placed child if no such leave policy is in place for any of its employees. [2003 c 401 § 4; 1989 1st ex.s. c 11 § 23.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.370 Parental leave—Collective bargaining agreement or employee benefit plan—Application. In the case of employees covered by an unexpired collective bargaining agreement that expires on or after September 1, 1989, or by an employee benefit program or plan with a stated year ending on or after September 1, 1989, the effective date of RCW 49.12.360 shall be the later of: (1) The first day following expiration of the collective bargaining agreement; or (2) the first day of the next plan year. [1989 1st ex.s. c 11 § 24.]

Severability—Effective date—1989 1st ex.s. c 11: See RCW 49.78.900 and 49.78.901.

49.12.380 Child labor laws—Information program. Upon adoption of the rules under *section 1 of this act, the department of labor and industries shall implement a comprehensive program to inform employers of the rules adopted. The program shall include mailings, public service announcements, seminars, and any other means deemed appropriate to inform all Washington employers of their rights and responsibilities regarding the employment of minors. [1991 c 303 § 2.]

***Reviser's note:** Section 1 of this act, which amended RCW 49.12.121, was vetoed by the governor.

49.12.390 Child labor laws—Violations—Civil penalties—Restraining orders. (1)(a) Except as otherwise provided in subsection (2) of this section, if the director, or the director's designee, finds that an employer has violated any of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, a citation stating the violations shall be issued to the employer. The citation shall be in writing, describing the nature of the violation including reference to the standards, rules, or orders alleged to have been violated. An initial citation for failure to comply with RCW 49.12.123 or rules requiring a minor work permit and maintenance of records shall state a specific and reasonable time for abatement of the violation to allow the employer to correct the violation without penalty. The director or the director's designee may establish a specific time for abatement of other nonserious violations in lieu of a penalty for first time violations. The citation and a proposed penalty assessment shall be given to the highest management official available at the workplace or be mailed to the employer at the workplace. In addition, the department shall mail a copy of the citation and proposed penalty assessment to the central personnel office of the

employer. Citations issued under this section shall be posted at or near the place where the violation occurred.

(b) Except when an employer corrects a violation as provided in (a) of this subsection, he or she shall be assessed a civil penalty of not more than one thousand dollars depending on the size of the business and the gravity of the violation. The employer shall pay the amount assessed within thirty days of receipt of the assessment or notify the director of his or her intent to appeal the citation or the assessment penalty as provided in RCW 49.12.400.

(2) If the director, or the director's designee, finds that an employer has committed a serious or repeated violation of the requirements of RCW 49.12.121 or 49.12.123, or any rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, the employer is subject to a civil penalty of not more than one thousand dollars for each day the violation continues. For the purposes of this subsection, a serious violation shall be deemed to exist if death or serious physical harm has resulted or is imminent from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use by the employer, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(3) In addition to any other authority provided in this section, if, upon inspection or investigation, the director, or director's designee, believes that an employer has violated RCW 49.12.121 or 49.12.123, or a rule or order adopted or variance granted under RCW 49.12.121 or 49.12.123, and that the violation creates a danger from which there is a substantial probability that death or serious physical harm could result to a minor employee, the director, or director's designee, may issue an order immediately restraining the condition, practice, method, process, or means creating the danger in the workplace. An order issued under this subsection may require the employer to take steps necessary to avoid, correct, or remove the danger and to prohibit the employment or presence of a minor in locations or under conditions where the danger exists.

(4) An employer who violates any of the posting requirements of RCW 49.12.121 or rules adopted implementing RCW 49.12.121 shall be assessed a civil penalty of not more than one hundred dollars for each violation.

(5) A person who gives advance notice, without the authority of the director, of an inspection to be conducted under this chapter shall be assessed a civil penalty of not more than one thousand dollars.

(6) Penalties assessed under this section shall be paid to the director and deposited into the general fund. [1991 c 303 § 3.]

49.12.400 Child labor laws—Appeal. A person, firm, or corporation aggrieved by an action taken or decision made by the department under RCW 49.12.390 may appeal the action or decision to the director by filing notice of the appeal with the director within thirty days of the department's action or decision. A notice of appeal filed under this section shall stay the effectiveness of a citation or notice of the assessment of a penalty pending review of the appeal by the director, but such appeal shall not stay the effectiveness of an order of immediate restraint issued under RCW 49.12.390. Upon

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receipt of an appeal, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue all final orders after the hearing. The final orders are subject to appeal in accordance with chapter 34.05 RCW. Orders not appealed within the time period specified in chapter 34.05 RCW are final and binding. [1991 c 303 § 4.]

49.12.410 Child labor laws—Violations—Criminal penalties. (1) An employer who knowingly or recklessly violates the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, is guilty of a gross misdemeanor.

(2) An employer whose practices in violation of the requirements of RCW 49.12.121 or 49.12.123, or a rule or order adopted under RCW 49.12.121 or 49.12.123, result in the death or permanent disability of a minor employee is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 273; 1991 c 303 § 5.]

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

49.12.420 Child labor laws—Exclusive remedies. The penalties established in RCW 49.12.390 and 49.12.410 for violations of RCW 49.12.121 and 49.12.123 are exclusive remedies. [1991 c 303 § 7.]

49.12.450 Compensation for required employee work apparel—Exceptions—Changes—Rules—Expiration of subsection. (1) Notwithstanding the provisions of chapter 49.46 RCW or other provisions of this chapter, the obligation of an employer to furnish or compensate an employee for apparel required during work hours shall be determined only under this section.

(2) Employers are not required to furnish or compensate employees for apparel that an employer requires an employee to wear during working hours unless the required apparel is a uniform.

(3) As used in this section, "uniform" means:

(a) Apparel of a distinctive style and quality that, when worn outside of the workplace, clearly identifies the person as an employee of a specific employer;

(b) Apparel that is specially marked with an employer's logo;

(c) Unique apparel representing an historical time period or an ethnic tradition; or

(d) Formal apparel.

(4) Except as provided in subsection (5) of this section, if an employer requires an employee to wear apparel of a common color that conforms to a general dress code or style, the employer is not required to furnish or compensate an employee for that apparel. For the purposes of this subsection, "common color" is limited to the following colors or light or dark variations of such colors: White, tan, or blue, for tops; and tan, black, blue, or gray, for bottoms. An employer is permitted to require an employee to obtain two sets of wearing apparel to accommodate for the seasonal changes in weather which necessitate a change in wearing apparel.

(5) If an employer changes the color or colors of apparel required to be worn by any of his or her employees during a two-year period of time, the employer shall furnish or com-

pensate the employees for the apparel. The employer shall be required to furnish or compensate only those employees who are affected by the change. The two-year time period begins on the date the change in wearing apparel goes into effect and ends two years from this date. The beginning and end of the two-year time period applies to all employees regardless of when the employee is hired.

(6) The department shall utilize negotiated rule making as defined by RCW 34.05.310(2)(a) in the development and adoption of rules defining apparel that conforms to a general dress code or style. This subsection expires January 1, 2000.

(7) For the purposes of this section, personal protective equipment required for employee protection under chapter 49.17 RCW is not deemed to be employee wearing apparel. [1998 c 334 § 2.]

Construction—1998 c 334: "Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of June 11, 1998, until the expiration date of such agreement." [1998 c 334 § 3.]

49.12.460 Volunteer firefighters, reserve officers—Employer duties—Violations. (1) An employer may not discharge from employment or discipline a volunteer firefighter or reserve officer because of leave taken related to an alarm of fire or an emergency call.

(2)(a) A volunteer firefighter or reserve officer who believes he or she was discharged or disciplined in violation of this section may file a complaint alleging the violation with the director. The volunteer firefighter or reserve officer may allege a violation only by filing such a complaint within ninety days of the alleged violation.

(b) Upon receipt of the complaint, the director must cause an investigation to be made as the director deems appropriate and must determine whether this section has been violated. Notice of the director's determination must be sent to the complainant and the employer within ninety days of receipt of the complaint.

(c) If the director determines that this section was violated and the employer fails to reinstate the employee or withdraw the disciplinary action taken against the employee, whichever is applicable, within thirty days of receipt of notice of the director's determination, the volunteer firefighter or reserve officer may bring an action against the employer alleging a violation of this section and seeking reinstatement or withdrawal of the disciplinary action.

(d) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations under this section and to order reinstatement of the employee or withdrawal of the disciplinary action.

(3) For the purposes of this section:

(a) "Alarm of fire or emergency call" means responding to, working at, or returning from a fire alarm or an emergency call, but not participating in training or other nonemergency activities.

(b) "Employer" means an employer who had twenty or more full-time equivalent employees in the previous year.

(c) "Reinstatement" means reinstatement with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(d) "Withdrawal of disciplinary action" means withdrawal of disciplinary action with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(e) "Volunteer firefighter" means a firefighter who:

(i) Is not paid;

(ii) Is not already at his or her place of employment when called to serve as a volunteer, unless the employer agrees to provide such an accommodation; and

(iii) Has been ordered to remain at his or her position by the commanding authority at the scene of the fire.

(f) "Reserve officer" has the meaning provided in RCW 41.24.010.

(4) The legislature declares that the public policies articulated in this section depend on the procedures established in this section and no civil or criminal action may be maintained relying on the public policies articulated in this section without complying with the procedures set forth in this section, and to that end all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this section. [2004 c 44 § 1; 2003 c 401 § 5; 2001 c 173 § 1.]

Findings—Purpose—Intent—Effective date—2003 c 401: See notes following RCW 49.12.187.

49.12.900 Severability—1973 2nd ex.s. c 16. If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 16 § 20.]

49.12.901 Severability—1991 c 303. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 303 § 10.]

49.12.902 Effective date—1991 c 303 §§ 3-7. Sections 3 through 7 of this act shall take effect April 1, 1992. [1991 c 303 § 12.]

Chapter 49.17 RCW WASHINGTON INDUSTRIAL SAFETY AND HEALTH ACT

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49.17.010 Purpose. The legislature finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for the welfare of the people of the state of Washington and in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature in the exercise of its police power, and in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state, which program shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590). [1973 c 80 § 1.]

Industrial insurance: Title 51 RCW.

49.17.020 Definitions. For the purposes of this chapter:

(1) The term "agriculture" means farming and includes, but is not limited to:

- (a) The cultivation and tillage of the soil;
- (b) Dairying;
- (c) The production, cultivation, growing, and harvesting of any agricultural or horticultural commodity;
- (d) The raising of livestock, bees, fur-bearing animals, or poultry; and
- (e) Any practices performed by a farmer or on a farm, incident to or in connection with such farming operations, including but not limited to preparation for market and delivery to:
 - (i) Storage;
 - (ii) Market; or
 - (iii) Carriers for transportation to market.

The term "agriculture" does not mean a farmer's processing for sale or handling for sale a commodity or product grown or produced by a person other than the farmer or the farmer's employees.

(2) The term "director" means the director of the department of labor and industries, or his designated representative.

(3) The term "department" means the department of labor and industries.

(4) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: PROVIDED, That any person, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(5) The term "employee" means an employee of an employer who is employed in the business of his employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his personal labor for an employer under this chapter whether by way of manual labor or otherwise.

(6) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(7) The term "safety and health standard" means a standard which requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

(8) The term "work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(9) The term "working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050, as now or hereafter amended, and for the purposes of the computation of time within which an act is to be done under the provisions of this chapter, shall be com-

puted by excluding the first working day and including the last working day. [1997 c 362 § 2; 1973 c 80 § 2.]

Department of labor and industries: Chapter 49.17 RCW.

49.17.022 Legislative findings and intent—Definition of agriculture. The legislature finds that the state's farms are diverse in their nature and the owners, managers, and their employees continually find new ways to plant, raise, harvest, process, store, market, and distribute their products. The legislature further finds that the department of labor and industries needs guidance in determining when activities related to agricultural products are to be regulated as agricultural activities and when they should be regulated as other activities. It is the intent of the legislature that activities performed by a farmer as incident to or in conjunction with his or her farming activities be regulated as agricultural activities. For this purpose, an agricultural activity is to be interpreted broadly, based on the definition of "agriculture" in RCW 49.17.020. [1997 c 362 § 1.]

49.17.030 Application of chapter—Fees and charges. This chapter shall apply with respect to employment performed in any work place within the state. The department of labor and industries shall provide by rule for a schedule of fees and charges to be paid by each employer subject to this chapter who is not subject to or obtaining coverage under the industrial insurance laws and who is not a self-insurer. The fees and charges collected shall be for the purpose of defraying such employer's pro rata share of the expenses of enforcing and administering this chapter. [1973 c 80 § 3.]

49.17.040 Rules and regulations—Authority—Procedure. The director shall make, adopt, modify, and repeal rules and regulations governing safety and health standards for conditions of employment as authorized by this chapter after a public hearing in conformance with the administrative procedure act and the provisions of this chapter. At least thirty days prior to such public hearing, the director shall cause public notice of such hearing to be made in newspapers of general circulation in this state, of the date, time, and place of such public hearing, along with a general description of the subject matter of the proposed rules and information as to where copies of any rules and regulations proposed for adoption may be obtained and with a solicitation for recommendations in writing or suggestions for inclusion or changes in such rules to be submitted not later than five days prior to such public hearing. Any preexisting rules adopted by the department of labor and industries relating to health and safety standards in work places subject to the jurisdiction of the department shall remain effective insofar as such rules are not inconsistent with the provisions of this chapter. [1973 c 80 § 4.]

49.17.041 Agricultural safety standards—Limitation on adopting or establishing between January 1, 1995, through January 15, 1996—Requirements. (1)(a) Except as provided in (b) of this subsection, no rules adopted under this chapter amending or establishing agricultural safety standards shall take effect during the period beginning January 1, 1995, and ending January 15, 1996. This subsection applies,

but is not limited to applying, to a rule adopted before January 1, 1995, but with an effective date which is during the period beginning January 1, 1995, and ending January 15, 1996, and to provisions of rules adopted prior to January 1, 1995, which provisions are to become effective during the period beginning January 1, 1995, and ending January 15, 1996.

(b) Subsection (1)(a) of this section does not apply to: Provisions of rules that were in effect before January 1, 1995; emergency rules adopted under RCW 34.05.350; or revisions to chapter 296-306 WAC regarding rollover protective structures that were adopted in 1994 and effective March 1, 1995, and that are additionally revised to refer to the variance process available under this chapter.

(2) The rules for agricultural safety adopted under this chapter must:

(a) Establish, for agricultural employers, an agriculture safety standard that includes agriculture-specific rules and specific references to the general industry safety standard adopted under chapter 49.17 RCW; and

(b) Exempt agricultural employers from the general industry safety standard adopted under chapter 49.17 RCW for all rules not specifically referenced in the agriculture safety standard.

(3) The department shall publish in one volume all of the occupational safety rules that apply to agricultural employers and shall make this volume available to all agricultural employers before January 15, 1996. This volume must be available in both English and Spanish.

(4) The department shall provide training, education, and enhanced consultation services concerning its agricultural safety rules to agricultural employers before the rules' effective dates. The training, education, and consultation must continue throughout the winter of 1995-1996. Training and education programs must be provided throughout the state and must be coordinated with agricultural associations in order to meet their members' needs.

(5) The department shall provide, for informational purposes, a list of commercially available rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. The list must include the name and address of the manufacturer and the approximate price of the structure. Included with the list shall be a statement indicating that an employer may apply for a variance from the rules requiring rollover protective structures under this chapter and that variances may be granted in appropriate circumstances on a case-by-case basis. The statement shall also provide examples of circumstances under which a variance may be granted. The list and statement shall be generally available to the agricultural community before the department may take any action to enforce rules requiring rollover protective structures for tractors used in agricultural operations manufactured before October 25, 1976. [1995 c 371 § 2.]

Finding—1995 c 371: "The legislature finds that:

(1) The state's highly productive and efficient agricultural sector is composed predominately of family-owned and managed farms and an industrious and efficient workforce;

(2) A reasonable level of safety regulations is needed to protect workers;

(3) The smaller but highly efficient farming operations would benefit from safety rules that are easily referenced and agriculture-specific to the

extent possible; and

(4) There should be lead time between the adoption of agriculture safety rules and their effective date in order to allow the department of labor and industries to provide training, education, and enhanced consultation services to family-owned and managed farms." [1995 c 371 § 1.]

Application—1995 c 371 § 2: "Section 2(1) of this act is remedial in nature and applies to rules and provisions of rules regarding agricultural safety that would take effect after December 31, 1994." [1995 c 371 § 4.]

49.17.050 Rules and regulations—Guidelines—Standards. In the adoption of rules and regulations under the authority of this chapter, the director shall:

(1) Provide for the preparation, adoption, amendment, or repeal of rules and regulations of safety and health standards governing the conditions of employment of general and special application in all work places;

(2) Provide for the adoption of occupational health and safety standards which are at least as effective as those adopted or recognized by the United States secretary of labor under the authority of the Occupational Safety and Health Act of 1970 (Public Law 91-596; 84 Stat. 1590);

(3) Provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards at their work places and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(4) Provide for the promulgation of health and safety standards and the control of conditions in all work places concerning gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents which shall set a standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life; any such standards shall require where appropriate the use of protective devices or equipment and for monitoring or measuring any such gases, vapors, dust, or other airborne particles, toxic materials, or harmful physical agents;

(5) Provide for appropriate reporting procedures by employers with respect to such information relating to conditions of employment which will assist in achieving the objectives of this chapter;

(6) Provide for the frequency, method, and manner of the making of inspections of work places without advance notice; and,

(7) Provide for the publication and dissemination to employers, employees, and labor organizations and the posting where appropriate by employers of informational, education, or training materials calculated to aid and assist in achieving the objectives of this chapter;

(8) Provide for the establishment of new and the perfection and expansion of existing programs for occupational safety and health education for employers and employees, and, in addition institute methods and procedures for the establishment of a program for voluntary compliance solely through the use of advice and consultation with employers and employees with recommendations including recommendations of methods to abate violations relating to the requirements of this chapter and all applicable safety and health

standards and rules and regulations promulgated pursuant to the authority of this chapter;

(9) Provide for the adoption of safety and health standards requiring the use of safeguards in trenches and excavations and around openings of hoistways, hatchways, elevators, stairways, and similar openings;

(10) Provide for the promulgation of health and safety standards requiring the use of safeguards for all vats, pans, trimmers, cut off, gang edger, and other saws, planers, presses, formers, cogs, gearing, belting, shafting, coupling, set screws, live rollers, conveyors, mangles in laundries, and machinery of similar description, which can be effectively guarded with due regard to the ordinary use of such machinery and appliances and the danger to employees therefrom, and with which the employees of any such work place may come in contact while in the performance of their duties and prescribe methods, practices, or processes to be followed by employers which will enhance the health and safety of employees in the performance of their duties when in proximity to machinery or appliances mentioned in this subsection;

(11) Certify that no later than twenty business days prior to the effective date of any significant legislative rule, as defined by RCW 34.05.328, a meeting of impacted parties is convened to: (a) Identify ambiguities and problem areas in the rule; (b) coordinate education and public relations efforts by all parties; (c) provide comments regarding internal department training and enforcement plans; and (d) provide comments regarding appropriate evaluation mechanisms to determine the effectiveness of the new rule. The meeting shall include a balanced representation of both business and labor from impacted industries, department personnel responsible for the above subject areas, and other agencies or key stakeholder groups as determined by the department. An existing advisory committee may be utilized if appropriate. [1998 c 224 § 1; 1973 c 80 § 5.]

49.17.055 WISHA advisory committee—Appointment of members—Duties—Terms, compensation, and expenses. The director shall appoint a WISHA advisory committee composed of ten members: Four members representing subject workers, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization of employees, representing a majority of employees; four members representing subject employers, each of whom shall be appointed from a list of at least three names submitted by a recognized statewide organization of employers, representing a majority of employers; and two ex officio members, without a vote, one of whom shall be the chairperson of the board of industrial insurance appeals, and the other representing the department. The member representing the department shall be chairperson. The committee shall provide comment on department rule making, policies, and other initiatives. The committee shall also conduct a continuing study of any aspect of safety and health the committee determines to require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1997, and the terms of the members representing the workers and employ-

ers shall be staggered so that the director shall designate one member from each group initially appointed whose term shall expire on June 30, 1998, and one member from each group whose term shall expire on June 30, 1999. The members shall serve without compensation, but are entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire such experts, if any, as it requires to discharge its duties and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it needs, without charge. All expenses of the committee must be paid by the department. [1997 c 107 § 1.]

49.17.060 Employer—General safety standard—Compliance. Each employer:

(1) Shall furnish to each of his employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his employees: PROVIDED, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter. [1973 c 80 § 6.]

49.17.070 Right of entry—Inspections and investigations—Subpoenas—Contempt. (1) Subject to subsections (2) through (5) of this section, the director, or his or her authorized representative, in carrying out his or her duties under this chapter, upon the presentation of appropriate credentials to the owner, manager, operator, or on-site person in charge of the worksite, is authorized:

(a) To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer; and

(b) To inspect, survey, and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such workplace and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

(2) In making inspections and making investigations under this chapter the director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the superior courts. In the case of contumacy, failure, or refusal of any person to obey such an order, any superior court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application of the director, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) Except as provided in subsection (4) of this section or RCW 49.17.075, the director or his or her authorized representative shall obtain consent from the owner, manager, oper-

ator, or his or her on-site person in charge of the worksite when entering any worksite located on private property to carry out his or her duties under this chapter. Solely for the purpose of requesting the consent required by this section, the director or his or her authorized representative shall, in a safe manner, enter a worksite at an entry point designated by the employer or, in the event no entry point has been designated, at a reasonably recognizable entry point.

(4) This section does not prohibit the director or his or her authorized representative from taking action consistent with a recognized exception to the warrant requirements of the federal and state Constitutions.

(5) This section does not require advance notice of an inspection. [2006 c 31 § 2; 1973 c 80 § 7.]

Intent—2006 c 31: "The legislature intends that inspections performed under the Washington industrial safety and health act ensure safe and healthful working conditions for every person working in the state of Washington. Inspections must follow the mandates of Article II, section 35 of the state Constitution, and equal or exceed the requirements prescribed by the occupational safety and health act of 1970 (Public Law 91-596, 84 Stat. 1590). The legislature also intends that the inspections comply with the fourth and fourteenth amendments to the United States Constitution and Article I, section 7 of the state Constitution." [2006 c 31 § 1.]

49.17.075 Search warrants. The director may apply to a court of competent jurisdiction for a search warrant authorizing access to any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer. The court may upon such application issue a search warrant for the purpose requested. [2006 c 31 § 3.]

Intent—2006 c 31: See note following RCW 49.17.070.

49.17.080 Variance from safety and health standards—Application—Contents—Procedure. (1) Any employer may apply to the director for a temporary order granting a variance from any safety and health standard promulgated by rule or regulation under the authority of this chapter. Such temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) of this section and establishes that the employer is unable to comply with a safety or health standard because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the safety and health standard or because necessary construction or alteration of facilities cannot be completed by the effective date of such safety and health standard, that he is taking all available steps to safeguard his employees against the hazards covered by the safety and health standard, and he has an effective program for coming into compliance with such safety and health standard as quickly as practicable. Any temporary order issued under the authority of this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the safety and health standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing upon request of the employer or any affected employee. The name of any affected employee requesting a hearing under the provisions of this subsection shall be confidential and shall not be disclosed without the consent of such

employee. The director may issue one interim order to be effective until a determination is made or a decision rendered if a hearing is demanded. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter, except that such an order may be renewed not more than twice, so long as the requirements of this subsection are met and if an application for renewal is filed at least ninety days prior to the expiration date of the order. No renewal of a temporary order may remain in effect for longer than one hundred eighty days.

(2) An application for a temporary order under this section shall contain:

(a) A specification of the safety and health standard or portion thereof from which the employer seeks a variance;

(b) A representation by the employer, supported by representations from qualified persons having first hand knowledge of the facts represented, that he is unable to comply with the safety and health standard or portion thereof and a detailed statement of the reasons therefor;

(c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;

(d) A statement as to when the employer expects to be able to comply with the standard or portion thereof and what steps he has taken and will take, with dates specified, to come into compliance with the standard; and

(e) A certification that the employer, by the date of mailing or delivery of the application to the director, has informed his employees of the application by providing a copy thereof to his employees or their authorized representative by posting a copy of such application in a place or places reasonably accessible to all employees or by other appropriate means of notification and by mailing a copy to the authorized representative of such employees; the application shall set forth the manner in which the employees have been so informed. The application shall also advise employees and their employee representatives of their right to apply to the director to conduct a hearing upon the application for a variance. [1973 c 80 § 8.]

49.17.090 Variance from safety and health standards—Notice—Hearing—Order—Modification or revocation. Any employer may apply to the director for an order for a variance from any rule or regulation establishing a safety and health standard promulgated under this chapter. Affected employees shall be given notice of each such application and in the manner prescribed by RCW 49.17.080 shall be informed of their right to request a hearing on any such application. The director shall issue such order granting a variance, after opportunity for an inspection, if he determines or decides after a hearing has been held, if request for hearing has been made, that the applicant for the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by such applicant employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the safety and health standard or standards from which the variance is sought. The order so issued shall prescribe the conditions the employer

must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. At any time after six months has elapsed from the date of the issuance of the order granting a variance upon application of an employer, employee, or the director on his own motion, after notice has been given in the manner prescribed for the issuance of such order may modify or revoke the order granting the variance from any standard promulgated under the authority of this chapter. [1973 c 80 § 9.]

49.17.100 Inspection—Employer and employee representatives. A representative of the employer and an employee representative authorized by the employees of such employer shall be given an opportunity to accompany the director, or his authorized representative, during the physical inspection of any work place for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the work place. The director may adopt procedural rules and regulations to implement the provisions of this section: PROVIDED, That neither this section, nor any other provision of this chapter, shall be construed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing concerning wages or standards or conditions of employment which equal or exceed those established under the authority of this chapter. [1986 c 192 § 1; 1973 c 80 § 10.]

49.17.110 Compliance by employee—Violations—Notice—Review. Each employee shall comply with the provisions of this chapter and all rules, regulations, and orders issued pursuant to the authority of this chapter which are applicable to his own actions and conduct in the course of his employment. Any employee or representative of employees who in good faith believes that a violation of a safety or health standard, promulgated by rule under the authority of this chapter exists that threatens physical harm to employees, or that an imminent danger to such employees exists, may request an inspection of the work place by giving notice to the director or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to any provision of this chapter. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable, to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employer and the employee or rep-

representative of the employees in writing of such determination.

Prior to or during any inspection of a work place, any employee or representative of employees employed in such work place may notify the director or any representative of the director responsible for conducting the inspection, in writing, of any violation of this chapter which he has reason to believe exists in such work place. The director shall, by rule, establish procedures for informal review of any refusal by a representative of the director to issue a citation with respect to any such alleged violation, and shall furnish the employee or representative of employees requesting such review a written statement of the reasons for the director's final disposition of the case. [1973 c 80 § 11.]

49.17.120 Violations—Citations. (1) If upon inspection or investigation the director or his or her authorized representative believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rule adopted by the director, or the conditions of any order granting a variance pursuant to this chapter, the director shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation.

(2) The director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(3) Each citation, or a copy or copies thereof, issued under the authority of this section and RCW 49.17.130 shall be prominently posted, at or near each place a violation referred to in the citation occurred or as may otherwise be prescribed in regulations issued by the director. The director shall provide by rule for procedures to be followed by an employee representative upon written application to receive copies of citations and notices issued to any employer having employees who are represented by such employee representative. Such rule may prescribe the form of such application, the time for renewal of applications, and the eligibility of the applicant to receive copies of citations and notices.

(4) No citation may be issued under this section or RCW 49.17.130 after the expiration of six months following a compliance inspection, investigation, or survey revealing any such violation.

(5)(a) No citation may be issued under this section if there is unpreventable employee misconduct that led to the violation, but the employer must show the existence of:

- (i) A thorough safety program, including work rules, training, and equipment designed to prevent the violation;
- (ii) Adequate communication of these rules to employees;
- (iii) Steps to discover and correct violations of its safety rules; and
- (iv) Effective enforcement of its safety program as written in practice and not just in theory.

(b) This subsection (5) does not eliminate or modify any other defenses that may exist to a citation. [1999 c 93 § 1; 1973 c 80 § 12.]

49.17.130 Violations—Dangerous conditions—Citations and orders of immediate restraint—Restraints—Restraining orders. (1) If upon inspection or investigation, the director, or his authorized representative, believes that an employer has violated a requirement of RCW 49.17.060, or any safety or health standard promulgated by rules of the department, or any conditions of an order granting a variance, which violation is such that a danger exists from which there is a substantial probability that death or serious physical harm could result to any employee, the director or his authorized representative shall issue a citation and may issue an order immediately restraining any such condition, practice, method, process, or means in the work place. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation in order that the resumption of normal operations may be had without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner. In addition, if any machine or equipment, or any part thereof, is in violation of a requirement of RCW 49.17.060 or any safety or health standard promulgated by rules of the department, and the operation of such machine or equipment gives rise to a substantial probability that death or serious physical harm could result to any employee, and an order of immediate restraint of the use of such machine or equipment has been issued under this subsection, the use of such machine or equipment is prohibited, and a notice to that effect shall be attached thereto by the director or his authorized representative.

(2) Whenever the director, or his authorized representative, concludes that a condition of employment described in subsection (1) of this section exists in any work place, he shall promptly inform the affected employees and employers of the danger.

(3) At any time that a citation or a citation and order restraining any condition of employment or practice described in subsection (1) of this section is issued by the director, or his authorized representative, he may in addition request the attorney general to make an application to the superior court of the county wherein such condition of employment or practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1973 c 80 § 13.]

49.17.140 Appeal to board—Citation or notification of assessment of penalty—Final order—Procedure—Redetermination—Hearing. (1) If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation,

shall notify the employer by certified mail of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties, the director shall notify the employer by certified mail of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to fifteen additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any

employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. A notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation. [1994 c 61 § 1; 1986 c 20 § 1; 1973 c 80 § 14.]

49.17.150 Appeal to superior court—Review or enforcement of orders. (1) Any person aggrieved by an order of the board of industrial insurance appeals issued under RCW 49.17.140(3) may obtain a review of such order in the superior court for the county in which the violation is alleged to have occurred, by filing in such court within thirty days following the communication of the board's order or denial of any petition or petitions for review, a written notice of appeal praying that the order be modified or set aside. Such appeal shall be perfected by filing with the clerk of the court and by serving a copy thereof by mail, or personally, on the director and on the board. The board shall thereupon transmit a copy of the notice of appeal to all parties who participated in proceedings before the board, and shall file in the court the complete record of the proceedings. Upon such filing the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings and the record of proceedings a decree affirming, modifying, or setting aside in all or in part, the decision of the board of industrial insurance appeals and enforcing the same to the extent that such order is affirmed or modified. The commencement of appellate proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the board of industrial insurance appeals. No objection that

has not been urged before the board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board or hearing examiner where the board has denied a petition or petitions for review with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact are supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and the judgment and decree shall be final, except as the same shall be subject to review by the supreme court. Appeals filed under this subsection shall be heard expeditiously.

(2) The director may also obtain review or enforcement of any final order of the board by filing a petition for such relief in the superior court for the county in which the alleged violation occurred. The provisions of subsection (1) of this section shall govern such proceeding to the extent applicable. If a notice of appeal, as provided in subsection (1) of this section, is not filed within thirty days after service of the board's order, the board's findings of fact, decision, and order or the examiner's findings of fact, decision, and order when a petition or petitions for review have been denied shall be conclusive in connection with any petition for enforcement which is filed by the director after the expiration of such thirty day period. In any such case, as well as in the case of an unappealed citation or a notification of the assessment of a penalty by the director, which has become a final order under subsection (1) or (2) of RCW 49.17.140 upon application of the director, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the citation and notice of assessment of penalty and shall transmit a copy of such decree to the director and the employer named in the director's petition. In any contempt proceeding brought to enforce a decree of the superior court entered pursuant to this subsection or subsection (1) of this section the superior court may assess the penalties provided in RCW 49.17.180, in addition to invoking any other available remedies. [1982 c 109 § 1; 1973 c 80 § 15.]

49.17.160 Discrimination against employee filing complaint, instituting proceedings, or testifying prohibited—Procedure—Remedy. (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty days after such violation occurs, file a complaint with the director alleging such discrimination. Upon receipt of such complaint, the director shall cause such investigation to be made as he deems appropriate. If upon such investigation, the director determines that the provisions of this section have been violated, he shall bring an action in the superior court of the county wherein the violation is alleged to have occurred against the person or persons who is alleged to have violated the provisions of this section. If the director determines that the provisions of this section have not been violated, the employee may institute the action on his own behalf within thirty days of such determination. In any such action the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

(3) Within ninety days of the receipt of the complaint filed under this section, the director shall notify the complainant of his determination under subsection (2) of this section. [1973 c 80 § 16.]

49.17.170 Injunctions—Temporary restraining orders. (1) In addition to and after having invoked the powers of restraint vested in the director as provided in RCW 49.17.130 the superior courts of the state of Washington shall have jurisdiction upon petition of the director, through the attorney general, to enjoin any condition or practice in any work place from which there is a substantial probability that death or serious physical harm could result to any employee immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such danger and prohibit the employment or presence of any individual in locations or under conditions where such danger exists, except individuals whose presence is necessary to avoid, correct, or remove such danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(2) Upon the filing of any such petition the superior courts of the state of Washington shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of enforcement proceedings pursuant to this chapter, except that no temporary restraining order issued without notice shall be effective for a period longer than five working days.

(3) Whenever and as soon as any authorized representative of the director concludes that a condition or practice described in subsection (1) exists in any work place, he shall inform the affected employees and employers of the danger and may recommend to the director that relief be sought under this section.

(4) If the director arbitrarily or capriciously fails to invoke his restraining authority under RCW 49.17.130 or fails to seek relief under this section, any employee who may

be injured by reason of such failure, or the representative of such employees, may bring an action against the director in the superior court for the county in which the danger is alleged to exist for a writ of mandamus to compel the director to seek such an order and for such further relief as may be appropriate or seek the director to exercise his restraining authority under RCW 49.17.130. [1973 c 80 § 17.]

49.17.180 Violations—Civil penalties. (1) Except as provided in RCW 43.05.090, any employer who willfully or repeatedly violates the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 may be assessed a civil penalty not to exceed seventy thousand dollars for each violation. A minimum penalty of five thousand dollars shall be assessed for a willful violation.

(2) Any employer who has received a citation for a serious violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under the authority of this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090 as determined in accordance with subsection (6) of this section, shall be assessed a civil penalty not to exceed seven thousand dollars for each such violation.

(3) Any employer who has received a citation for a violation of the requirements of RCW 49.17.060, of any safety or health standard promulgated under this chapter, of any existing rule or regulation governing the conditions of employment promulgated by the department, or of any order issued granting a variance under RCW 49.17.080 or 49.17.090, where such violation is specifically determined not to be of a serious nature as provided in subsection (6) of this section, may be assessed a civil penalty not to exceed seven thousand dollars for each such violation, unless such violation is determined to be de minimis.

(4) Any employer who fails to correct a violation for which a citation has been issued under RCW 49.17.120 or 49.17.130 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board of industrial insurance appeals in the case of any review proceedings under this chapter initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than seven thousand dollars for each day during which such failure or violation continues.

(5) Any employer who violates any of the posting requirements of this chapter, or any of the posting requirements of rules promulgated by the department pursuant to this chapter related to employee or employee representative's rights to notice, including but not limited to those employee rights to notice set forth in RCW 49.17.080, 49.17.090, 49.17.120, 49.17.130, 49.17.220(1) and 49.17.240(2), shall be assessed a penalty not to exceed seven thousand dollars for each such violation. Any employer who violates any of the posting requirements for the posting of informational, educational, or training materials under the authority of RCW

49.17.050(7), may be assessed a penalty not to exceed seven thousand dollars for each such violation.

(6) For the purposes of this section, a serious violation shall be deemed to exist in a work place if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such work place, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(7) The director, or his authorized representatives, shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the number of affected employees of the employer being charged, the gravity of the violation, the size of the employer's business, the good faith of the employer, and the history of previous violations.

(8) Civil penalties imposed under this chapter shall be paid to the director for deposit in the supplemental pension fund established by RCW 51.44.033. Civil penalties may be recovered in a civil action in the name of the department brought in the superior court of the county where the violation is alleged to have occurred, or the department may utilize the procedures for collection of civil penalties as set forth in RCW 51.48.120 through 51.48.150. [1995 c 403 § 629; 1991 c 108 § 1; 1986 c 20 § 2; 1973 c 80 § 18.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

49.17.190 Violations—Criminal penalties. (1) Any person who gives advance notice of any inspection to be conducted under the authority of this chapter, without the consent of the director or his authorized representative, shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or by both.

(2) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both.

(3) Any employer who willfully and knowingly violates the requirements of RCW 49.17.060, any safety or health standard promulgated under this chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one hundred thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than two hundred thousand dollars or by imprisonment for not more than one year, or by both.

(4) Any employer who has been issued an order immediately restraining a condition, practice, method, process, or

means in the work place, pursuant to RCW 49.17.130 or 49.17.170, and who nevertheless continues such condition, practice, method, process, or means, or who continues to use a machine or equipment or part thereof to which a notice prohibiting such use has been attached, shall be guilty of a gross misdemeanor, and upon conviction shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than six months, or by both.

(5) Any employer who shall knowingly remove, displace, damage, or destroy, or cause to be removed, displaced, damaged, or destroyed any safety device or safeguard required to be present and maintained by any safety or health standard, rule, or order promulgated pursuant to this chapter, or pursuant to the authority vested in the director under RCW 43.22.050 shall, upon conviction, be guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or by both.

(6) Whenever the director has reasonable cause to believe that any provision of this section defining a crime has been violated by an employer, the director shall cause a record of such alleged violation to be prepared, a copy of which shall be referred to the prosecuting attorney of the county wherein such alleged violation occurred, and the prosecuting attorney of such county shall in writing advise the director of the disposition he shall make of the alleged violation. [1986 c 20 § 3; 1973 c 80 § 19.]

49.17.200 Confidentiality—Trade secrets. All information reported to or otherwise obtained by the director, or his authorized representative, in connection with any inspection or proceeding under the authority of this chapter, which contains or which might reveal a trade secret shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the director, the board of industrial insurance appeals, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. [1973 c 80 § 20.]

Uniform trade secrets act: Chapter 19.108 RCW.

49.17.210 Research, experiments, and demonstrations for safety purposes—Confidentiality of information—Variance. The director is authorized to conduct, either directly or by grant or contract, research, experiments, and demonstrations as may be of aid and assistance in the furtherance of the objects and purposes of this chapter. Employer identity, employee identity, and personal identifiers of voluntary participants in research, experiments, and demonstrations shall be deemed confidential and shall not be open to public inspection. Information obtained from such voluntary activities shall not be deemed to be medical information for the purpose of RCW 51.36.060 and shall be deemed confidential and shall not be open to public inspection. The director, in his or her discretion, is authorized to grant a variance from any rule or regulation or portion thereof, whenever he or she determines that such variance is necessary to permit an employer to participate in an experiment approved by the director, and the experiment is

designed to demonstrate or validate new and improved techniques to safeguard the health or safety of employees. Any such variance shall require that all due regard be given to the health and safety of all employees participating in any experiment. [1991 c 89 § 1; 1973 c 80 § 21.]

49.17.220 Records—Reports—Notice to employee exposed to harmful materials. (1) Each employer shall make, keep, and preserve, and make available to the director such records regarding his activities relating to this chapter as the director may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include provisions requiring employers to conduct periodic inspections. The director shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable safety and health standards.

(2) The director shall prescribe regulations requiring employers to maintain accurate records, and to make periodic reports of work-related deaths, and of injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The director shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any applicable safety and health standard promulgated under this chapter and shall inform any employee who is being thus exposed of the corrective action being taken. [1973 c 80 § 22.]

49.17.230 Compliance with federal act—Agreements and acceptance of grants authorized. The director is authorized to adopt by rule any provision reasonably necessary to enable this state to qualify a state plan under section 18 of the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590) to enable this state to assume the responsibility for the development and enforcement of occupational safety and health standards in all work places within this state subject to the legislative jurisdiction of the state of Washington. The director is authorized to enter into agreement with the United States and to accept on behalf of the state of Washington grants of funds to implement the development and enforcement of this chapter and the Occupational Safety and Health Act of 1970. [1973 c 80 § 23.]

49.17.240 Safety and health standards. (1) The director in the promulgation of rules under the authority of this chapter shall establish safety and health standards for conditions of employment of general and/or specific applicability for all industries, businesses, occupations, crafts, trades, and employments subject to the provisions of this chapter, or those that are a national or accepted federal standard. In adopting safety and health standards for conditions of employment, the director shall solicit and give due regard to all recommendations by any employer, employee, or labor representative of employees.

(2) Any safety and health standard adopted by rule of the director shall, where appropriate, prescribe the use of labels or other forms of warning to insure that employees are apprised of all hazards to which they may be exposed, relevant symptoms, and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rules shall so prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be reasonably necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event that such medical examinations are in the nature of research, as determined by the director, such examinations may be furnished at the expense of the department. The results of such examinations or tests shall be furnished only to the director, other appropriate agencies of government, and at the request of the employee to his physician.

(3) Whenever the director adopts by rule any safety and health standard he may at the same time provide by rule the effective date of such standard which shall not be less than thirty days, excepting emergency rules, but may be made effective at such time in excess of thirty days from the date of adoption as specified in any rule adopting a safety and health standard. Any rule not made effective thirty days after adoption, having a delayed effectiveness in excess of thirty days, may only be made upon a finding made by the director that such delayed effectiveness of the rule is reasonably necessary to afford the affected employers a reasonable opportunity to make changes in methods, means, or practices to meet the requirements of the adopted rule. Temporary orders granting a variance may be utilized by the director in lieu of the delayed effectiveness in the adoption of any rule. [1973 c 80 § 24.]

49.17.250 Voluntary compliance program—Consultation and advisory services. (1) In carrying out the responsibilities for the development of a voluntary compliance program under the authority of RCW 49.17.050(8) and the rendering of advisory and consultative services to employers, the director may grant an employer's application for advice and consultation, and for the purpose of affording such consultation and advice visit the employer's work place. Such consultation and advice shall be limited to the matters specified in

the request affecting the interpretation and applicability of safety and health standards to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the employer's work place. The director in granting any requests for consultative or advisory service may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The director, or an authorized representative, will make recommendations regarding the elimination of any hazards disclosed within the scope of the on-site consultation. No visit to an employer's work place shall be regarded as an inspection or investigation under the authority of this chapter, and no notices or citations shall be issued, nor, shall any civil penalties be assessed upon such visit, nor shall any authorized representative of the director designated to render advice and consult with employers under the voluntary compliance program have any enforcement authority: PROVIDED, That in the event an on-site visit discloses a serious violation of a health and safety standard as defined in RCW 49.17.180(6), and the hazard of such violation is either not abated by the cooperative action of the employer, or, is not subject to being satisfactorily abated by the cooperative action of the employer, the director shall either invoke the administrative restraining authority provided in RCW 49.17.130 or seek the issuance of injunctive process under the authority of RCW 49.17.170 or invoke both such remedies.

(3) Nothing in this section shall be construed as providing immunity to any employer who has made application for consultative services during the pendency of the granting of such application from inspections or investigations conducted under RCW 49.17.070 or any inspection conducted as a result of a complaint, nor immunity from inspections under RCW 49.17.070 or inspections resulting from a complaint subsequent to the conclusion of the consultative period. This section shall not be construed as requiring an inspection under RCW 49.17.070 of any work place which has been visited for consultative purposes. However, in the event of a subsequent inspection, the director, or an authorized representative, may in his or her discretion take into consideration any information obtained during the consultation visit of that work place in determining the nature of an alleged violation and the amount of penalties to be assessed, if any. Such rules and regulations to be promulgated pursuant to this section shall provide that in all instances of serious violations as defined in RCW 49.17.180(6) which are disclosed in any consultative period, shall be corrected within a specified period of time at the expiration of which an inspection will be conducted under the authority of RCW 49.17.070. All employers requesting consultative services shall be advised of the provisions of this section and the rules adopted by the director relating to the voluntary compliance program. Information obtained by the department as a result of employer-requested consultation and training services shall be deemed confidential and shall not be open to public inspection. Within thirty days of receipt, the employer shall make voluntary services reports available to employees or their collective bargaining representatives for review. Employers may satisfy the availability requirement by requesting a copy of the reports from the department. The director may provide by rule for the frequency, manner, and method of the rendering

of consultative services to employers, and for the scheduling and priorities in granting applications consistent with the availability of personnel, and in such a manner as not to jeopardize the enforcement requirements of this chapter. [1991 c 89 § 2; 1973 c 80 § 25.]

49.17.260 Statistics—Investigations—Reports. In furtherance of the objects and purposes of this chapter, the director shall develop and maintain an effective program of collection, compilation, and analysis of industrial safety and health statistics. The director, or his authorized representative, shall investigate and analyze industrial catastrophes, serious injuries, and fatalities occurring in any work place subject to this chapter, in an effort to ascertain whether such injury or fatality occurred as the result of a violation of this chapter, or any safety and health standard, rule, or order promulgated pursuant to this chapter, or if not, whether a safety and health standard or rule should be promulgated for application to such circumstances. The director shall adopt rules relating to the conducting and reporting of such investigations. Such investigative report shall be deemed confidential and only available upon order of the superior court after notice to the director and an opportunity for hearing: PROVIDED, That such investigative reports shall be made available without the necessity of obtaining a court order, to employees of governmental agencies in the performance of their official duties, to the injured workman or his legal representative or his labor organization representative, or to the legal representative or labor organization representative of a deceased workman who was the subject of an investigation, or to the employer of the injured or deceased workman or any other employer or person whose actions or business operation is the subject of the report of investigation, or any attorney representing a party in any pending legal action in which an investigative report constitutes relevant and material evidence in such legal action. [1973 c 80 § 26.]

49.17.270 Administration of chapter. The department shall be the sole and paramount administrative agency responsible for the administration of the provisions of this chapter, and any other agency of the state or any municipal corporation or political subdivision of the state having administrative authority over the inspection, survey, investigation, or any regulatory or enforcement authority of safety and health standards related to the health and safety of employees in any work place subject to this chapter, shall be required, notwithstanding any statute to the contrary, to exercise such authority as provided in this chapter and subject to interagency agreement or agreements with the department made under the authority of the interlocal cooperation act (chapter 39.34 RCW) relative to the procedures to be followed in the enforcement of this chapter: PROVIDED, That in relation to employers using or possessing sources of ionizing radiation the department of labor and industries and the department of social and health services shall agree upon mutual policies, rules, and regulations compatible with policies, rules, and regulations adopted pursuant to chapter 70.98 RCW insofar as such policies, rules, and regulations are not inconsistent with the provisions of this chapter. [1973 c 80 § 27.]

49.17.280 Agricultural workers and handlers of agricultural pesticides—Coordination of regulation and enforcement with department of agriculture. (1) As used in this section, "federal worker protection standard" or "federal standard" means the worker protection standard for agricultural workers and handlers of agricultural pesticides adopted by the United States environmental protection agency in 40 C.F.R., part 170 as it exists on June 6, 1996.

(2)(a) No rule adopted under this chapter may impose requirements that make compliance with the federal worker protection standard impossible.

(b) The department shall adopt by rule safety and health standards that are at least as effective as the federal standard. Standards adopted by the department under this section shall be adopted in coordination with the department of agriculture.

(3) If a violation of the federal worker protection standard, or of state rules regulating activities governed by the federal standard, is investigated by the department and by the department of agriculture, the agencies shall conduct a joint investigation if feasible, and shall share relevant information. However, an investigation conducted by the department under Title 51 RCW solely with regard to industrial insurance shall not be considered to be an investigation by the department for this purpose. The agencies shall not issue duplicate citations to an individual or business for the same violation of the federal standard or state rules regulating activities governed by the federal standard. By December 1, 1996, the department and the department of agriculture shall jointly establish a formal agreement that: Identifies the roles of each of the two agencies in conducting investigations of activities governed by the federal standard; and provides for protection of workers and enforcement of standards that is at least as effective as provided to all workers under this chapter. The department's role under the agreement shall not extend beyond protection of safety and health in the workplace as provided under this chapter. [1996 c 260 § 2.]

Finding—Intent—1996 c 260: "The legislature finds that the state's highly productive and efficient agriculture sector is composed predominately of family owned and managed farms and an industrious and efficient workforce. It is the intent of the legislature that the department of agriculture and the department of labor and industries coordinate adoption, implementation, and enforcement of a common set of worker protection standards related to pesticides in order to avoid inconsistency and conflict in the application of those rules. It is also the intent of the legislature that the department of agriculture and the department of labor and industries coordinate investigations with the department of health as well. Further, coordination of enforcement procedures under chapter 260, Laws of 1996 shall not reduce the effectiveness of the enforcement provisions of the Washington industrial safety and health act of 1973 or the Washington pesticide application act. Finally, when the department of agriculture or the department of labor and industries anticipates regulatory changes to standards regarding pesticide application and handling, they shall involve the affected parties in the rule-making process and solicit relevant information. The department of agriculture and the department of labor and industries shall identify differences in their respective jurisdictions and penalty structures and publish those differences." [1996 c 260 § 1.]

Severability—1996 c 260: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 260 § 6.]

Department of agriculture authority: RCW 17.21.440.

49.17.285 Medical monitoring—Records on covered pesticides—Reports. Employers whose employees receive

medical monitoring under chapter 296-307 WAC, Part J-1, shall submit records to the department of labor and industries each month indicating the name of each worker tested, the number of hours that each worker handled covered pesticides during the thirty days prior to testing, and the number of hours that each worker handled covered pesticides during the current calendar year. The department of labor and industries shall work with the department of health to correlate this data with each employee's test results. No later than January 1, 2005, the department of labor and industries shall require employers to report this data to the physician or other licensed health care professional and department of health public health laboratory or other approved laboratory when each employee's cholinesterase test is taken. The department shall also require employers to provide each employee who receives medical monitoring with: (1) A copy of the data that the employer reports for that employee upon that employee's request; and (2) access to the records on which the employer's report is based. [2004 c 272 § 1.]

Effective date—2004 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]." [2004 c 272 § 4.]

49.17.288 Cholinesterase monitoring—Reports. By January 1, 2005, January 1, 2006, and January 1, 2007, the department of labor and industries shall report the results of its data collection, correlation, and analysis related to cholinesterase monitoring to the house of representatives committees on agriculture and natural resources and commerce and labor, or their successor committees, and the senate committees on agriculture and commerce and trade, or their successor committees. These reports shall also identify any technical issues regarding the testing of cholinesterase levels or the administration of cholinesterase monitoring. [2004 c 272 § 2.]

Effective date—2004 c 272: See note following RCW 49.17.285.

49.17.300 Temporary worker housing—Electricity—Storage, handling, preparation of food—Rules. By December 1, 1998, the department of labor and industries shall adopt rules requiring electricity in all temporary worker housing and establishing minimum requirements to ensure the safe storage, handling, and preparation of food in these camps, regardless of whether individual or common cooking facilities are in use. [1998 c 37 § 3.]

49.17.310 Temporary worker housing—Licensing, operation, and inspection—Rules—Definition. The department and the department of health shall adopt joint rules for the licensing, operation, and inspection of temporary worker housing, and the enforcement thereof. For the purposes of this section "temporary worker housing" has the same meaning as given in RCW 70.114A.020. [1999 c 374 § 2.]

49.17.320 Temporary worker housing operation standards—Departments' agreement—Enforcement—Definition. By December 1, 1999, the department and the department of health shall jointly establish a formal agreement that identifies the roles of each of the two agencies with

respect to the enforcement of temporary worker housing operation standards.

The agreement shall, to the extent feasible, provide for inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation.

For the purposes of this section, "temporary worker housing" has the same meaning as provided in RCW 70.114A.020. [1999 c 374 § 4.]

49.17.350 Flaggers. (1) The director of the department of labor and industries shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers.

(2) The transportation commission shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards governing flaggers.

(3) The utilities and transportation commission shall adopt permanent rules that take effect no later than March 1, 2001, revising any safety standards and employment qualifications governing flaggers.

(4) The permanent rules adopted pursuant to this section shall be designed to improve options available to ensure the safety of flaggers, ensure that flaggers have adequate visual warning of objects approaching from behind them, and, with respect to the utilities and transportation commission rules, update employment qualifications for flaggers.

(5) In developing permanent rules adopted pursuant to this section, state agencies and commissions shall consult with other persons with an interest in improving safety standards and updating employment qualifications for flaggers. State agencies and commissions shall coordinate and make consistent, to the extent possible, permanent rules. State agencies and commissions shall report, by April 22, 2001, to the senate labor and workforce development committee and the house of representatives commerce and labor committee on the permanent rules adopted pursuant to this section. [2000 c 239 § 2.]

Emergency rules: "(1) The director of the department of labor and industries shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(2) The transportation commission shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(3) The utilities and transportation commission shall adopt emergency rules that take effect no later than June 1, 2000, revising any safety standards governing flaggers.

(4) Notwithstanding RCW 34.05.350, the emergency rules adopted pursuant to this section shall remain in effect or be adopted in sequence until March 1, 2001, or the effective date of the permanent rules adopted pursuant to RCW 49.17.350, whichever is earlier.

(5) The emergency rules adopted pursuant to this section shall be designed to improve options available to ensure the safety of flaggers, and ensure that flaggers have adequate visual warning of objects approaching from behind them.

(6) In developing emergency rules adopted pursuant to this section, state agencies and commissions shall consult with other persons with an interest in improving safety standards for flaggers. State agencies and commissions shall report, by September 15, 2000, to the senate labor and workforce development committee and the house of representatives commerce and labor committee on the emergency rules adopted pursuant to this section." [2000 c 239 § 1.]

Effective date—2000 c 239 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 31, 2000]." [2000 c 239 § 9.]

Short title—2000 c 239 §§ 1 and 2: "Sections 1 and 2 of this act may be known and cited as the "Kim Vendl Worker Safety Act."" [2000 c 239 § 10.]

Captions not law—2000 c 239: "Captions used in this act are not any part of the law." [2000 c 239 § 11.]

49.17.360 Ergonomics Initiative—Intent. Washington must aid businesses in creating new jobs. Governor Locke's competitiveness council has identified repealing the state ergonomics regulations as a top priority for improving the business climate and creating jobs in Washington state. A broad coalition of democrats and republicans have introduced bills repeatedly to bring legislative oversight to this issue. This measure will repeal an expensive, unproven rule. This measure will aid in creating jobs and employing the people of Washington. [2004 c 1 § 1 (Initiative Measure No. 841, approved November 4, 2003).]

Construction—Severability—2004 c 1 (Initiative Measure No. 841): See notes following RCW 49.17.370.

49.17.370 Ergonomics Initiative—Definition—Rule repeal. For the purposes of this section, "state ergonomics regulations" are defined as the rules addressing musculoskeletal disorders, adopted on May 26, 2000, by the director of the department of labor and industries, and codified as WAC 296-62-05101 through 296-62-05176. The state ergonomics regulations, filed on May 26, 2000, by the director and codified as WAC 296-62-05101 through 296-62-05176 are repealed. The director shall not have the authority to adopt any new or amended rules dealing with musculoskeletal disorders, or that deal with the same or similar activities as these rules being repealed, until and to the extent required by congress or the federal occupational safety and health administration. [2004 c 1 § 2 (Initiative Measure No. 841, approved November 4, 2003).]

Construction—2004 c 1 (Initiative Measure No. 841): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2004 c 1 § 3 (Initiative Measure No. 841, approved November 4, 2003).]

Severability—2004 c 1 (Initiative Measure No. 841): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 1 § 4 (Initiative Measure No. 841, approved November 4, 2003).]

49.17.400 Construction crane safety—Definitions. (Effective January 1, 2010.) The definitions in this section apply throughout RCW 49.17.400 through 49.17.430 unless the context clearly requires otherwise.

(1) "Apprentice operator or trainee" means a crane operator who has not met requirements established by the department under RCW 49.17.430.

(2) "Attachments" includes, but is not limited to, crane-attached or suspended hooks, magnets, grapples, clamshell buckets, orange peel buckets, concrete buckets, drag lines, personnel platforms, augers, or drills and pile-driving equipment.

(3) "Certified crane inspector" means a crane inspector who has been certified by the department.

(4) "Construction" means all or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling of buildings and other structures and all related

operations; the excavation, construction, alteration, and repair of sewers, trenches, caissons, conduits, pipelines, roads, and all related operations; the moving of buildings and other structures, and the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments, or any other related construction, alteration, repair, or removal work. "Construction" does not include manufacturing facilities or powerhouses.

(5) "Crane" means power-operated equipment used in construction that can hoist, lower, and horizontally move a suspended load. "Crane" includes, but is not limited to: Articulating cranes, such as knuckle-boom cranes; crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes, such as wheel-mounted, rough-terrain, all-terrain, commercial truck mounted, and boom truck cranes; multipurpose machines when configured to hoist and lower by means of a winch or hook and horizontally move a suspended load; industrial cranes, such as carry-deck cranes; dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes, such as fixed jib, hammerhead boom, luffing boom, and self-erecting; pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

(6) "Crane operator" means an individual engaged in the operation of a crane.

(7) "Professional engineer" means a professional engineer as defined in RCW 18.43.020.

(8) "Qualified crane operator" means a crane operator who meets the requirements established by the department under RCW 49.17.430.

(9) "Safety or health standard" means a standard adopted under this chapter. [2007 c 27 § 2.]

Intent—2007 c 27: "The legislature intends to promote the safe condition and operation of cranes used in construction work by establishing certification requirements for construction cranes and qualifications for construction crane operators. The legislature intends that standards for safety of construction cranes and for certification of personnel operating cranes in construction work be established." [2007 c 27 § 1.]

Effective date—2007 c 27: "This act takes effect January 1, 2010." [2007 c 27 § 7.]

49.17.410 Construction crane safety—Application. (Effective January 1, 2010.) (1) RCW 49.17.400 through 49.17.430 apply to cranes used with or without attachments.

(2) RCW 49.17.400 through 49.17.430 do not apply to:

(a) A crane while it has been converted or adapted for a nonhoisting or nonlifting use including, but not limited to, power shovels, excavators, and concrete pumps;

(b) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, and track loaders when used with or without chains, slings, or other rigging to lift suspended loads;

(c) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles;

(d) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks), when used in the power line and electric service industries for auguring holes to set power and utility poles, or handling associated materials to be installed or removed from utility poles;

- (e) Equipment originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms;
- (f) Hydraulic jacking systems, including telescopic/hydraulic gantries;
- (g) Stacker cranes;
- (h) Powered industrial trucks (forklifts);
- (i) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair;
- (j) Equipment that hoists by using a come-along or chainfall;
- (k) Dedicated drilling rigs;
- (l) Gin poles used for the erection of communication towers;
- (m) Tree trimming and tree removal work;
- (n) Anchor handling with a vessel or barge using an affixed A-frame;
- (o) Roustabouts;
- (p) Cranes used on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work; and
- (q) Crane operators operating cranes on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work. [2007 c 27 § 3.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

49.17.420 Construction crane certification program—Rules—Certificate of operation. (Effective January 1, 2010.) (1) The department shall establish, by rule, a crane certification program for cranes used in construction. In establishing rules, the department shall consult nationally recognized crane standards.

(2) The crane certification program must include, at a minimum, the following:

(a) The department shall establish certification requirements for crane inspectors, including an experience requirement, an education requirement, a training requirement, and other necessary requirements determined by the director;

(b) The department shall establish a process for certified crane inspectors to issue temporary certificates of operation for a crane and the department to issue a final certificate of operation for a crane after a certified crane inspector determines that the crane meets safety or health standards, including meeting or exceeding national periodic inspection requirements recognized by the department;

(c) Crane owners must ensure that cranes are inspected and load proof tested by a certified crane inspector at least annually and after any significant modification or significant repairs of structural parts. If the use of weights for a unit proof load test is not possible or reasonable, other recording test equipment may be used. In adopting rules implementing this requirement, the department may consider similar standards and practices used by the federal government;

(d) Tower cranes and tower crane assembly parts must be inspected by a certified crane inspector both prior to assembly and following erection of a tower crane;

(e) Before installation of a nonstandard tower crane base, the engineering design of the nonstandard base shall be reviewed and acknowledged as acceptable by an independent professional engineer;

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(f) A certified crane inspector must notify the department and the crane owner if, after inspection, the certified crane inspector finds that the crane does not meet safety or health standards. A certified crane inspector shall not attest that a crane meets safety or health standards until any deficiencies are corrected and the correction is verified by the certified crane inspector; and

(g) Inspection reports including all information and documentation obtained from a crane inspection shall be made available or provided to the department by a certified crane inspector upon request.

(3) Except as provided in RCW 49.17.410(2), any crane operated in the state must have a valid temporary or final certificate of operation issued by the certified crane inspector or department posted in the operator's cab or station.

(4) Certificates of operation issued by the department under the crane certification program established in this section are valid for one year from the effective date of the temporary operating certificate issued by the certified crane inspector.

(5) This section does not apply to maritime cranes regulated by the department. [2007 c 27 § 4.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

49.17.430 Qualified construction crane operators—Rules—Apprentice operators or trainees—Reciprocity. (Effective January 1, 2010.) (1) Except for training purposes as provided in subsection (3) of this section, an employer or contractor shall not permit a crane operator to operate a crane unless the crane operator is a qualified crane operator.

(2) The department shall establish, by rule, requirements that must be met to be considered a qualified crane operator. In establishing rules, the department shall consult nationally recognized crane standards for crane operator certification. The rules must include, at a minimum, the following:

(a) The crane operator must have a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency which administers written and practical examinations, has procedures for recertification that enable the crane operator to recertify at least every five years, and is recognized by the department;

(b) The crane operator must have up to two thousand hours of documented crane operator experience, which meets experience levels established by the department for crane types and capacities by rule; and

(c) The crane operator must pass a substance abuse test conducted by a recognized laboratory service.

(3) An apprentice operator or trainee may operate a crane when:

(a) The apprentice operator or trainee has been provided with training prior to operating the crane that enables the apprentice operator or trainee to operate the crane safely;

(b) The apprentice operator or trainee performs operating tasks that are within his or her ability, as determined by the supervising qualified crane operator; and

(c) The apprentice operator or trainee is under the direct and continuous supervision of a qualified crane operator who meets the following requirements:

(i) The qualified crane operator is an employee or agent of the employer of the apprentice operator or trainee;

(ii) The qualified crane operator is familiar with the proper use of the crane's controls;

(iii) While supervising the apprentice operator or trainee, the qualified crane operator performs no tasks that detract from the qualified crane operator's ability to supervise the apprentice operator or trainee;

(iv) For equipment other than tower cranes, the qualified crane operator and the apprentice operator or trainee must be in direct line of sight of each other and shall communicate verbally or by hand signals; and

(v) For tower cranes, the qualified crane operator and the apprentice operator or trainee must be in direct communication with each other.

(4) The department may recognize crane operator certification from another state or territory of the United States as equivalent to qualified crane operator requirements if the department determines that the other jurisdiction's credentialing standards are substantially similar to the qualified crane operator requirements. [2007 c 27 § 5.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

49.17.440 Construction crane safety—Rules—Implementation. (*Effective January 1, 2010.*) The department of labor and industries shall adopt rules necessary to implement RCW 49.17.400 through 49.17.430. [2007 c 27 § 6.]

Intent—Effective date—2007 c 27: See notes following RCW 49.17.400.

49.17.900 Short title. This act shall be known and cited as the Washington Industrial Safety and Health Act of 1973. [1973 c 80 § 29.]

49.17.910 Severability—1973 c 80. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 80 § 30.]

Chapter 49.19 RCW

SAFETY—HEALTH CARE SETTINGS

Sections

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49.19.005 Findings—1999 c 377. The legislature finds that:

(1) Violence is an escalating problem in many health care settings in this state and across the nation;

(2) Based on an analysis of workers' compensation claims, the department of labor and industries reports that health care employees face the highest rate of workplace violence in Washington state;

(3) The actual incidence of workplace violence in health care settings is likely to be greater than documented because of failure to report or failure to maintain records of incidents that are reported;

(4) Patients, visitors, and health care employees should be assured a reasonably safe and secure environment in health care settings; and

(5) Many health care settings have undertaken efforts to assure that patients, visitors, and employees are safe from violence, but additional personnel training and appropriate safeguards may be needed to prevent workplace violence and minimize the risk and dangers affecting people in health care settings. [1999 c 377 § 1.]

49.19.010 Definitions. For purposes of this chapter:

(1) "Health care setting" means:

(a) Hospitals as defined in RCW 70.41.020;

(b) Home health, hospice, and home care agencies under chapter 70.127 RCW, subject to RCW 49.19.070;

(c) Evaluation and treatment facilities as defined in RCW 71.05.020; and

(d) Community mental health programs as defined in RCW 71.24.025.

(2) "Department" means the department of labor and industries.

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Violence" or "violent act" means any physical assault or verbal threat of physical assault against an employee of a health care setting. [2007 c 414 § 3; 2007 c 375 § 10; 2000 c 94 § 18; 1999 c 377 § 2.]

Reviser's note: This section was amended by 2007 c 375 § 10 and by 2007 c 414 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Construction—Severability—2007 c 375: See notes following RCW 10.31.110.

49.19.020 Workplace violence plan—Security and safety assessment. (1) By July 1, 2000, each health care setting shall develop and implement a plan to reasonably prevent and protect employees from violence at the setting. The plan shall address security considerations related to the following items, as appropriate to the particular setting, based upon the hazards identified in the assessment required under subsection (2) of this section:

(a) The physical attributes of the health care setting;

(b) Staffing, including security staffing;

(c) Personnel policies;

(d) First aid and emergency procedures;

(e) The reporting of violent acts; and

(f) Employee education and training.

(2) Before the development of the plan required under subsection (1) of this section, each health care setting shall conduct a security and safety assessment to identify existing or potential hazards for violence and determine the appropriate preventive action to be taken. The assessment shall include, but is not limited to, a measure of the frequency of, and an identification of the causes for and consequences of, violent acts at the setting during at least the preceding five

years or for the years records are available for assessments involving home health, hospice, and home care agencies.

(3) In developing the plan required by subsection (1) of this section, the health care setting may consider any guidelines on violence in the workplace or in health care settings issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and health care setting accrediting organizations. [1999 c 377 § 3.]

49.19.030 Violence prevention training. By July 1, 2001, and on a regular basis thereafter, as set forth in the plan developed under RCW 49.19.020, each health care setting shall provide violence prevention training to all its affected employees as determined by the plan. The training shall occur within ninety days of the employee's initial hiring date unless he or she is a temporary employee. For temporary employees, training would take into account unique circumstances. The training may vary by the plan and may include, but is not limited to, classes, videotapes, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan. The training shall address the following topics, as appropriate to the particular setting and to the duties and responsibilities of the particular employee being trained, based upon the hazards identified in the assessment required under RCW 49.19.020:

- (1) General safety procedures;
- (2) Personal safety procedures;
- (3) The violence escalation cycle;
- (4) Violence-predicting factors;
- (5) Obtaining patient history from a patient with violent behavior;
- (6) Verbal and physical techniques to de-escalate and minimize violent behavior;
- (7) Strategies to avoid physical harm;
- (8) Restraining techniques;
- (9) Appropriate use of medications as chemical restraints;
- (10) Documenting and reporting incidents;
- (11) The process whereby employees affected by a violent act may debrief;
- (12) Any resources available to employees for coping with violence; and
- (13) The health care setting's workplace violence prevention plan. [1999 c 377 § 4.]

49.19.040 Violent acts—Records. Beginning no later than July 1, 2000, each health care setting shall keep a record of any violent act against an employee, a patient, or a visitor occurring at the setting. At a minimum, the record shall include:

- (1) The health care setting's name and address;
- (2) The date, time, and specific location at the health care setting where the act occurred;
- (3) The name, job title, department or ward assignment, and staff identification or social security number of the victim if an employee;
- (4) A description of the person against whom the act was committed as:

- (a) A patient;
- (b) A visitor;
- (c) An employee; or
- (d) Other;
- (5) A description of the person committing the act as:
 - (a) A patient;
 - (b) A visitor;
 - (c) An employee; or
 - (d) Other;
 - (6) A description of the type of violent act as a:
 - (a) Threat of assault with no physical contact;
 - (b) Physical assault with contact but no physical injury;
 - (c) Physical assault with mild soreness, surface abrasions, scratches, or small bruises;
 - (d) Physical assault with major soreness, cuts, or large bruises;
 - (e) Physical assault with severe lacerations, a bone fracture, or a head injury; or
 - (f) Physical assault with loss of limb or death;
 - (7) An identification of any body part injured;
 - (8) A description of any weapon used;
 - (9) The number of employees in the vicinity of the act when it occurred; and
 - (10) A description of actions taken by employees and the health care setting in response to the act. Each record shall be kept for at least five years following the act reported, during which time it shall be available for inspection by the department upon request. [1999 c 377 § 5.]

49.19.050 Noncompliance—Penalties. Failure of a health care setting to comply with this chapter shall subject the setting to citation under chapter 49.17 RCW. [1999 c 377 § 6.]

49.19.060 Health care setting—Assistance. A health care setting needing assistance to comply with this chapter may contact the federal department of labor or the state department of labor and industries for assistance. The state departments of labor and industries, social and health services, and health shall collaborate with representatives of health care settings to develop technical assistance and training seminars on plan development and implementation, and shall coordinate their assistance to health care settings. [1999 c 377 § 7.]

49.19.070 Intent—Finding—Enforcement. It is the intent of the legislature that any violence protection and prevention plan developed under this chapter be appropriate to the setting in which it is to be implemented. To that end, the legislature recognizes that not all professional health care is provided in a facility or other formal setting, such as a hospital. Many services are provided by home health, hospice, and home care agencies. The legislature finds that it is inappropriate and impractical for these agencies to address workplace violence in the same manner as other, facility-based, health care settings. When enforcing this chapter as to home health, hospice, and home care agencies, the department shall allow agencies sufficient flexibility in recognition of the unique circumstances in which these agencies deliver services. [1999 c 377 § 8.]

Chapter 49.22 RCW

SAFETY—CRIME PREVENTION

Sections

49.22.010	Definitions.
49.22.020	Late night retail establishments—Duties.
49.22.030	Enforcement.
49.22.900	Effective date—Implementation—1989 c 357.

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

(1) "Department" means the department of labor and industries.

(2) "Late night retail establishment" means any business or commercial establishment making sales to the public between the hours of eleven o'clock p.m. and six o'clock a.m., except restaurants, hotels, taverns, or any lodging facility.

(3) "Employer" means the operator, lessee, or franchisee of a late night retail establishment. [1989 c 357 § 1.]

49.22.020 Late night retail establishments—Duties. In addition to providing crime prevention training as provided in *section 2 of this act, all employers operating late night retail establishments shall:

(1) Post a conspicuous sign in the window or door which states that there is a safe on the premises and it is not accessible to the employees on the premises and that the cash register contains only the minimal amount of cash needed to conduct business: PROVIDED, That an employer shall not be subject to penalties under RCW 49.22.030 for having moneys in the cash register in excess of the minimal amount needed to conduct business;

(2) So arrange all material posted in the window or door so as to provide a clear and unobstructed view of the cash register, provided the cash register is otherwise in a position visible from the street;

(3) Have a drop-safe, limited access safe, or comparable device on the premises; and

(4) Operate the outside lights for that portion of the parking area that is necessary to accommodate customers during all night hours the late night retail establishment is open, if the late night retail establishment has a parking area for its customers. [1989 c 357 § 3.]

*Reviser's note: "Section 2 of this act" was vetoed by the governor.

49.22.030 Enforcement. The requirements of this chapter shall be implemented and enforced, including rules, citations, violations, penalties, appeals, and other administrative procedures by the director of the department of labor and industries pursuant to the Washington industrial safety and health act of 1973, chapter 49.17 RCW. [1989 c 357 § 4.]

49.22.900 Effective date—Implementation—1989 c 357. This act shall take effect January 1, 1990. The director of the department of labor and industries may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 357 § 7.]

Chapter 49.24 RCW

HEALTH AND SAFETY—
UNDERGROUND WORKERS

Sections

49.24.010	Pressure defined.
49.24.020	Compressed air safety requirements.
49.24.030	Medical and nursing attendants.
49.24.040	Examination as to physical fitness.
49.24.060	Penalty.
49.24.070	Enforcement.
49.24.080	Requirements for underground labor.
49.24.100	Lighting appliances.
49.24.110	Exhaust valves.
49.24.120	Fire prevention.
49.24.130	Air chambers—Hanging walks.
49.24.140	Locks.
49.24.150	Explosives and detonators.
49.24.160	Air plant—Feed water.
49.24.170	Electric power requirements.
49.24.180	Inspection.
49.24.190	Cars, cages, buckets—Employees riding or walking.
49.24.200	Speed of vehicles.
49.24.210	Oil supply restricted.
49.24.220	Explosives, use of—Blasting.
49.24.230	Firing switch—Warning by blaster.
49.24.240	Inspection after blast.
49.24.250	Code of signals.
49.24.260	Requirements as to caissons.
49.24.270	Shields to be provided.
49.24.280	Caissons to be braced.
49.24.290	Cages—Hoisting apparatus.
49.24.300	Buckets in vertical shafts.
49.24.310	Telephone system for tunnels.
49.24.320	Location of lights.
49.24.330	Generators, transformers, etc., to be grounded.
49.24.340	Electrical voltage.
49.24.350	Lamps to be held in reserve.
49.24.360	Insulators required.
49.24.370	Director to make rules and regulations.
49.24.380	Penalty.

Coal mining code: Title 78 RCW.

Protection of employees: State Constitution Art. 2 § 35.

Supervisor of safety: RCW 43.22.040.

49.24.010 Pressure defined. The term "pressure" means gauge air pressure in pounds per square inch. [1937 c 131 § 1; RRS § 7666-1.]

49.24.020 Compressed air safety requirements. Every employer of persons for work in compressed air shall:

(1) Connect at least two air pipes with the working chamber and keep such pipes in perfect working condition;

(2) Attach to the working chamber in accessible positions all instruments necessary to show its pressure and keep such instruments in charge of competent persons, with a period of duty for each such person not exceeding six hours in any twenty-four;

(3) Place in each shaft a safe ladder extending its entire length;

(4) Light properly and keep clear such passageway;

(5) Provide independent lighting systems for the working chamber and shaft leading to it, when electricity is used for lighting;

(6) Guard lights other than electric lights;

(7) Protect workmen by a shield erected in the working chamber when such chamber is less than ten feet long and is suspended with more than nine feet space between its deck and the bottom of the excavation;

(8) Provide for and keep accessible to employees working in compressed air a dressing room heated, lighted and

ventilated properly and supplied with benches, lockers, sanitary waterclosets, bathing facilities and hot and cold water;

(9) Establish and maintain a medical lock properly heated, lighted, ventilated and supplied with medicines and surgical implements, when the maximum air pressure exceeds seventeen pounds. [1937 c 131 § 2; RRS § 7666-2.]

49.24.030 Medical and nursing attendants. Every employer of persons for work in compressed air shall:

(1) Keep at the place of work at all necessary times a duly qualified medical officer to care for cases of illness and to administer strictly and enforce RCW 49.24.020 and 49.24.040;

(2) Keep at a medical lock required by RCW 49.24.020(9) a certified nurse selected by the medical officer required by subdivision (1) of this section and qualified to give temporary relief in cases of illness. [1937 c 131 § 3; RRS § 7666-3.]

49.24.040 Examination as to physical fitness. If an employee is a new employee, an absentee for ten or more successive days, an employee who has worked in compressed air continuously for three months or a beginner in compressed air who has worked but a single shaft [shift] as required by *RCW 49.24.050, the officer required by RCW 49.24.030(1) shall examine him and declare him physically fit to work in compressed air before permitting him to enter or reenter the working chamber. Excessive users of intoxicants shall not be permitted to work in compressed air. [1937 c 131 § 4; RRS § 7666-4.]

*Reviser's note: RCW 49.24.050 was repealed by 1963 c 105 § 1.

49.24.060 Penalty. Violation of or noncompliance with any provision of *this article by any employer, manager, superintendent, foreman or other person having direction or control of such work shall be a gross misdemeanor punishable by a fine of not less than two hundred and fifty dollars or by imprisonment for not more than one year or by both such fine and imprisonment. [1937 c 131 § 7; RRS § 7666-7.]

*Reviser's note: "this article" appears in 1937 c 131, an eight section act that was not subdivided by "article" organization. The act is codified as RCW 49.24.010 through 49.24.070.

49.24.070 Enforcement. The director of labor and industries shall have the power and it shall be the director's duty to enforce the provisions of RCW 49.24.010 through 49.24.070. Any authorized inspector or agent of the department may issue and serve upon the employer or person in charge of such work, an order requiring compliance with a special provision or specific provisions of RCW 49.24.010 through 49.24.070 and directing the discontinuance of any employment of persons in compressed air in connection with such work until such specific provision or provisions have been complied with by such employer to the satisfaction of the department. [1994 c 164 § 23; 1973 1st ex.s. c 52 § 7; 1937 c 131 § 8; RRS § 7666-8.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

49.24.080 Requirements for underground labor. Every person, firm or corporation constructing, building or (2008 Ed.)

operating a tunnel, quarry, caisson or subway, excepting in connection with mines, with or without compressed air, shall in the employment of any labor comply with the following safety provisions:

(1) A safety miner shall be selected by the crew on each shift who shall check the conditions necessary to make the working place safe; such as loose rock, faulty timbers, poor rails, lights, ladders, scaffolds, fan pipes and firing lines.

(2) Ventilating fans shall be installed from twenty-five to one hundred feet outside the portal.

(3) No employee shall be allowed to "bar down" without the assistance of another employee.

(4) No employee shall be permitted to return to the heading until at least thirty minutes after blasting.

(5) Whenever persons are employed in wet places, the employer shall furnish such persons with rubbers, boots, coats and hats. All boots if worn previously by an employee shall be sterilized before being furnished to another: PROVIDED, That RCW 49.24.080 through 49.24.380 shall not apply to the operation of a railroad except that new construction of tunnels, caissons or subways in connection therewith shall be subject to the provisions of RCW 49.24.080 through 49.24.380: PROVIDED, FURTHER, That in the event of repair work being done in a railroad tunnel, no person shall be compelled to perform labor until the air has been cleared of smoke, gas and fumes. [1973 1st ex.s. c 154 § 89; 1965 c 144 § 1; 1941 c 194 § 1; Rem. Supp. 1941 § 7666-9.]

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

49.24.100 Lighting appliances. (1) All lighting in compressed air chambers shall be by electricity only. Whenever practicable there shall be two independent lighting systems with independent sources of supply.

(2) The exterior of all lamp sockets shall be entirely non-metallic.

(3) All portable incandescent lamps used shall be guarded by a wire cage large enough to enclose both lamp and socket.

(4) All incandescent lamps shall be so placed that they cannot come in contact with any combustible material.

(5) Only heavy insulated or armored wire shall be used for light or power. [1941 c 194 § 3; Rem. Supp. 1941 § 7666-11.]

49.24.110 Exhaust valves. Exhaust valves shall be provided, having risers extending to the upper part of chamber, if necessary, and shall be operated at such times as may be required and especially after a blast, and persons shall not be required to resume work after a blast until the gas and smoke have cleared, for at least thirty minutes. [1973 1st ex.s. c 154 § 90; 1941 c 194 § 4; Rem. Supp. 1941 § 7666-12.]

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

49.24.120 Fire prevention. All reasonable precaution shall be taken against fire, and provisions shall be made so that water lines shall be available for use at all times. Fire hose connections with hose connected shall be installed in all power plants and work houses. There shall be fire hose connections within reasonable distance of all caissons. Fire hose shall be connected at either side of a tunnel bulkhead, with at

least fifty feet of hose with nozzle connection. Water lines shall extend into each tunnel with hose connections every two hundred feet and shall be kept ready for use at all times. [1941 c 194 § 5; Rem. Supp. 1941 § 7666-13.]

49.24.130 Air chambers—Hanging walks. (1) Whenever the air pressure in a tunnel heading exceeds twenty-one pounds per square inch above atmospheric pressure, two air chambers shall always be in use, except for such time as may be necessary when headings are being started from shafts; and whenever practicable the pressure in the outer chamber shall not exceed one-half the pressure in the heading;

(2) In all tunnels sixteen feet in diameter or over, hanging walks shall be provided from working face to nearest lock. An overhead clearance of six feet shall be maintained and suitable ramps provided under all safety screens. [1941 c 194 § 6; Rem. Supp. 1941 § 7666-14.]

49.24.140 Locks. (1) Each bulkhead in tunnels of twelve feet or more in diameter or equivalent area, shall have at least two locks in perfect working condition, one of which shall be used as a man lock. An additional lock for use in case of emergency shall be held in reserve.

(2) The man lock shall be large enough so that those using it are not compelled to be in a cramped position, and shall not be less than five feet in height. Emergency locks shall be large enough to hold an entire heading shift.

(3) All locks used for decompression shall be lighted by electricity and shall contain a pressure gauge, a time piece, a glass "bull's eye" in each door or in each end, and shall also have facilities for heating.

(4) Valves shall be so arranged that the locks can be operated both from within and from without. [1941 c 194 § 7; Rem. Supp. 1941 § 7666-15.]

49.24.150 Explosives and detonators. When locking explosives and detonators into the air chamber, they shall be kept at opposite ends of the lock. While explosives and detonators are being taken through, no men other than the lock tender and the carriers shall be permitted in the lock. [1941 c 194 § 8; Rem. Supp. 1941 § 7666-16.]

49.24.160 Air plant—Feed water. (1) A good and sufficient air plant for the compression of air shall be provided to meet not only ordinary conditions, but emergencies, and to provide margin for repairs at all times. Provision must be made for storing in tanks at each boiler house enough feed water for twelve hours' supply unless connection can be made with two independent and separately sufficient sources of supply.

(2) The plant shall be capable of furnishing to each working chamber a sufficient air supply for all pressure to enable work to be done. [1941 c 194 § 9; Rem. Supp. 1941 § 7666-17.]

49.24.170 Electric power requirements. When electric power is used for running compressors supplying air for compressed air tunnel work and such power is purchased from a local central station or power company—

(1) There shall be two or more sources of power from the power company's stations to the compressor plant. Such power feeders shall each have a capacity large enough to carry the entire compressor plant load and normal overload. The feeders shall preferably run from separate generating plants or substations and be carried to the compressor plant over separate routes and not through the same duct lines and manholes so that the breakdown of one feeder shall not cause an interruption on the other feeder.

(2) There shall be duplicate feeder bus-bars, and feeder connections to the bus-bars shall be such that either feeder can feed to each separate bus-bar set, individually, or simultaneously to both sets.

(3) There shall be at least two compressors so connected to the bus-bars that they can be operated from either set of busses. The compressors shall be fed from different bus-bar sets, in such a way that a breakdown of a feeder or bus-bar would interrupt the operation of only part of the compressor plant.

(4) Duplicate air feed pipes shall be provided from the compressor plant to a point beyond the lock. [1941 c 194 § 10; Rem. Supp. 1941 § 7666-18.]

49.24.180 Inspection. While work is in progress, the employer shall employ a competent person who shall make a regular inspection at least once every working day of all engines, boilers, steam pipes, drills, air pipes, air gauges, air locks, dynamos, electric wiring, signaling apparatus, brakes, cages, buckets, hoists, cables, ropes, timbers, supports, and all other apparatus and appliances; and he shall immediately upon discovery of any defect, report same in writing to the employer, or his agent in charge. [1941 c 194 § 11; Rem. Supp. 1941 § 7666-19.]

49.24.190 Cars, cages, buckets—Employees riding or walking. No employee shall ride on any loaded car, cage or bucket, nor walk up or down any incline or shaft while any car, cage or bucket is above him. [1941 c 194 § 12; Rem. Supp. 1941 § 7666-20.]

49.24.200 Speed of vehicles. No vehicle shall be operated underground at a speed greater than five miles an hour, while construction work is going on. [1941 c 194 § 13; Rem. Supp. 1941 § 7666-21.]

49.24.210 Oil supply restricted. Oil for illumination or power shall not be taken into the underground workings of any tunnel or kept therein in greater quantities than one day's supply. [1941 c 194 § 14; Rem. Supp. 1941 § 7666-22.]

49.24.220 Explosives, use of—Blasting. (1) No greater quantity of explosives than that which is required for immediate use shall be taken into the working chamber.

(2) Explosives shall be conveyed in a suitable covered wooden box.

(3) Detonators shall be conveyed in a separate covered wooden box.

(4) Explosives and detonators shall be taken separately into the caissons.

(5) After blasting is completed, all explosives and detonators shall be returned at once to the magazine.

(6) No naked light shall be used in the vicinity of open chests or magazines containing explosives, nor near where a charge is being primed.

(7) No tools or other articles shall be carried with the explosives or with the detonators.

(8) All power lines and electric light wires shall be disconnected at a point outside the blasting switch before the loading of holes. No current by grounding of power or bonded rails shall be allowed beyond blasting switch after explosives are taken in preparatory to blasting, and under no circumstances shall grounded current be used for exploding blasts.

(9) Before drilling is commenced on any shift, all remaining holes shall be examined with a wooden stick for unexploded charges or cartridges, and if any are found, same shall be refired before work proceeds.

(10) No person shall be allowed to deepen holes that have previously contained explosives.

(11) All wires in broken rock shall be carefully traced and search made for unexploded cartridges.

(12) Whenever blasting is being done in a tunnel, at points liable to break through to where other men are at work, the foreman or person in charge shall, before any holes are loaded, give warning of danger to all persons that may be working where the blasts may break through, and he shall not allow any holes to be charged until warning is acknowledged and men are removed.

(13) Blasters when testing circuit through charged holes shall use sufficient leading wires to be at a safe distance and shall use only approved types of galvanometers. No tests of circuits in charged holes shall be made until men are removed to safe distance.

(14) No blasts shall be fired with fuse, except electrically ignited fuse, in vertical or steep shafts.

(15) In shaft sinking where the electric current is used for firing, a separate switch not controlling any electric lights must be used for blasting and proper safeguard similar to those in tunnels must be followed in order to insure against premature firing. [1941 c 194 § 15; Rem. Supp. 1941 § 7666-23.]

Explosives: Chapter 70.74 RCW.

49.24.230 Firing switch—Warning by blaster. When firing by electricity from power or lighting wires, a proper switch shall be furnished with lever down when "off".

The switch shall be fixed in a locked box to which no person shall have access except the blaster. There shall be provided flexible leads or connecting wires not less than five feet in length with one end attached to the incoming lines and the other end provided with plugs that can be connected to an effective ground. After blasting, the switch lever shall be pulled out, the wires disconnected and the box locked before any person shall be allowed to return, and shall remain so locked until again ready to blast.

In the working chamber all electric light wires shall be provided with a disconnecting switch, which must be thrown to disconnect all current from the wires in the working cham-

ber before electric light wires are removed or the charge exploded.

Before blasting the blaster shall cause a sufficient warning to be sounded and shall compel all persons to retreat to a safe shelter, before he sets off the blast, and shall permit no one to return until conditions are safe. [1941 c 194 § 16; Rem. Supp. 1941 § 7666-24.]

49.24.240 Inspection after blast. (1) After a blast is fired, loosened pieces of rock shall be scaled from the sides of the excavation and after the blasting is completed, the entire working chamber shall be thoroughly scaled.

(2) The person in charge shall inspect the working chamber and have all loose rock or ground removed and the chamber made safe before proceeding with the work.

(3) Drilling must not be started until all remaining butts of old holes are examined for unexploded charges. [1941 c 194 § 17; Rem. Supp. 1941 § 7666-25.]

49.24.250 Code of signals. Any code of signals used shall be printed and copies thereof, in such languages as may be necessary to be understood by all persons affected thereby, shall be kept posted in a conspicuous place near entrances to work places and in such other places as may be necessary to bring them to the attention of all persons affected thereby.

Effective and reliable signaling devices shall be maintained at all times to give instant communication between the bottom and top of the shaft. [1941 c 194 § 18; Rem. Supp. 1941 § 7666-26.]

49.24.260 Requirements as to caissons. All shafting used in pneumatic caissons shall be provided with ladders, which are to be kept clear and in good condition at all times. The distance between the centers of the rungs of a ladder shall not exceed fourteen inches and shall not vary more than one inch in any one piece of shafting. The length of the ladder rungs shall not be less than nine inches. The rungs of the ladder shall in no case be less than three inches from the wall or other obstruction in the shafting or opening in which the ladder shall be used. Under no circumstances shall a ladder inclining backward from the vertical be installed. A suitable ladder shall be provided from the top of all locks to the surface.

All man shafts shall be lighted at a distance of every ten feet with a guarded incandescent lamp.

All outside caisson air locks shall be provided with a platform not less than forty-two inches wide, and provided with a guard rail forty-two inches high.

All caissons in which fifteen or more men are employed shall have two locks, one of which shall be used as a man lock. Man locks and man shafts shall be in charge of a man whose duty it shall be to operate said lock and shaft. All caissons more than ten feet in diameter shall be provided with a separate man shaft, which shall be kept clear and in operating order at all times.

Locks shall be so located that the distance between the bottom door and water level shall be not less than three feet. [1941 c 194 § 19; Rem. Supp. 1941 § 7666-27.]

49.24.270 Shields to be provided. Wherever, in the prosecution of caisson work in which compressed air is employed, the working chamber is less than twelve feet in length, and when such caissons are at any time suspended or hung while work is in progress, so that the bottom of the excavation is more than nine feet below the deck of the working chamber, a shield shall be erected therein for the protection of the workers. [1989 c 12 § 15; 1941 c 194 § 20; Rem. Supp. 1941 § 7666-28.]

49.24.280 Caissons to be braced. All caissons shall be properly and adequately braced before loading with concrete or other weight. [1941 c 194 § 21; Rem. Supp. 1941 § 7666-29.]

49.24.290 Cages—Hoisting apparatus. In all shafts where men are hoisted or lowered, an iron-bonneted cage shall be used for the conveyance of men, but this provision shall not apply to shafts in the process of sinking or during the dismantling of the shaft after work in the tunnel is substantially completed.

Cages shall be provided with bonnets consisting of two steel plates not less than three-sixteenths of an inch in thickness, sloping toward each side and so arranged that they may be readily pushed upward to afford egress to persons therein, and such bonnet shall cover the top of the cage in such manner as to protect persons in the cage from falling objects.

Cages shall be entirely enclosed on two sides with solid partition or wire mesh not less than No. 8 U.S. Standard gauge, no opening in which shall exceed two inches.

Cages shall be provided with hanging chains or other similar devices for hand holds.

Every cage shall be provided with an approved safety catch of sufficient strength to hold the cage with its maximum load at any point in the shaft.

All parts of the hoisting apparatus, cables, brakes, guides and fastenings shall be of the most substantial design and shall be arranged for convenient inspection. The efficiency of all safety devices shall be established by satisfactory tests before the cages are put into service and at least once every three months thereafter and a record thereof kept.

The test of the safety catch shall consist of releasing the cage suddenly in such manner that the safety catches shall have opportunity to grip the guides. [1941 c 194 § 22; Rem. Supp. 1941 § 7666-30.]

49.24.300 Buckets in vertical shafts. In all vertical shafts in which hoisting is done by means of a bucket, suitable guides shall be provided when the depth exceeds ten times the diameter or width of the shaft, but in no case shall the maximum depth without guides exceed one hundred and fifty feet. In connection with the bucket, there shall be a crosshead traveling between these guides. The height of the crosshead shall be at least two-thirds of its width, but the height in no case shall be less than thirty inches. [1941 c 194 § 23; Rem. Supp. 1941 § 7666-31.]

49.24.310 Telephone system for tunnels. Where tunnels are driven from shafts more than two hundred and fifty feet deep, a telephone system shall be established and main-

tained, communicating with the surface at each such shaft, and with a station or stations readily and quickly accessible to the men at the working level. [1941 c 194 § 24; Rem. Supp. 1941 § 7666-32.]

49.24.320 Location of lights. (1) While work is in progress, tunnels, stairways, ladderways and all places on the surface where work is being conducted, shall be properly lighted. In shafts more than one hundred feet deep, the shaft below that point shall be lighted.

(2) All places where hoisting, pumping or other machinery is erected and in the proximity of which persons are working or moving about, shall be so lighted when the machine is in operation that the moving parts of such machine can be clearly distinguished. [1941 c 194 § 25; Rem. Supp. 1941 § 7666-33.]

49.24.330 Generators, transformers, etc., to be grounded. The frames and bed plates of generators, transformers, compensators, rheostats and motors installed underground shall be effectively grounded. All metallic coverings, armoring of cables, other than trailing cables, and the neutral wire of three-wire systems shall also be so grounded. [1941 c 194 § 26; Rem. Supp. 1941 § 7666-34.]

49.24.340 Electrical voltage. In electrical systems installed, no higher voltage than low voltage shall be used underground, except for transmission or other application to transformers, motors, generators or other apparatus in which the whole of the medium or high voltage apparatus is stationary. [1941 c 194 § 27; Rem. Supp. 1941 § 7666-35.]

49.24.350 Lamps to be held in reserve. Lamps or other proper lights shall be kept ready for use in all underground stations where a failure of electric light is likely to cause danger. [1941 c 194 § 28; Rem. Supp. 1941 § 7666-36.]

49.24.360 Insulators required. (1) All underground cables and wires, unless provided with grounded metallic covering, shall be supported by efficient insulators. The conductors connecting lamps to the power supply shall in all cases be insulated.

(2) Cables and wires unprovided with metallic coverings shall not be fixed to walls or timbers by means of uninsulated fastenings. [1941 c 194 § 29; Rem. Supp. 1941 § 7666-37.]

49.24.370 Director to make rules and regulations. The director of labor and industries shall establish such rules and regulations as he deems primarily necessary for the safety of the employees employed in tunnels, quarries, caissons and subways and shall be guided by the most modern published studies and researches made by persons or institutions into the correction of the evils chargeable to improper safeguards and inspection of the tools, machinery, equipment and places of work obtaining in the industries covered by RCW 49.24.080 through 49.24.380. [1941 c 194 § 32; Rem. Supp. 1941 § 7666-39.]

49.24.380 Penalty. Every person violating any of the provisions of RCW 49.24.080 through 49.24.380 shall be guilty of a misdemeanor. [1941 c 194 § 31; Rem. Supp. 1941 § 7666-38.]

Chapter 49.26 RCW

HEALTH AND SAFETY—ASBESTOS

Sections

49.26.010	Legislative declaration.
49.26.013	Inspection of construction projects required.
49.26.016	Inspection of construction projects—Penalties.
49.26.020	Asbestos use standards.
49.26.030	Containers for asbestos products.
49.26.040	Regulations—Enforcement.
49.26.100	Asbestos projects—Definitions.
49.26.110	Asbestos projects—Worker's and supervisor's certificates.
49.26.115	Asbestos abatement projects—Contractor's certificate required.
49.26.120	Asbestos projects—Qualified asbestos workers and supervisor—Prenotification to department—Fire personnel.
49.26.125	Prenotification to department—Exemptions.
49.26.130	Asbestos projects—Rules—Fees—Asbestos account.
49.26.140	Asbestos projects—Enforcement—Penalties.
49.26.150	Discrimination against employee filing complaint prohibited.
49.26.900	Severability—1973 c 30.
49.26.901	Effective dates—1988 c 271 §§ 6-18.

49.26.010 Legislative declaration. Air-borne asbestos dust and particles, such as those from sprayed asbestos slurry, asbestos-coated ventilating ducts, and certain other applications of asbestos are known to produce irreversible lung damage and bronchogenic carcinoma. One American of every four dying in urban areas of the United States has asbestos particles or dust in his lungs. The nature of this problem is such as to constitute a hazard to the public health and safety, and should be brought under appropriate regulation. [1973 c 30 § 1.]

49.26.013 Inspection of construction projects required. (1) Any owner or owner's agent who allows or authorizes any construction, renovation, remodeling, maintenance, repair, or demolition project which has a reasonable possibility, as defined by the department, of disturbing or releasing asbestos into the air, shall perform or cause to be performed, using practices approved by the department, a good faith inspection to determine whether the proposed project will disturb or release any material containing asbestos into the air.

Such inspections shall be conducted by persons meeting the accreditation requirements of the federal toxics substances control act, section 206(a) (1) and (3) (15 U.S.C. 2646(a) (1) and (3)).

An inspection under this section is not required if the owner or owner's agent is reasonably certain that asbestos will not be disturbed or assumes that asbestos will be disturbed by a project which involves construction, renovation, remodeling, maintenance, repair, or demolition and takes the maximum precautions as specified by all applicable federal and state requirements.

(2) Except as provided in RCW 49.26.125, the owner or owner's agent shall prepare and maintain a written report describing each inspection, or a statement of assumption of the presence or reasonable certainty of the absence of asbestos, and shall provide a copy of the written report or statement

to all contractors before they apply or bid on work. In addition, upon written or oral request, the owner or owner's agent shall make a copy of the written report available to: (1) The department of labor and industries; (2) contractors; and (3) the collective bargaining representatives or employee representatives, if any, of employees who may be exposed to any asbestos or material containing asbestos. A copy shall be posted as prescribed by the department in a place that is easily accessible to such employees. [1995 c 218 § 1; 1989 c 154 § 2. Prior: 1988 c 271 § 7.]

Purpose—1989 c 154: "The purpose of chapter 154, Laws of 1989 is to make corrections to chapter 271, Laws of 1988, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1989 c 154 § 1.]

Severability—1989 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 154 § 14.]

49.26.016 Inspection of construction projects—Penalties. (1) Any owner or owner's agent who allows the start of any construction, renovation, remodeling, maintenance, repair, or demolition without first (a) conducting the inspection and preparing and maintaining the report of the inspection, or preparing and maintaining a statement of assumption of the presence or reasonable certainty of the absence of asbestos, as required under RCW 49.26.013; and (b) preparing and maintaining the additional written description of the project as required under RCW 49.26.120 shall be subject to a mandatory fine of not less than two hundred fifty dollars for each violation. Each day the violation continues shall be considered a separate violation. In addition, any construction, renovation, remodeling, maintenance, repair, or demolition which was started without meeting the requirements of RCW 49.26.013 and 49.26.120 shall be halted immediately and cannot be resumed before meeting such requirements.

(2) No contractor may commence any construction, renovation, remodeling, maintenance, repair or demolition project without receiving the copy of the written report or statement from the owner or the owner's agent. Any contractor who begins any project without the copy of the written report or statement shall be subject to a mandatory fine of not less than two hundred and fifty dollars per day. Each day the violation continues shall be considered a separate violation.

(3) The certificate of any asbestos contractor who knowingly violates any provision of this chapter or any rule adopted under this chapter shall be revoked for a period of not less than six months.

(4) The penalties imposed in this section are in addition to any penalties under RCW 49.26.140. [1995 c 218 § 2; 1989 c 154 § 3. Prior: 1988 c 271 § 8.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.020 Asbestos use standards. Standards regulating the use of asbestos in construction or manufacturing shall be established by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Standards to be adopted shall describe the types of asbestos that may be used in construction and manufacturing, the methods and procedures for their use, and such other requirements as may be needed to protect

the public health and safety with respect to air-borne asbestos particles and asbestos dust. [1973 c 30 § 2.]

49.26.030 Containers for asbestos products. Products containing asbestos shall be stored in containers of types approved by the director of the department of labor and industries, with the advice of the state health officer and the department of ecology. Containers of asbestos shall be plainly marked "Asbestos—do not inhale" or other words to the same effect. [1973 c 30 § 3.]

49.26.040 Regulations—Enforcement. The asbestos use standards required under RCW 49.26.020 and the list of approved container types required under RCW 49.26.030 shall be adopted as regulations of the department of labor and industries. The department shall have the power to implement and enforce such regulations. [1973 c 30 § 4.]

49.26.100 Asbestos projects—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Asbestos abatement project" means an asbestos project involving three square feet or three linear feet, or more, of asbestos-containing material.

(2) "Asbestos project" means the construction, demolition, repair, maintenance, remodeling, or renovation of any public or private building or mechanical piping equipment or systems involving the demolition, removal, encapsulation, salvage, or disposal of material, or outdoor activity, releasing or likely to release asbestos fibers into the air.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of the department of labor and industries or the director's designee.

(5) "Person" means any individual, partnership, firm, association, corporation, sole proprietorship, or the state of Washington or its political subdivisions.

(6) "Certified asbestos supervisor" means an individual who is certified by the department to supervise an asbestos project. A certified asbestos supervisor is not required for projects involving less than three square feet or three linear feet of asbestos-containing material.

(7) "Certified asbestos worker" means an individual who is certified by the department to work on an asbestos project.

(8) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship registered under chapter 18.27 RCW that submits a bid or contracts to remove or encapsulate asbestos for another and is certified by the department to remove or encapsulate asbestos.

(9) "Owner" means the owner of any public or private building, structure, facility or mechanical system, or the agent of such owner, but does not include individuals who work on asbestos projects on their own single-family residences no part of which is used for any commercial purpose. [1995 c 218 § 3; 1989 c 154 § 4. Prior: 1988 c 271 § 6; 1985 c 387 § 1.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.110 Asbestos projects—Worker's and supervisor's certificates. (1) No employee or other individual is eligible to do work governed by this chapter unless issued a certificate by the department.

(2) To qualify for a certificate:

(a) Certified asbestos workers must have successfully completed a four-day training course. Certified asbestos supervisors must have completed a five-day training course. Training courses shall be provided or approved by the department; shall cover such topics as the health and safety aspects of the removal and encapsulation of asbestos, including but not limited to the federal and state standards regarding protective clothing, respirator use, disposal, air monitoring, cleaning, and decontamination; and shall meet such additional qualifications as may be established by the department by rule for the type of certification sought. The department may require the successful completion of annual refresher courses provided or approved by the department for continued certification as an asbestos worker or supervisor. However, the authority of the director to adopt rules implementing this section is limited to rules that are specifically required, and only to the extent specifically required, for the standards to be as stringent as the applicable federal laws governing work subject to this chapter; and

(b) All applicants for certification as asbestos workers or supervisors must pass an examination in the type of certification sought which shall be provided or approved by the department.

These requirements are intended to represent the minimum requirements for certification and shall not preclude contractors or employers from providing additional education or training.

(3) The department shall provide for the reciprocal certification of any individual trained to engage in asbestos projects in another state when the prior training is shown to be substantially similar to the training required by the department. Nothing shall prevent the department from requiring such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate, as provided under RCW 49.26.140, for failure of the holder to comply with any requirement of this chapter or chapter 49.17 RCW, or any rule adopted under those chapters, or applicable health and safety standards and regulations. In addition to any penalty imposed under RCW 49.26.016, the department may suspend or revoke any certificate issued under this chapter for a period of not less than six months upon the following grounds:

(a) The certificate was obtained through error or fraud; or

(b) The holder thereof is judged to be incompetent to carry out the work for which the certificate was issued.

Before any certificate may be denied, suspended, or revoked, the holder thereof shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against such holder, and shall give him or her the opportunity to request a hearing before the department. At such hearing, the department and the holder shall have opportunity to produce witnesses and give testimony.

(5) A denial, suspension, or revocation order may be appealed to the board of industrial insurance appeals within fifteen working days after the denial, suspension, or revocation order is entered. The notice of appeal may be filed with the department or the board of industrial insurance appeals. The board of industrial insurance appeals shall hold the hearing in accordance with procedures established in RCW 49.17.140. Any party aggrieved by an order of the board of industrial insurance appeals may obtain superior court review in the manner provided in RCW 49.17.150.

(6) Each person certified under this chapter shall display, upon the request of an authorized representative of the department, valid identification issued by the department. [1995 c 218 § 4; 1989 c 154 § 5. Prior: 1988 c 271 § 10; 1985 c 387 § 2.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.115 Asbestos abatement projects—Contractor's certificate required. Before working on an asbestos abatement project, a contractor shall obtain an asbestos contractor's certificate from the department and shall have in its employ at least one certified asbestos supervisor who is responsible for supervising all asbestos abatement projects undertaken by the contractor and for assuring compliance with all state laws and regulations regarding asbestos. The contractor shall apply for certification renewal every year. The department shall ensure that the expiration of the contractor's registration and the expiration of his or her asbestos contractor's certificate coincide. [1995 c 218 § 5; 1989 c 154 § 6. Prior: 1988 c 271 § 11.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.120 Asbestos projects—Qualified asbestos workers and supervisor—Prenotification to department—Fire personnel. (1) No person may assign any employee, contract with, or permit any individual or person to remove or encapsulate asbestos in any facility unless performed by a certified asbestos worker and under the direct, on-site supervision of a certified asbestos supervisor. In cases in which an employer conducts an asbestos abatement project in its own facility and by its own employees, supervision can be performed in the regular course of a certified asbestos supervisor's duties. Asbestos workers must have access to certified asbestos supervisors throughout the duration of the project.

(2) The department shall require persons undertaking asbestos projects to provide written notice to the department before the commencement of the project except as provided in RCW 49.26.125. The notice shall include a written description containing such information as the department requires by rule. The department may by rule allow a person to report multiple projects at one site in one report. The department shall by rule establish the procedure and criteria by which a person will be considered to have attempted to meet the prenotification requirement.

(3) The department shall consult with the state fire protection policy board, and may establish any additional policies and procedures for municipal fire department and fire district personnel who clean up sites after fires which have

rendered it likely that asbestos has been or will be disturbed or released into the air. [1995 c 218 § 6; 1989 c 154 § 7. Prior: 1988 c 271 § 12; 1985 c 387 § 4.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.125 Prenotification to department—Exemptions. Prenotification to the department under RCW 49.26.120 shall not be required for:

(1)(a) Any asbestos project involving less than forty-eight square feet of surface area, or less than ten linear feet of pipe unless the surface area of the pipe is greater than forty-eight square feet. The person undertaking such a project shall keep the reports, or statements, and written descriptions required under RCW 49.26.013 and 49.26.120 which shall be available upon request of the department. Employees and employee representatives may request such reports under RCW 49.26.013(2).

(b) The director may waive the prenotification requirement upon written request of an owner for large-scale, ongoing projects. In granting such a waiver, the director shall require the owner to provide prenotification if significant changes in personnel, methodologies, equipment, work site, or work procedures occur or are likely to occur. The director shall further require annual resubmittal of such notification.

(c) The director, upon review of an owner's reports, work practices, or other data available as a result of inspections, audits, or other authorized activities, may reduce the size threshold for prenotification required by this section. Such a change shall be based on the director's determination that significant problems in personnel, methodologies, equipment, work site, or work procedures are creating the potential for violations of this chapter or asbestos requirements under chapter 49.17 RCW. The new prenotification requirements shall be given in writing to the owner and shall remain in effect until modified or withdrawn in writing by the director.

(2) Emergency projects.

(a) As used in this section, "emergency project" means a project that was not planned and results from a sudden, unexpected event, and does not include operations that are necessitated by nonroutine failure of equipment or systems.

(b) Emergency projects which disturb or release any material containing asbestos into the air shall be reported to the department within three working days after the commencement of the project in the manner otherwise required under this chapter. A notice shall be clearly posted adjacent to the work site describing the nature of the emergency project. The employees' collective bargaining representatives, or employee representatives, or designated representatives, if any, shall be notified of the emergency as soon as possible by the person undertaking the emergency project.

Incremental phasing in the conduct or design of asbestos projects or otherwise designing or conducting asbestos projects of a size less than forty-eight square feet, or other threshold for exemption as provided under this section, with the intent of avoiding prenotification requirements is a violation of this chapter. [1989 c 154 § 8. Prior: 1988 c 271 § 13.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.130 Asbestos projects—Rules—Fees—Asbestos account. (1) The department shall administer this chapter.

(2) The director of the department shall adopt, in accordance with chapters 34.05 and 49.17 RCW, rules necessary to carry out this chapter.

(3) The department shall prescribe fees for the issuance and renewal of certificates, including recertification, and the administration of examinations, and for the review of training courses.

(4) The asbestos account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in the account. Moneys in the account shall be spent after appropriation only for costs incurred by the department in the administration and enforcement of this chapter. Disbursements from the account shall be on authorization of the director of the department or the director's designee.

(5) During the 2003-2005 fiscal biennium, the legislature may transfer from the asbestos account to the state general fund such amounts as reflect the excess fund balance in the account. [2003 1st sp.s. c 25 § 924; 1989 c 154 § 9. Prior: 1988 c 271 § 15; 1987 c 219 § 1; 1985 c 387 § 3.]

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

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.140 Asbestos projects—Enforcement—Penalties. (1) Unless specifically provided otherwise by statute, this chapter shall be implemented and enforced, including penalties, violations, citations, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW.

(2) A person or individual who previously has been assessed a civil penalty under this section, and who knowingly violates a provision of RCW 49.26.110 through 49.26.130 or a rule adopted pursuant to RCW 49.26.110 through 49.26.130 is guilty of a misdemeanor. [1987 c 219 § 2; 1985 c 387 § 5.]

49.26.150 Discrimination against employee filing complaint prohibited. Any employee who notifies the department of any activity the employee reasonably believes to be a violation of this chapter or any rule adopted under this chapter or who participates in any proceeding related thereto shall have the same rights and protections against discharge or discrimination as employees are afforded under chapter 49.17 RCW. [1989 c 154 § 10. Prior: 1988 c 271 § 16.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

49.26.900 Severability—1973 c 30. If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 30 § 5.]

49.26.901 Effective dates—1988 c 271 §§ 6-18. Sections 15, as reenacted and amended in 1989, and 18, chapter 271, Laws of 1988, are necessary for the immediate preserva-

tion of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect as of March 24, 1988. Sections 6 through 8, 10 through 13, and 16, chapter 271, Laws of 1988, as reenacted or amended and reenacted in 1989, shall take effect as of January 1, 1989. [1989 c 154 § 11. Prior: 1988 c 271 § 19.]

Purpose—Severability—1989 c 154: See notes following RCW 49.26.013.

Chapter 49.28 RCW HOURS OF LABOR

Sections

49.28.010	Eight hour day, 1899 act—Public works contracts—Emergency overtime—Penalty.
49.28.040	Eight hour day, 1903 act—Policy enunciated.
49.28.050	Eight hour day, 1903 act—Contracts, cancellation of, for violations.
49.28.060	Eight hour day, 1903 act—Stipulation in contracts—Duty of officers.
49.28.065	Public works employees—Agreements to work ten hour day.
49.28.080	Hours of domestic employees—Exception—Penalty.
49.28.100	Hours of operators of power equipment in waterfront operations—Penalty.
49.28.120	Employer's duty to provide time to vote.
49.28.130	Hours of health care facility employees—Definitions.
49.28.140	Hours of health care facility employees—Mandatory overtime prohibited—Exceptions.
49.28.150	Hours of health care facility employees—Penalties.

Child labor: RCW 26.28.060, 26.28.070.

Hours of labor for public institutions personnel: RCW 72.01.042, 72.01.043.

Prevailing wages must be paid on public works: RCW 39.12.020.

49.28.010 Eight hour day, 1899 act—Public works contracts—Emergency overtime—Penalty. (1) Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided.

(2) All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys, or buildings for the state or any county or municipality within the state, shall be done under the provisions of this section. In cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this section is made a part of all contracts, subcontracts, or agreements for work done for the state or any county or municipality within the state.

(3) Any contractor, subcontractor, or agent of contractor or subcontractor, foreman, or employer who violates this section is guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court. [2003 c 53 § 274; 1899 c 101 § 1; RRS § 7642.]

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

49.28.040 Eight hour day, 1903 act—Policy enunciated. That it is a part of the public policy of the state of

Washington that all work "by contract or day labor done" for it, or any political subdivision created by its laws, shall be performed in work days of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day. [1903 c 44 § 1; RRS § 7645.]

49.28.050 Eight hour day, 1903 act—Contracts, cancellation of, for violations. All contracts for work for the state of Washington, or any political subdivision created by its laws, shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work. [1903 c 44 § 2; RRS § 7646.]

49.28.060 Eight hour day, 1903 act—Stipulation in contracts—Duty of officers. It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in RCW 49.28.040 through 49.28.060, and all such officers and agents, and all officers and agents entrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared. [1903 c 44 § 3; RRS § 7647.]

49.28.065 Public works employees—Agreements to work ten hour day. Notwithstanding the provisions of RCW 49.28.010 through 49.28.060, a contractor or subcontractor in any public works contract subject to those provisions may enter into an agreement with his or her employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of *RCW 49.28.020 shall not apply to the hours, up to forty hours per week, worked pursuant to agreements entered into under this section. [1988 c 121 § 1.]

*Reviser's note: RCW 49.28.020 was repealed by 2003 c 53 § 421, effective July 1, 2003.

49.28.080 Hours of domestic employees—Exception—Penalty. (1) No male or female household or domestic employee shall be employed by any person for a longer period than sixty hours in any one week. Employed time shall include minutes or hours when the employee has to remain subject to the call of the employer and when the employee is not free to follow his or her inclinations.

(2) In cases of emergency such employee may be employed for a longer period than sixty hours.

(3) Any employer violating this section is guilty of a misdemeanor. [2003 c 53 § 275; 1937 c 129 § 1; RRS § 7651-1. FORMER PARTS OF SECTION: (i) 1937 c 129 § 2; RRS § 7651-2, now codified as RCW 49.28.082. (ii) 1937 c 129 § 4; RRS § 7651-4, now codified as RCW 49.28.084.]

(2008 Ed.)

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

Severability—1937 c 129: "In the event any part of this act is held invalid such invalidity shall not affect the validity of the remainder of this act." [1937 c 129 § 3.] This applies to RCW 49.28.080 through 49.28.084.

49.28.100 Hours of operators of power equipment in waterfront operations—Penalty. (1) It shall be unlawful for any employer to permit any of his or her employees to operate on docks, in warehouses and/or in or on other waterfront properties any power driven mechanical equipment for the purpose of loading cargo on, or unloading cargo from, ships, barges, or other watercraft, or of assisting in such loading or unloading operations, for a period in excess of twelve and one-half hours at any one time without giving such person an interval of eight hours' rest: PROVIDED, HOWEVER, The provisions of this section shall not be applicable in cases of emergency, including fire, violent storms, leaking or sinking ships or services required by the armed forces of the United States.

(2) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 276; 1953 c 271 § 1.]

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

49.28.120 Employer's duty to provide time to vote. (1) Except as provided in subsection (2) of this section, every employer shall arrange employees' working hours on the day of a primary or election, general or special, so that each employee will have a reasonable time up to two hours available for voting during the hours the polls are open as provided by *RCW 29.13.080.

If an employee's work schedule does not give the employee two free hours during the time the polls are open, not including meal or rest breaks, the employer shall permit the employee to take a reasonable time up to two hours from the employee's work schedule for voting purposes. In such a case, the employer shall add this time to the time for which the employee is paid.

(2) The provisions of this section apply only if, during the period between the time an employee is informed of his or her work schedule for a primary or election day and the date of the primary or election, there is insufficient time for an absentee ballot to be secured for that primary or election. [1987 c 296 § 1.]

*Reviser's note: RCW 29.13.080 was recodified as RCW 29A.44.070 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

49.28.130 Hours of health care facility employees—Definitions. The definitions in this section apply throughout this section and RCW 49.28.140 and 49.28.150 unless the context clearly requires otherwise.

(1) "Employee" means a licensed practical nurse or a registered nurse licensed under chapter 18.79 RCW employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage.

(2) "Employer" means an individual, partnership, association, corporation, state institution, political subdivision of the state, or person or group of persons, acting directly or indirectly in the interest of a health care facility.

(3) "Health care facility" means the following facilities, or any part of the facility, that operates on a twenty-four hours per day, seven days per week basis: Hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, and psychiatric hospitals licensed under chapter 71.12 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state. If a nursing home regulated under chapter 18.51 RCW or a home health agency regulated under chapter 70.127 RCW is operating under the license of a health care facility, the nursing home or home health agency is considered part of the health care facility for the purposes of this subsection.

(4) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift within a twenty-four hour period not to exceed twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period.

(5) "On-call time" means time spent by an employee who is not working on the premises of the place of employment but who is compensated for availability or who, as a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

(6) "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:

(a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;

(b) Contacts qualified employees who have made themselves available to work extra time;

(c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

(7) "Unforeseeable emergent circumstance" means (a) any unforeseen declared national, state, or municipal emergency; (b) when a health care facility disaster plan is activated; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services. [2002 c 112 § 2.]

Finding—2002 c 112: "Washington state is experiencing a critical shortage of qualified, competent health care workers. To safeguard the health, efficiency, and general well-being of health care workers and promote patient safety and quality of care, the legislature finds, as a matter of public policy, that required overtime work should be limited with reasonable safeguards in order to ensure that the public will continue to receive safe, quality care." [2002 c 112 § 1.]

49.28.140 Hours of health care facility employees—Mandatory overtime prohibited—Exceptions. (1) No employee of a health care facility may be required to work overtime. Attempts to compel or force employees to work overtime are contrary to public policy, and any such requirement contained in a contract, agreement, or understanding is void.

(2) The acceptance by any employee of overtime is strictly voluntary, and the refusal of an employee to accept such overtime work is not grounds for discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

(3) This section does not apply to overtime work that occurs:

(a) Because of any unforeseeable emergent circumstance;

(b) Because of prescheduled on-call time;

(c) When the employer documents that the employer has used reasonable efforts to obtain staffing. An employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages; or

(d) When an employee is required to work overtime to complete a patient care procedure already in progress where the absence of the employee could have an adverse effect on the patient. [2002 c 112 § 3.]

Finding—2002 c 112: See note following RCW 49.28.130.

49.28.150 Hours of health care facility employees—Penalties. The department of labor and industries shall investigate complaints of violations of RCW 49.28.140. A violation of RCW 49.28.140 is a class 1 civil infraction in accordance with chapter 7.80 RCW, except that the maximum penalty is one thousand dollars for each infraction up to three infractions. If there are four or more violations of RCW 49.28.140 for a health care facility, the employer is subject to a fine of two thousand five hundred dollars for the fourth violation, and five thousand dollars for each subsequent violation. The department of labor and industries is authorized to issue and enforce civil infractions according to chapter 7.80 RCW. [2002 c 112 § 4.]

Finding—2002 c 112: See note following RCW 49.28.130.

Chapter 49.30 RCW AGRICULTURAL LABOR

Sections

49.30.005	Intent—Duties of department.
49.30.010	Definitions.
49.30.020	Hours and pay, recordkeeping.
49.30.040	Violation of chapter—Civil infraction.
49.30.900	Severability—1989 c 380.
49.30.901	Conflict with federal requirements—1989 c 380.

49.30.005 Intent—Duties of department. It is the intent of the legislature that the department assist agricultural employers in mitigating the costs of the state's unemployment insurance program. The department shall work with members of the agricultural community to: Improve understanding of the program's operation; increase compliance with work-search requirements; provide prompt notification of potential claims against an employer's experience rating; inform employers of their rights; inform employers of the actions necessary to appeal a claim and to protect their rights; and reduce claimant and employer fraud. These efforts shall include:

(1) Conducting employer workshops and community seminars;

(2) Developing new educational materials; and

(3) Developing forms that use lay language. [1998 c 245 § 99; 1991 c 31 § 1; 1990 c 245 § 10; 1989 c 380 § 82.]

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

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

(1) "Agricultural employment" or "employment" means employment in agricultural labor as defined in RCW 50.04.150.

(2) "Department" means the department of labor and industries.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any agricultural activity in this state and employs one or more employees.

(4) "Employee" means a person employed in agricultural employment, and includes a person who is working under an independent contract the essence of which is personal labor in agricultural employment whether by way of manual labor or otherwise. However, "employee" shall not include immediate family members of the officers of any corporation, partnership, sole proprietorship, or other business entity, or officers of any closely held corporation engaged in agricultural production of crops or livestock.

(5) "Minor" means an employee who is under the age of eighteen years. [1989 c 380 § 83.]

49.30.020 Hours and pay, recordkeeping. (1) Each employer required to keep employment records under RCW 49.46.070, shall retain such records for three years.

(2) Each employer shall furnish to each employee at the time the employee's wages are paid an itemized statement showing the pay basis in hours or days worked, the rate or rates of pay, the gross pay, and all deductions from the pay for the respective pay period. [1989 c 380 § 84.]

49.30.040 Violation of chapter—Civil infraction. Any violation of the provisions of this chapter or rules adopted hereunder shall be a class I civil infraction. The director shall have the authority to issue and enforce civil infractions according to chapter 7.80 RCW. [1989 c 380 § 86.]

49.30.900 Severability—1989 c 380. See RCW 15.58.942.

49.30.901 Conflict with federal requirements—1989 c 380. See note following RCW 50.04.150.

Chapter 49.32 RCW

INJUNCTIONS IN LABOR DISPUTES

Sections

49.32.011	Injunctions in labor disputes.
49.32.020	Policy enunciated.
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49.32.073	Injunctions—Complaints, conditions precedent.
49.32.074	Injunctions—Findings and order essential.
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49.32.110	Definitions.

49.32.900	Severability—1933 ex.s. c 7.
49.32.910	General repealer.

Labor unions—Injunctions in labor disputes—1919 act: Chapter 49.36 RCW.

49.32.011 Injunctions in labor disputes. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter. [1933 ex.s. c 7 § 1; RRS § 7612-1. Cf. 1919 c 185 § 2. Formerly RCW 49.32.040.]

Injunctions in labor disputes: RCW 49.36.015.

49.32.020 Policy enunciated. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the state of Washington, as such jurisdiction and authority are herein defined and limited, the public policy of the state of Washington is hereby declared as follows:

WHEREAS, Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections; therefore, the following definitions of the courts of the state of Washington are hereby enacted. [1933 ex.s. c 7 § 2; RRS § 7612-2.]

49.32.030 Undertakings and promises unenforceable. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in RCW 49.32.020, is hereby declared to be contrary to the public policy of the state of Washington, and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation and any employee or prospective employee of the same, whereby—

(1) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(2) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. [1933 ex.s. c 7 § 3; RRS § 7612-3.]

49.32.050 Jurisdiction of courts. No court of the state of Washington shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute or prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(1) Ceasing or refusing to perform any work or to remain in any relation of employment;

(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in RCW 49.32.030;

(3) Paying or giving to, or withholding from, any person participating or interested in such labor dispute any strike or unemployment benefits or insurance or other moneys or things of value;

(4) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any state;

(5) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(6) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(7) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(8) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(9) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in RCW 49.32.030. [1933 ex.s. c 7 § 4; RRS § 7612-4.]

49.32.060 Concert of action immaterial. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in RCW 49.32.050. [1933 ex.s. c 7 § 5; RRS § 7612-5.]

49.32.070 Responsibility of associations. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the state of Washington for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. [1933 ex.s. c 7 § 6; RRS § 7612-6.]

49.32.072 Injunctions—Hearings and findings—Temporary orders—Security. No court of the state of Washington or any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(1) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(2) That substantial and irreparable injury to complainant's property will follow;

(3) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(4) That complainant has no adequate remedy at law; and

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: PROVIDED, HOWEVER, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon

such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. [1933 ex.s. c 7 § 7; RRS § 7612-7.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.073 Injunctions—Complaints, conditions precedent. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. [1933 ex.s. c 7 § 8; RRS § 7612-8.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.074 Injunctions—Findings and order essential. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute, shall include only a prohibition of such specific act or acts as may be expressly complained of in the complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. [1933 ex.s. c 7 § 9; RRS § 7612-9.]

Reviser's note: This section was declared unconstitutional in *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 63 P.2d 397 (1936).

49.32.080 Appellate review. Whenever any court of the state of Washington shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings, and on his filing the usual bond for costs, forthwith certify the entire record of the case, including a transcript of the evidence taken, to the supreme court or the court of appeals for its review. Upon the filing of such record in the supreme court or the court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character. [1971 c 81 § 116; 1933 ex.s. c 7 § 10; RRS § 7612-10.]

Rules of court: *Appeal procedure superseded by RAP 2.1, 2.2, 18.22.*

49.32.090 Contempt—Speedy jury trial. In all cases arising under this chapter in which a person shall be charged with contempt in a court of the state of Washington, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed: PROVIDED, That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs,

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orders, or process of the court. [1933 ex.s. c 7 § 11; RRS § 7612-11.]

49.32.100 Contempt—Retirement of judge. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as provided by law. The demand shall be filed prior to the hearing of the contempt proceeding. [1933 ex.s. c 7 § 12; RRS § 7612-12.]

Civil procedure—Prejudice of judge—Change of venue: RCW 4.12.040.

49.32.110 Definitions. When used in this chapter, and for the purpose of this chapter—

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (a) between one or more employers or associations of employers and one or more employees or associations of employees; (b) between one or more employers or associations of employers and one or more employees or association of employees; or (c) between one or more employees or association of employees and one or more employees or association of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(3) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. [1933 ex.s. c 7 § 13; RRS § 7612-13. Formerly RCW 49.32.010.]

49.32.900 Severability—1933 ex.s. c 7. If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional, or otherwise invalid, the remaining provisions of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby. [1933 ex.s. c 7 § 14; RRS § 7612-14.]

49.32.910 General repealer. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed. [1933 ex.s. c 7 § 15; RRS § 7612-15.]

Chapter 49.36 RCW LABOR UNIONS

Sections

49.36.010	Unions legalized.
49.36.015	Injunctions in labor disputes.
49.36.020	Employment contracts—Remedy for violation.
49.36.030	Prosecutions prohibited.

Collective bargaining with employees of city owned utilities: RCW 35.22.350.

Discrimination—Unfair practices: RCW 49.60.180 through 49.60.215, 49.60.220.

Prohibited practices: Chapter 49.44 RCW.

Supervisor of industrial relations: RCW 43.22.260.

49.36.010 Unions legalized. It shall be lawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations; or carry out their legitimate purposes by any lawful means. [1919 c 185 § 1; RRS § 7611.]

49.36.015 Injunctions in labor disputes. No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employee or between employer and employees or between employees or between persons employed and persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable damage to property or to a personal right or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such petition must be in writing describing such damage or injury feared by the applicant, and sworn to by the applicant or his agent or attorney. No such restraining order or injunction shall prohibit any such person or persons, whether singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from paying or giving to, or withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court of the state. [1919 c 185 § 2; RRS § 7612.]

Labor disputes: Chapter 49.32 RCW.

49.36.020 Employment contracts—Remedy for violation. The labor of a human being is not a commodity or article of commerce, and the right to enter into the relation of employer and employee or to change that relation except in violation of contract is a legal right. In all cases involving the violation of the contract of employment, either by the employee or employer where no irreparable damage is about to be done to the property, personal rights or property rights of either, no injunction shall be granted, but the parties shall be left to their remedy at law. [1919 c 185 § 3; RRS § 7613.]

Injunctions in labor disputes: RCW 49.32.011.

49.36.030 Prosecutions prohibited. No person shall be indicted, prosecuted, or tried in any court of this state for entering into or carrying on any lawful arrangement, agreement, or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bettering the conditions of working men and women, or for any lawful act done in pursuance thereof. [1919 c 185 § 4; RRS § 7614.]

Chapter 49.38 RCW THEATRICAL ENTERPRISES

Sections

49.38.010	Definitions.
49.38.020	Payment of wages—Cash deposit or bond required.
49.38.030	Action to require cash deposit or bond.
49.38.040	Payment of wages—Action against cash deposit or bond—Limitations.
49.38.050	Recovery of attorney's fees and costs.
49.38.060	Penalty.
49.38.070	Department to adopt rules.
49.38.900	Severability—1984 c 89.

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

(1) Department means the department of labor and industries.

(2) Theatrical enterprise means the production of any circus, vaudeville, carnival, revue, variety show, musical comedy, operetta, opera, drama, endurance contest, marathon, walkathon, or any other entertainment event where persons are a part of the enterprise's presentation. Theatrical enterprise does not include a program of a radio or television station operating pursuant to a license issued by the federal communications commission or any event produced by a non-profit cultural or artistic organization that has been located in a community for at least two years. [1984 c 89 § 1.]

49.38.020 Payment of wages—Cash deposit or bond required. (1) Any person engaged in the business of promoting a theatrical enterprise in this state shall deposit with the department the cash or a bond issued by a surety company authorized to do business in this state in an amount determined sufficient by the department to pay the wages of every person involved in the production of the theatrical enterprise for the period for which a single payment of wages is made, but not to exceed one week.

(2) The deposit required under subsection (1) of this section shall be on file with the department seven calendar days before the commencement of the theatrical enterprise. [1984 c 89 § 2.]

49.38.030 Action to require cash deposit or bond. If a person engaged in the business of promoting a theatrical enterprise fails to deposit cash or the bond required under RCW 49.38.020, the department may bring an action in the superior court to compel such person to deposit the cash or bond or cease doing business until he or she has done so. [1984 c 89 § 3.]

49.38.040 Payment of wages—Action against cash deposit or bond—Limitations. Any person having a claim for wages against a person engaged in the business of promoting a theatrical enterprise may bring an action against the bond or cash deposit in the district or superior court of the county in which the theatrical enterprise is produced or any county in which the principal on the bond resides or conducts business. An action against the bond may be brought against the named surety without joining the principal named in the bond. The liability of the surety shall not exceed the amount named in the bond. Any action brought under this chapter shall be commenced within one year after the completion of the work for which wages are alleged to be due and owing under this chapter. If a cash deposit has been made in lieu of a surety bond and if judgment is entered against the depositor and deposit, then the department shall upon receipt of a certified copy of a final judgment within one year of the date of entry of such judgment pay the judgment from the deposit. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit. [1984 c 89 § 4.]

49.38.050 Recovery of attorney's fees and costs. In an action brought pursuant to RCW 49.38.040, the prevailing party is entitled to reasonable attorney's fees and costs. [1984 c 89 § 5.]

49.38.060 Penalty. Any person who violates this chapter is guilty of a gross misdemeanor. [1984 c 89 § 6.]

49.38.070 Department to adopt rules. The department may adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter. [1984 c 89 § 7.]

49.38.900 Severability—1984 c 89. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 89 § 8.]

Chapter 49.40 RCW SEASONAL LABOR

Sections

49.40.010	Seasonal labor defined.
49.40.020	Contracts to be in writing—Advances.
49.40.030	Fraud in securing advances—Penalty.
49.40.040	Disputes determined by director of labor and industries.
49.40.050	Hearings.
49.40.060	Findings and award.
49.40.070	Appeal.
49.40.080	Findings and award as evidence.

49.40.010 Seasonal labor defined. For the purpose of this chapter the term "seasonal labor" shall include all work performed by any person employed for a period of time greater than one month and where the wages for such work are not to be paid at any fixed interval of time, but at the termination of such employment, and where such person is hired within this state for work to be performed outside the state and the wages earned during said employment are to be

paid in this state at the termination of such employment: PROVIDED, That this chapter shall not apply to wages earned by seamen or other persons where the payment of their wages is regulated by federal statutes. [1919 c 191 § 1; RRS § 7603.]

49.40.020 Contracts to be in writing—Advances. Every contract for seasonal labor shall be in writing and signed by the employer and the employee, and may provide for advances of moneys to be earned under such contract or for the furnishing of supplies to the employee before the wages are earned, and for the payment of money or the furnishing of supplies during the season. [1919 c 191 § 2; RRS § 7604.]

49.40.030 Fraud in securing advances—Penalty. Every employee who with intent to defraud shall have secured advances of money or supplies under a contract for seasonable labor and who with intent to defraud shall wilfully fail to perform sufficient labor to compensate for such advances and supplies made under such contract shall be guilty of a gross misdemeanor. [1919 c 191 § 3; RRS § 7605.]

49.40.040 Disputes determined by director of labor and industries. Upon the written petition of either the employer or the employee setting forth in ordinary and concise language the facts and questions in dispute, the director of labor and industries shall, in person or by his duly authorized deputy, and is hereby authorized to hear and determine all disputes concerning wages earned at seasonal labor, and allow or reject deductions made from such wages for moneys advanced or supplies furnished before the wages are earned for money paid or supplies furnished during the season or for money paid to third persons upon the written order of the employee. [1919 c 191 § 4; RRS § 7606.]

49.40.050 Hearings. Upon the filing of any such petition, the director of labor and industries shall notify the other party to the dispute of the time and place when and where such petition will be heard, and may set said petition for a hearing before a regularly appointed deputy at such place in the state as he shall determine is most convenient for the parties, and the director or his deputy shall have power and authority to issue subpoenas to compel the attendance of witnesses and the production of books, papers and records at such hearing, and to administer oaths. Obedience to such subpoenas shall be enforced by the courts of the county where such hearing is held. [1919 c 191 § 5; RRS § 7607.]

49.40.060 Findings and award. The director of labor and industries, or his deputy holding the hearing shall, after such hearing, determine the amount due from the employer to the employee, and shall make findings of fact and an award in accordance therewith, which findings and award shall be filed in the office of the director and a copy thereof served upon the employer and upon the employee by registered mail directed to their last known post office address. [1919 c 191 § 6; RRS § 7608.]

49.40.070 Appeal. Any person aggrieved by the finding or award of the director of labor and industries has the right of appeal in the manner provided in chapter 34.05 RCW. [1987 c 202 § 217; 1919 c 191 § 7; RRS § 7609.]

Intent—1987 c 202: See note following RCW 2.04.190.

49.40.080 Findings and award as evidence. In case no appeal is taken from the award of the director of labor and industries and suit shall be brought upon the contract for seasonal labor in any court of competent jurisdiction, the findings and award of the director made in any proceeding under this chapter at a hearing at which both parties to such suit shall have appeared may be introduced in evidence in such suit, for the information of the court in which the suit is pending, and may, in the discretion of the court, be submitted to the jury as a part of the evidence in the case; but such findings and award shall not be conclusive or binding upon the court or the jury in any such case. [1919 c 191 § 8; RRS § 7610.]

Chapter 49.44 RCW

VIOLATIONS—PROHIBITED PRACTICES

Sections

49.44.010	Blacklisting—Penalty.
49.44.020	Bribery of labor representative.
49.44.030	Labor representative receiving bribe.
49.44.040	Obtaining employment by false letter or certificate.
49.44.050	Fraud by employment agent.
49.44.060	Corrupt influencing of agent.
49.44.080	Endangering life by refusal to labor.
49.44.090	Unfair practices in employment because of age of employee or applicant—Exceptions.
49.44.100	Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty.
49.44.120	Requiring lie detector tests—Penalty.
49.44.135	Requiring lie detector tests—Civil penalty and damages—Attorneys' fees.
49.44.140	Requiring assignment of employee's rights to inventions—Conditions.
49.44.150	Requiring assignment of employee's rights to inventions—Disclosure of inventions by employee.
49.44.160	Public employers—Intent.
49.44.170	Public employers—Unfair practices—Definitions—Remedies.
49.44.180	Genetic screening.
49.44.190	Noncompetition agreements for broadcasting industry employees—Restrictions—Trade secrets protected.

Blind persons or individuals with disabilities, discriminating against in public employment: RCW 70.84.080.

Discrimination—Unfair practices: RCW 49.60.180 through 49.60.200.

49.44.010 Blacklisting—Penalty. Every person in this state who shall wilfully and maliciously, send or deliver, or make or cause to be made, for the purpose of being delivered or sent or part with the possession of any paper, letter or writing, with or without name signed thereto, or signed with a fictitious name, or with any letter, mark or other designation, or publish or cause to be published any statement for the purpose of preventing any other person from obtaining employment in this state or elsewhere, and every person who shall wilfully and maliciously "blacklist" or cause to be "blacklisted" any person or persons, by writing, printing or publishing, or causing the same to be done, the name, or mark, or designation representing the name of any person in any paper, pamphlet, circular or book, together with any statement concerning persons so named, or publish or cause to be published that any person is a member of any secret organiza-

tion, for the purpose of preventing such person from securing employment, or who shall wilfully and maliciously make or issue any statement or paper that will tend to influence or prejudice the mind of any employer against the person of such person seeking employment, or any person who shall do any of the things mentioned in this section for the purpose of causing the discharge of any person employed by any railroad or other company, corporation, individual or individuals, shall, on conviction thereof, be adjudged guilty of misdemeanor and punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. [1899 c 23 § 1; RRS § 7599.]

Interference with or discharge from employment of member of organized militia: RCW 38.40.040, 38.40.050.

Libel and slander: Chapter 9.58 RCW.

49.44.020 Bribery of labor representative. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any duly constituted representative of a labor organization, with intent to influence him in respect to any of his acts, decisions or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation, shall be guilty of a gross misdemeanor. [1909 c 249 § 424; RRS § 2676.]

49.44.030 Labor representative receiving bribe. Every person who, being the duly constituted representative of a labor organization, shall ask or receive, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon any agreement or understanding that any of his acts, decisions or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corporation shall be influenced thereby, shall be guilty of a gross misdemeanor. [1909 c 249 § 425; RRS § 2677.]

49.44.040 Obtaining employment by false letter or certificate. Every person who shall obtain employment or appointment to any office or place of trust, by color or aid of any false or forged letter or certificate of recommendation, shall be guilty of a misdemeanor. [1909 c 249 § 371; RRS § 2623.]

49.44.050 Fraud by employment agent. Every employment agent or broker who, with intent to influence the action of any person thereby, shall misstate or misrepresent verbally, or in any writing or advertisement, any material matter relating to the demand for labor, the conditions under which any labor or service is to be performed, the duration thereof or the wages to be paid therefor, shall be guilty of a misdemeanor. [1909 c 249 § 372; RRS § 2624.]

Discrimination—Unfair practices of employment agencies: RCW 49.60.200.

False advertising: RCW 9.04.010.

49.44.060 Corrupt influencing of agent. Every person who shall give, offer or promise, directly or indirectly, any compensation, gratuity or reward to any agent, employee or

servant of any person or corporation, with intent to influence his action in relation to his principal's, employer's or master's business, shall be guilty of a gross misdemeanor. [1909 c 249 § 426; RRS § 2678.]

49.44.080 Endangering life by refusal to labor. Every person who shall wilfully and maliciously, either alone or in combination with others, break a contract of service or employment, knowing or having reasonable cause to believe that the consequence of his so doing will be to endanger human life or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, shall be guilty of a misdemeanor. [1909 c 249 § 281; RRS § 2533.]

Injunctions in labor disputes: Chapter 49.32 RCW.

Labor unions—Injunctions in labor disputes: RCW 49.36.015.

49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions. It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is forty years of age or older, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: PROVIDED, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the executive director of the Washington state human rights commission or the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals forty years of age or older: PROVIDED, That nothing herein shall forbid a requirement of disclosure of birth date upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age after an employee is hired.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his or her duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons war-

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rant consideration of age factors. [1993 c 510 § 24; 1985 c 185 § 30; 1983 c 293 § 2; 1961 c 100 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Unfair practices, discrimination because of age: RCW 49.60.180 through 49.60.205.

49.44.100 Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty. (1) It shall be unlawful for any person, firm or corporation not directly involved in a labor strike or lockout to recruit and bring into this state from outside this state any person or persons for employment, or to secure or offer to secure for such person or persons any employment, when the purpose of such recruiting, securing or offering to secure employment is to have such persons take the place in employment of employees in a business owned by a person, firm or corporation involved in a labor strike or lockout, or to have such persons act as pickets of a business owned by a person, firm or corporation where a labor strike or lockout exists: PROVIDED, That this section shall not apply to activities and services offered by or through the Washington employment security department.

(2) Any person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 277; 1961 c 180 § 1.]

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

49.44.120 Requiring lie detector tests—Penalty. (1) It shall be unlawful for any person, firm, corporation or the state of Washington, its political subdivisions or municipal corporations to require, directly or indirectly, that any employee or prospective employee take or be subjected to any lie detector or similar tests as a condition of employment or continued employment: PROVIDED, That this section shall not apply to persons making application for employment with any law enforcement agency or with the juvenile court services agency of any county, or to persons returning after a break of more than twenty-four consecutive months in service as a fully commissioned law enforcement officer: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security.

(2) Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

(3) Any person violating this section is guilty of a misdemeanor.

(4) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(5) Nothing in this section may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under this section for purposes of any civil action or injunctive relief. [2007 c 14 § 1; 2005 c 265 § 1; 2003 c 53 § 278; 1985 c 426 § 1; 1973 c 145 § 1; 1965 c 152 § 1.]

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

49.44.135 Requiring lie detector tests—Civil penalty and damages—Attorneys' fees. In a civil action alleging a violation of RCW 49.44.120, the court may:

(1) Award a penalty in the amount of five hundred dollars to a prevailing employee or prospective employee in addition to any award of actual damages;

(2) Award reasonable attorneys' fees and costs to the prevailing employee or prospective employee; and

(3) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.120 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [1985 c 426 § 3.]

49.44.140 Requiring assignment of employee's rights to inventions—Conditions. (1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.

(2) An employer shall not require a provision made void and unenforceable by subsection (1) of this section as a condition of employment or continuing employment.

(3) If an employment agreement entered into after September 1, 1979, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed [performed] by the employee for the employer. [1979 ex.s. c 177 § 2.]

49.44.150 Requiring assignment of employee's rights to inventions—Disclosure of inventions by employee. Even though the employee meets the burden of proving the conditions specified in RCW 49.44.140, the employee shall, at the time of employment or thereafter, disclose all inventions being developed by the employee, for the purpose of determining employer or employee rights. The employer or the employee may disclose such inventions to the department of employment security, and the department shall maintain a record of such disclosures for a minimum period of five years. [1979 ex.s. c 177 § 3.]

49.44.160 Public employers—Intent. The legislature intends that public employers be prohibited from misclassifying employees, or taking other action to avoid providing or continuing to provide employment-based benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

Chapter 155, Laws of 2002 does not mandate that any public employer provide benefits to actual temporary, seasonal, or part-time employees beyond the benefits to which they are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification. Public employers may determine eligibility rules for their own benefit plans and may exclude categories of workers such as "temporary" or "seasonal," so long as the definitions and eligibility rules are objective and applied on a consistent basis. Objective standards, such as control over the work and the length of the employment relationship, should determine whether a person is an employee who is entitled to employee benefits, rather than the arbitrary application of labels, such as "temporary" or "contractor." Common law standards should be used to determine whether a person is performing services as an employee, as a contractor, or as part of an agency relationship.

Chapter 155, Laws of 2002 does not modify any statute or policy regarding the employment of: Public employee retirees who are hired for postretirement employment as provided for in chapter 41.26, 41.32, 41.35, or 41.40 RCW or who work as contractors; or enrolled students who receive employment as student employees or as part of their education or financial aid. [2002 c 155 § 1.]

Construction—2002 c 155: "This act shall be construed liberally for the accomplishment of its purposes." [2002 c 155 § 3.]

Severability—2002 c 155: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 155 § 4.]

49.44.170 Public employers—Unfair practices—Definitions—Remedies. (1) It is an unfair practice for any public employer to:

(a) Misclassify any employee to avoid providing or continuing to provide employment-based benefits; or

(b) Include any other language in a contract with an employee that requires the employee to forgo employment-based benefits.

(2) The definitions in this subsection apply throughout chapter 155, Laws of 2002 unless the context clearly requires otherwise.

(a) "Employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. This definition shall be interpreted consistent with common law.

(b) "Employment-based benefits" means any benefits to which employees are entitled under state law or employer policies or collective bargaining agreements applicable to the employee's correct classification.

(c) "Public employer" means: (i) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or polit-

ical subdivision; and (ii) the state, state institutions, and state agencies. This definition shall be interpreted consistent with common law.

(d) "Misclassify" and "misclassification" means to incorrectly classify or label a long-term public employee as "temporary," "leased," "contract," "seasonal," "intermittent," or "part-time," or to use a similar label that does not objectively describe the employee's actual work circumstances.

(3) An employee deeming himself or herself harmed in violation of subsection (1) of this section may bring a civil action in a court of competent jurisdiction. [2002 c 155 § 2.]

Construction—Severability—2002 c 155: See notes following RCW 49.44.160.

49.44.180 Genetic screening. It shall be unlawful for any person, firm, corporation, or the state of Washington, its political subdivisions, or municipal corporations to require, directly or indirectly, that any employee or prospective employee submit genetic information or submit to screening for genetic information as a condition of employment or continued employment.

"Genetic information" for purposes of this chapter, is information about inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination. "Genetic information" for purposes of this chapter, does not include: (1) Routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and (2) results from tests for abuse of alcohol or drugs, or for the presence of HIV. [2004 c 12 § 1.]

49.44.190 Noncompetition agreements for broadcasting industry employees—Restrictions—Trade secrets protected. (1) If an employee subject to an employee noncompetition agreement is terminated without just cause or laid off by action of the employer, the noncompetition agreement is void and unenforceable.

(2) Nothing in this section restricts the right of an employer to protect trade secrets or other proprietary information by lawful means in equity or under applicable law.

(3) Nothing in this section has the effect of terminating, or in any way modifying, any rights or liabilities resulting from an employee noncompetition agreement that was entered into before December 31, 2005.

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

(a) "Employee" means an employee of a broadcasting industry employer other than a sales or management employee.

(b) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations.

(c) "Employee noncompetition agreement" means an agreement, written or oral, express or implied, between an employer and employee under which the employee agrees not to compete, either alone or as an employee of another,

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with the employer in providing services after termination of employment.

(d) "Broadcasting industry" means employers that distribute or transmit electronic signals to the public at large using television (VHF or UHF), radio (AM, FM, or satellite), or cable television technologies, or which prepare, develop, or create programs or messages to be transmitted by electronic signal using television, radio, or cable technology. [2005 c 176 § 1.]

Chapter 49.46 RCW MINIMUM WAGE ACT

Sections

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49.46.130	Minimum rate of compensation for employment in excess of forty hour work week—Exceptions.
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49.46.160	Automatic service charges.
49.46.900	Severability—1959 c 294.
49.46.910	Short title.
49.46.920	Effective date—1975 1st ex.s. c 289.

Enforcement of wage claims: RCW 49.48.040.

49.46.005 Declaration of necessity and police power.

Whereas the establishment of a minimum wage for employees is a subject of vital and imminent concern to the people of this state and requires appropriate action by the legislature to establish minimum standards of employment within the state of Washington, therefore the legislature declares that in its considered judgment the health, safety and the general welfare of the citizens of this state require the enactment of this measure, and exercising its police power, the legislature endeavors by this chapter to establish a minimum wage for employees of this state to encourage employment opportunities within the state. The provisions of this chapter are enacted in the exercise of the police power of the state for the purpose of protecting the immediate and future health, safety and welfare of the people of this state. [1961 ex.s. c 18 § 1.]

49.46.010 Definitions.

- As used in this chapter:
- (1) "Director" means the director of labor and industries;
 - (2) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director;
 - (3) "Employ" includes to permit to work;

(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee;

(5) "Employee" includes any individual employed by an employer but shall not include:

(a) Any individual (i) employed as a hand harvest laborer and paid on a piece rate basis in an operation which has been, and is generally and customarily recognized as having been, paid on a piece rate basis in the region of employment; (ii) who commutes daily from his or her permanent residence to the farm on which he or she is employed; and (iii) who has been employed in agriculture less than thirteen weeks during the preceding calendar year;

(b) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business, or profession;

(c) Any individual employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman as those terms are defined and delimited by rules of the director. However, those terms shall be defined and delimited by the director of personnel pursuant to chapter 41.06 RCW for employees employed under the director of personnel's jurisdiction;

(d) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(e) Any individual employed full time by any state or local governmental body or agency who provides voluntary services but only with regard to the provision of the voluntary services. The voluntary services and any compensation therefor shall not affect or add to qualification, entitlement or benefit rights under any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW;

(f) Any newspaper vendor or carrier;

(g) Any carrier subject to regulation by Part 1 of the Interstate Commerce Act;

(h) Any individual engaged in forest protection and fire prevention activities;

(i) Any individual employed by any charitable institution charged with child care responsibilities engaged primarily in the development of character or citizenship or promoting health or physical fitness or providing or sponsoring recreational opportunities or facilities for young people or members of the armed forces of the United States;

(j) Any individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties;

(k) Any resident, inmate, or patient of a state, county, or municipal correctional, detention, treatment or rehabilitative institution;

(l) Any individual who holds a public elective or appointive office of the state, any county, city, town, municipal corporation or quasi municipal corporation, political subdivision, or any instrumentality thereof, or any employee of the state legislature;

(m) All vessel operating crews of the Washington state ferries operated by the department of transportation;

(n) Any individual employed as a seaman on a vessel other than an American vessel;

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed;

(7) "Retail or service establishment" means an establishment seventy-five percent of whose annual dollar volume of sales of goods or services, or both, is not for resale and is recognized as retail sales or services in the particular industry. [2002 c 354 § 231; 1997 c 203 § 3; 1993 c 281 § 56; 1989 c 1 § 1 (Initiative Measure No. 518, approved November 8, 1988); 1984 c 7 § 364; 1977 ex.s. c 69 § 1; 1975 1st ex.s. c 289 § 1; 1974 ex.s. c 107 § 1; 1961 ex.s. c 18 § 2; 1959 c 294 § 1.]

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

Construction—1997 c 203: See note following RCW 49.46.130.

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective date—1989 c 1 (Initiative Measure No. 518, approved November 8, 1988): "This act shall take effect January 1, 1989." [1989 c 1 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

Effect of offset of military pay on status of bona fide executive, administrative, and professional employees: RCW 73.16.080.

49.46.020 Minimum hourly wage. (1) Until January 1, 1999, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than four dollars and ninety cents per hour.

(2) Beginning January 1, 1999, and until January 1, 2000, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than five dollars and seventy cents per hour.

(3) Beginning January 1, 2000, and until January 1, 2001, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than six dollars and fifty cents per hour.

(4)(a) Beginning on January 1, 2001, and each following January 1st as set forth under (b) of this subsection, every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate of not less than the amount established under (b) of this subsection.

(b) On September 30, 2000, and on each following September 30th, the department of labor and industries shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The adjusted minimum wage rate shall be calculated to the nearest cent using the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, for the twelve months

prior to each September 1st as calculated by the United States department of labor. Each adjusted minimum wage rate calculated under this subsection (4)(b) takes effect on the following January 1st.

(5) The director shall by regulation establish the minimum wage for employees under the age of eighteen years. [1999 c 1 § 1 (Initiative Measure No. 688, approved November 3, 1998); 1993 c 309 § 1; 1989 c 1 § 2 (Initiative Measure No. 518, approved November 8, 1988); 1975 1st ex.s. c 289 § 2; 1973 2nd ex.s. c 9 § 1; 1967 ex.s. c 80 § 1; 1961 ex.s. c 18 § 3; 1959 c 294 § 2.]

Effective date—1993 c 309: "This act shall take effect January 1, 1994." [1993 c 309 § 2.]

Effective date—1989 c 1 (Initiative Measure No. 518): See note following RCW 49.46.010.

Notification of employers: RCW 49.46.140.

49.46.040 Investigation—Services of federal agencies—Employer's records—Industrial homework. (1) The director or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter.

(2) With the consent and cooperation of federal agencies charged with the administration of federal labor laws, the director may, for the purpose of carrying out his functions and duties under this chapter, utilize the services of federal agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal agencies and their employees for services rendered for such purposes.

(3) Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make reports therefrom to the director as he shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations thereunder.

(4) The director is authorized to make such regulations regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations of the director relating to industrial homework are hereby continued in full force and effect. [1959 c 294 § 4.]

49.46.060 Exceptions for learners, apprentices, messengers, disabled. The director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for (1) the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the director, at such wages lower than the minimum wage applicable under RCW

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49.46.020 and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and for such period as shall be fixed in such certificates. [1959 c 294 § 6.]

49.46.065 Individual volunteering labor to state or local governmental agency—Amount reimbursed for expenses or received as nominal compensation not deemed salary for rendering services or affecting public retirement rights. When an individual volunteers his or her labor to a state or local governmental body or agency and receives pursuant to a statute or policy or an ordinance or resolution adopted by or applicable to the state or local governmental body or agency reimbursement in lieu of compensation at a nominal rate for normally incurred expenses or receives a nominal amount of compensation per unit of voluntary service rendered such reimbursement or compensation shall not be deemed a salary for the rendering of services or for purposes of granting, affecting or adding to any qualification, entitlement or benefit rights under any state, local government or publicly supported retirement system other than that provided under chapter 41.24 RCW. [1977 ex.s. c 69 § 2.]

49.46.070 Records of employer—Contents—Inspection—Sworn statement. Every employer subject to any provision of this chapter or of any regulation issued under this chapter shall make, and keep in or about the premises wherein any employee is employed, a record of the name, address, and occupation of each of his employees, the rate of pay, and the amount paid each pay period to each such employee, the hours worked each day and each work week by such employee, and such other information as the director shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter or of the regulations thereunder. Such records shall be open for inspection or transcription by the director or his authorized representative at any reasonable time. Every such employer shall furnish to the director or to his authorized representative on demand a sworn statement of such records and information upon forms prescribed or approved by the director. [1959 c 294 § 7.]

49.46.080 New or modified regulations—Judicial review—Stay. (1) As new regulations or changes or modification of previously established regulations are proposed, the director shall call a public hearing for the purpose of the consideration and establishment of such regulations following the procedures used in the promulgation of standards of safety under chapter 49.17 RCW.

(2) Any interested party may obtain a review of the director's findings and order in the superior court of county of petitioners' residence by filing in such court within sixty days after the date of publication of such regulation a written petition praying that the regulation be modified or set aside. A copy of such petition shall be served upon the director. The

finding of facts, if supported by evidence, shall be conclusive upon the court. The court shall determine whether the regulation is in accordance with law. If the court determines that such regulation is not in accordance with law, it shall remand the case to the director with directions to modify or revoke such regulation. If application is made to the court for leave to adduce additional evidence by any aggrieved party, such party shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence before the director. If the court finds that such evidence is material and that reasonable grounds exist for failure of the aggrieved party to adduce such evidence in prior proceedings, the court may remand the case to the director with directions that such additional evidence be taken before the director. The director may modify the findings and conclusions, in whole or in part, by reason of such additional evidence.

(3) The judgment and decree of the court shall be final except that it shall be subject to review by the supreme court or the court of appeals as in other civil cases.

(4) The proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of an administrative regulation issued under the provisions of this chapter. The court shall not grant any stay of an administrative regulation unless the person complaining of such regulation shall file in the court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the regulation, in the event such regulation is affirmed, of the amount by which the compensation such employees are entitled to receive under the regulation exceeds the compensation they actually receive while such stay is in effect. [1983 c 3 § 157; 1971 c 81 § 117; 1959 c 294 § 8.]

49.46.090 Payment of wages less than chapter requirements—Employer's liability—Assignment of wage claim. (1) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this chapter, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.

(2) At the written request of any employee paid less than the wages to which he is entitled under or by virtue of this chapter, the director may take an assignment under this chapter or as provided in RCW 49.48.040 of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. [1959 c 294 § 9.]

49.46.100 Prohibited acts of employer—Penalty. (1) Any employer who hinders or delays the director or his authorized representatives in the performance of his duties in the enforcement of this chapter, or refuses to admit the director or his authorized representatives to any place of employment, or fails to make, keep, and preserve any records as

required under the provisions of this chapter, or falsifies any such record, or refuses to make any record accessible to the director or his authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the director or his authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this chapter, or otherwise violates any provision of this chapter or of any regulation issued under this chapter shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.

(2) Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the director, or his authorized representatives that he has not been paid wages in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor. [1959 c 294 § 10.]

49.46.110 Collective bargaining not impaired. Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter. [1959 c 294 § 11.]

49.46.120 Chapter establishes minimum standards and is supplementary to other laws—More favorable standards unaffected. This chapter establishes a minimum standard for wages and working conditions of all employees in this state, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or ordinance, or any rule or regulation issued thereunder. Any standards relating to wages, hours, or other working conditions established by any applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law. [1961 ex.s. c 18 § 4; 1959 c 294 § 12.]

49.46.130 Minimum rate of compensation for employment in excess of forty hour work week—Exceptions. (1) Except as otherwise provided in this section, no employer shall employ any of his employees for a work week longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(5). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(5)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trad-

ing practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed. [1998 c 239 § 2. Prior: 1997 c 311 § 1; 1997 c 203 § 2; 1995 c 5 § 1; 1993 c 191 § 1; 1992 c 94 § 1; 1989 c 104 § 1; prior: 1977 ex.s. c 4 § 1; 1977 ex.s. c 74 § 1; 1975 1st ex.s. c 289 § 3.]

Findings—Intent—1998 c 239: "The legislature finds that employees in the airline industry have a long-standing practice and tradition of trading shifts voluntarily among themselves. The legislature also finds that federal law exempts airline employees from the provisions of federal overtime regulations. This act is intended to specify that airline industry employers are not required to pay overtime compensation to an employee agreeing to work additional hours for a coemployee." [1998 c 239 § 1.]

Intent—Collective bargaining agreements—1998 c 239: "This act does not alter the terms, conditions, or practices contained in any collective bargaining agreement." [1998 c 239 § 3.]

Retroactive application—1998 c 239: "This act is remedial in nature and applies retroactively." [1998 c 239 § 4.]

Severability—1998 c 239: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 239 § 5.]

Construction—1997 c 203: "Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of the effective date of this act [July 27, 1997] until the expiration date of such agreement." [1997 c 203 § 4.]

Intent—Application—1995 c 5: "This act is intended to clarify the original intent of RCW 49.46.010(5)(c). This act applies to all administrative and judicial actions commenced on or after February 1, 1995, and pending on March 30, 1995, and such actions commenced on or after March 30, 1995." [1995 c 5 § 2.]

Effective date—1995 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1995]." [1995 c 5 § 3.]

49.46.140 Notification of employers. The director of the department of labor and industries and the commissioner of employment security shall each notify employers of the requirements of chapter 289, Laws of 1975 1st ex. sess. through their regular quarterly notices to employers. [1975 1st ex.s. c 289 § 4.]

49.46.160 Automatic service charges. (1) An employer that imposes an automatic service charge related to food, beverages, entertainment, or portage provided to a customer must disclose in an itemized receipt and in any menu provided to the customer the percentage of the automatic service charge that is paid or is payable directly to the employee or employees serving the customer.

(2) For purposes of this section:

(a) "Employee" means nonmanagerial, nonsupervisory workers, including but not limited to servers, busers, banquet houseman, banquet captains, bartenders, barbacks, and porters.

(b) "Employer" means employers as defined in RCW 49.46.010 that provide food, beverages, entertainment, or portage, including but not limited to restaurants, catering houses, convention centers, and overnight accommodations.

(c) "Service charge" means a separately designated amount collected by employers from customers that is for services provided by employees, or is described in such a way that customers might reasonably believe that the amounts are for such services. Service charges include but are not limited to charges designated on receipts as a "service charge," "gratuity," "delivery charge," or "portage charge." Service charges are in addition to hourly wages paid or payable to the employee or employees serving the customer. [2007 c 390 § 1. Formerly RCW 19.48.130.]

49.46.900 Severability—1959 c 294. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter and the application thereof to other persons or circumstances shall not be affected thereby. [1959 c 294 § 13.]

49.46.910 Short title. This chapter may be known and cited as the "Washington Minimum Wage Act." [1961 ex.s. c 18 § 6; 1959 c 294 § 14.]

49.46.920 Effective date—1975 1st ex.s. c 289. This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect September 1, 1975. [1975 1st ex.s. c 289 § 5.]

Chapter 49.48 RCW

WAGES—PAYMENT—COLLECTION

Sections

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49.48.010 Payment of wages due to employee ceasing work to be at end of pay period—Exceptions—Authorized deductions or withholdings. When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period: PROVIDED, HOWEVER, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the

director of labor and industries by the employers intending to abandon the plan: PROVIDED FURTHER, That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless the deduction is:

- (1) Required by state or federal law; or
- (2) Specifically agreed upon orally or in writing by the employee and employer; or
- (3) For medical, surgical or hospital care or service, pursuant to any rule or regulation: PROVIDED, HOWEVER, That the deduction is openly, clearly and in due course recorded in the employer's books and records.

Paragraph *three of this section shall not be construed to affect the right of any employer or former employer to sue upon or collect any debt owed to said employer or former employer by his employees or former employees. [1971 ex.s. c 55 § 1; 1947 c 181 § 1; 1905 c 112 § 1; 1888 c 128 § 1; Rem. Supp. 1947 § 7594.]

***Reviser's note:** The reference to paragraph three of this section appears to be erroneous. An amendment to Engrossed Senate Bill No. 137 [1971 ex.s. c 55] deleted the first paragraph of the section without making a corresponding change in the reference to "paragraph three." It was apparently intended that the phrase "paragraph three of this section" refer to the paragraph beginning "It shall be unlawful . . .," which now appears as the second paragraph of the section.

Saving—1888 c 128: "This act is not to be construed as affecting any bona fide contract heretofore entered into contrary to its provisions and existing at the date of the passage hereof, and continuing by reason of limitation of said contract being still in force." [1888 c 128 § 4; no RRS.]

Effective date—1888 c 128: "This act is to take effect on and after its approval." [1888 c 128 § 5; no RRS.]

General repealer—1888 c 128: "All laws or parts of laws in conflict with this act be and the same are hereby repealed." [1888 c 128 § 6; no RRS.]

The foregoing annotations apply to RCW 49.48.010 through 49.48.030.

49.48.020 Penalty for noncompliance with RCW 49.48.010 through 49.48.030 and 49.48.060. Any person, firm, or corporation which violates any of the provisions of RCW 49.48.010 through 49.48.030 and 49.48.060 shall be guilty of a misdemeanor. [1971 ex.s. c 55 § 2; 1933 ex.s. c 20 § 1; 1888 c 128 § 2; RRS § 7595.]

Wages—Deductions—Rebates, authorized withholding: RCW 49.52.060.

49.48.030 Attorney's fee in action on wages—Exception. In any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: PROVIDED, HOWEVER, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary. [1971 ex.s. c 55 § 3; 1888 c 128 § 3; RRS § 7596.]

49.48.040 Enforcement of wage claims—Issuance of subpoenas—Compliance. (1) The department of labor and industries may:

- (a) Upon obtaining information indicating an employer may be committing a violation under chapters 39.12, 49.46,

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and 49.48 RCW, conduct investigations to ensure compliance with chapters 39.12, 49.46, and 49.48 RCW;

- (b) Order the payment of all wages owed the workers and institute actions necessary for the collection of the sums determined owed; and

- (c) Take assignments of wage claims and prosecute actions for the collection of wages of persons who are financially unable to employ counsel when in the judgment of the director of the department the claims are valid and enforceable in the courts.

- (2) The director of the department or any authorized representative may, for the purpose of carrying out RCW 49.48.040 through 49.48.080: (a) Issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records; (b) administer oaths and examine witnesses under oath; (c) take the verification of proof of instruments of writing; and (d) take depositions and affidavits. If assignments for wage claims are taken, court costs shall not be payable by the department for prosecuting such suits.

- (3) The director shall have a seal inscribed "Department of Labor and Industries—State of Washington" and all courts shall take judicial notice of such seal. Obedience to subpoenas issued by the director or authorized representative shall be enforced by the courts in any county.

- (4) The director or authorized representative shall have free access to all places and works of labor. Any employer or any agent or employee of such employer who refuses the director or authorized representative admission therein, or who, when requested by the director or authorized representative, wilfully neglects or refuses to furnish the director or authorized representative any statistics or information pertaining to his or her lawful duties, which statistics or information may be in his or her possession or under the control of the employer or agent, shall be guilty of a misdemeanor. [1987 c 172 § 1; 1935 c 96 § 1; RRS § 7596-1.]

49.48.050 Remedy cumulative. Nothing herein contained shall be construed to limit the authority of the prosecuting attorney of any county to prosecute actions, both civil and criminal, for such violations of RCW 49.48.040 through 49.48.080 as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the director of labor and industries. [1935 c 96 § 2; RRS § 7596-2.]

49.48.060 Director may require bond after assignment of wage claims—Court action—Penalty for failure to pay wage claim. (1) If upon investigation by the director, after taking assignments of any wage claim under RCW 49.48.040, it appears to the director that the employer is representing to his employees that he is able to pay wages for their services and that the employees are not being paid for their services, the director may require the employer to give a bond in such sum as the director deems reasonable and adequate in the circumstances, with sufficient surety, conditioned that the employer will for a definite future period not exceeding six months conduct his business and pay his employees in accordance with the laws of the state of Washington.

(2) If within ten days after demand for such bond the employer fails to provide the same, the director may commence a suit against the employer in the superior court of appropriate jurisdiction to compel him to furnish such bond or cease doing business until he has done so. The employer shall have the burden of proving the amount thereof to be excessive.

(3) If the court finds that there is just cause for requiring such bond and that the same is reasonable, necessary or appropriate to secure the prompt payment of the wages of the employees of such employer and his compliance with RCW 49.48.010 through 49.48.080, the court shall enjoin such employer from doing business in this state until the requirement is met, or shall make other, and may make further, orders appropriate to compel compliance with the requirement.

Upon being informed of a wage claim against an employer or former employer, the director shall, if such claim appears to be just, immediately notify the employer or former employer, of such claim by mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the director of his failure to do so, within thirty days thereafter, the employer or former employer shall be liable to a penalty of ten percent of that portion of the claim found to be justly due. The director shall have a cause of action against the employer or former employer for the recovery of such penalty, and the same may be included in any subsequent action by the director on said wage claim, or may be exercised separately after adjustment of such wage claim without court action. [1971 ex.s. c 55 § 4; 1935 c 96 § 3; RRS § 7596-3.]

49.48.070 Enforcement. It shall be the duty of the director of labor and industries to inquire diligently for any violations of RCW 49.48.040 through 49.48.080, and to institute the actions for penalties herein provided, and to enforce generally the provisions of RCW 49.48.040 through 49.48.080. [1935 c 96 § 4; RRS § 7596-4.]

49.48.075 Reciprocal enforcement agreements with other states. (1) The director of labor and industries, or the director's designee, may enter into reciprocal agreements with the labor department or corresponding agency of any other state or with the person, board, officer, or commission authorized to act on behalf of such department or agency, for the collection in such other states of claims or judgments for wages and other demands based upon claims assigned to the director.

(2) The director, or the director's designee, may, to the extent provided for by any reciprocal agreement entered into by law or with an agency of another state as herein provided, maintain actions in the courts of such other state for the collection of claims for wages, judgments, and other demands and may assign such claims, judgments, and demands to the labor department or agency of such other state for collection to the extent that such an assignment may be permitted or provided for by the law of such state or reciprocal agreement.

(3) The director, or the director's designee, may, upon the written consent of the labor department or corresponding agency of any other state or of the person, board, officer, or

commission of such state authorized to act on behalf of such labor department or corresponding agency, maintain actions in the courts of Washington upon assigned claims for wages, judgments, and demands arising in such other state in the same manner and to the same extent that such actions by the director are authorized when arising in Washington. Such actions may be maintained only in cases where such other state by law or reciprocal agreement extends a like comity to cases arising in Washington. [1985 c 48 § 1.]

49.48.080 Public employees excluded. Nothing in RCW 49.48.040 through 49.48.080 shall apply to the payment of wages or compensation of employees directly employed by any county, incorporated city or town, or other municipal corporation. Nor shall anything herein apply to employees, directly employed by the state, any department, bureau, office, board, commission or institution hereof. [1935 c 96 § 5; RRS § 7596-5.]

49.48.082 Wage complaints—Definitions. The definitions in this section apply throughout this section and RCW 49.48.083 through 49.48.086:

(1) "Citation" means a written determination by the department that a wage payment requirement has been violated.

(2) "Department" means the department of labor and industries.

(3) "Determination of compliance" means a written determination by the department that wage payment requirements have not been violated.

(4) "Director" means the director of the department of labor and industries, or the director's authorized representative.

(5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020 or 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

(6) "Employer" has the meaning provided in RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

(7) "Notice of assessment" means a written notice by the department that, based on a citation, the employer shall pay the amounts assessed under RCW 49.48.083.

(8) "Wage" has the meaning provided in RCW 49.46.010.

(9) "Wage complaint" means a complaint from an employee to the department that asserts that an employer has violated one or more wage payment requirements and that is reduced to writing.

(10) "Wage payment requirement" means a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department.

(11) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.52.050(2). [2006 c 89 § 1.]

Captions not law—2006 c 89: "Captions used in this act are not any part of the law." [2006 c 89 § 8.]

49.48.083 Wage complaints—Duty of department to investigate—Citations and notices of assessment—Civil penalties. (1) If an employee files a wage complaint with the department, the department shall investigate the wage complaint. Unless otherwise resolved, the department shall issue either a citation and notice of assessment or a determination of compliance: (a) No later than sixty days after the date on which the department received the wage complaint, unless the department extends this time period for good cause; and (b) no later than three years after the date on which the cause of action accrued, unless a longer period of time applies under law. Such cause of action for wage claims accrues from the date when the wages are due. The department shall send the citation and notice of assessment or the determination of compliance to both the employer and the employee by service of process or certified mail to their last known addresses.

(2) If the department determines that an employer has violated a wage payment requirement and issues to the employer a citation and notice of assessment, the department may order the employer to pay employees all wages owed, including interest of one percent per month on all wages owed, to the employee.

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A civil penalty for a willful violation of a wage payment requirement shall be not less than five hundred dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

(b) The department may not assess a civil penalty if the employer reasonably relied on: (i) A rule related to any wage payment requirement; (ii) a written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or (iii) an interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department shall maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b)(ii) of this subsection.

(c) The department shall waive any civil penalty assessed against an employer under this section if the director determines that the employer has provided payment to the employee of all wages that the department determined that the employer owed to the employee, including interest, within ten business days of the employer's receipt of the citation and notice of assessment from the department.

(d) The department may waive at any time a civil penalty assessed under this section, in whole or in part, if the director determines that the employer paid all wages owed to an employee.

(e) The department shall deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Upon payment by an employer, and acceptance by an employee, of all wages and interest assessed by the department in a citation and notice of assessment issued to the employer, the fact of such payment by the employer, and of such acceptance by the employee, shall: (a) Constitute a full and complete satisfaction by the employer of all specific wage payment requirements addressed in the citation and notice of assessment; and (b) bar the employee from initiating or pursuing any court action or other judicial or administrative proceeding based on the specific wage payment requirements addressed in the citation and notice of assessment. The citation and notice of assessment shall include a notification and summary of the specific requirements of this subsection. [2006 c 89 § 2.]

Captions not law—2006 c 89: See note following RCW 49.48.082.

49.48.084 Wage complaints—Administrative appeals. (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance issued by the department under RCW 49.48.083 may appeal the citation and notice of assessment or the determination of compliance to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation and notice of assessment or the determination of compliance. A citation and notice of assessment or a determination of compliance not appealed within thirty days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or an appealed determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of wages owed. [2006 c 89 § 3.]

Captions not law—2006 c 89: See note following RCW 49.48.082.

49.48.085 Wage complaints—Employee termination of administrative action. (1) An employee who has filed a wage complaint with the department may elect to terminate the department's administrative action, thereby preserving any private right of action, by providing written notice to the department within ten business days after the employee's receipt of the department's citation and notice of assessment.

(2) If the employee elects to terminate the department's administrative action: (a) The department shall immediately discontinue its action against the employer; (b) the department shall vacate a citation and notice of assessment already issued by the department to the employer; and (c) the citation and notice of assessment, and any related findings of fact or conclusions of law by the department, and any payment or offer of payment by the employer of the wages, including interest, assessed by the department in the citation and notice of assessment, shall not be admissible in any court action or other judicial or administrative proceeding.

(3) Nothing in this section shall be construed to limit or affect: (a) The right of any employee to pursue any judicial, administrative, or other action available with respect to an employer; (b) the right of the department to pursue any judicial, administrative, or other action available with respect to an employee that is identified as a result of a wage complaint; or (c) the right of the department to pursue any judicial, administrative, or other action available with respect to an employer in the absence of a wage complaint. For purposes of this subsection, "employee" means an employee other than an employee who has filed a wage complaint with the department and who thereafter has elected to terminate the department's administrative action as provided in subsection (1) of this section. [2006 c 89 § 4.]

Captions not law—2006 c 89: See note following RCW 49.48.082.

49.48.086 Collection procedures. (1) After a final order is issued under RCW 49.48.084, if an employer defaults in the payment of: (a) Any wages determined by the department to be owed to an employee, including interest; or (b) any civil penalty ordered by the department under RCW 49.48.083, the director may file with the clerk of any county within the state a warrant in the amount of the payment plus any filing fees. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of payment due on it plus any filing fees, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to, and interest in, all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant shall be

mailed to the employer within three days of filing with the clerk.

(2)(a) The director may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an employer upon whom a notice of assessment has been served by the department for payments or civil penalties due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

(b) The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director. The director shall hold the property in trust for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an employer and the property subject to it is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(3) In addition to the procedure for collection of wages owed, including interest, and civil penalties as set forth in this section, the department may recover wages owed, including interest, and civil penalties assessed under RCW 49.48.083 in a civil action brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

(4) This section does not affect other collection remedies that are otherwise provided by law. [2006 c 89 § 5.]

Captions not law—2006 c 89: See note following RCW 49.48.082.

49.48.087 Rules. The director may adopt rules to carry out the purposes of RCW 49.48.082 through 49.48.086. [2006 c 89 § 6.]

Captions not law—2006 c 89: See note following RCW 49.48.082.

49.48.090 Assignment of wages—Requisites to validity. No assignment of, or order for, wages to be earned in the future to secure a loan of less than three hundred dollars, shall be valid against an employer of the person making said assignment or order unless said assignment or order is accepted in writing by the employer, and said assignment or order, and the acceptance of the same, have been filed and recorded with the county auditor of the county where the party making said assignment or order resides, if a resident of the state, or in which he is employed, if not a resident of the state. [1909 c 32 § 1; RRS § 7597.]

49.48.100 Written consent of spouse required. No assignment of, or order for, wages to be earned in the future shall be valid, when made by a married person, unless the written consent of the other spouse to the making of such assignment or order is attached thereto. [1972 ex.s. c 108 § 7; 1909 c 32 § 2; RRS § 7598.]

49.48.115 Employer defined. For the purposes of RCW 49.48.120 the word "employer" shall include every person, firm, partnership, corporation, the state of Washington, and all municipal corporations. [1939 c 139 § 1; RRS § 1464-1. Formerly RCW 49.48.120, part.]

49.48.120 Payment on employee's death. (1) If at the time of the death of any person, his or her employer is indebted to him or her for work, labor, and services performed, and no executor or administrator of his or her estate has been appointed, the employer shall upon the request of the surviving spouse pay the indebtedness in an amount as may be due not exceeding the sum of two thousand five hundred dollars, to the surviving spouse, or if the decedent leaves no surviving spouse, then to the decedent's child or children, or if no children, then to the decedent's father or mother.

(2) In the event the decedent's employer is the state of Washington, then the amount of the indebtedness that can be paid under subsection (1) of this section shall not exceed ten thousand dollars. At the beginning of each biennium, the director of financial management may by administrative policy adjust the amount of indebtedness that can be paid under this subsection to levels not to exceed the percentage increase in the consumer price index for all urban consumers, CPI-U, for Seattle, or a successor index, for the previous biennium as calculated by the United States department of labor. Adjusted dollar amounts of indebtedness shall be rounded to the nearest five hundred dollar increment.

(3) If the decedent and the surviving spouse have entered into a community property agreement that meets the requirements of RCW 26.16.120, and the right to the indebtedness became the sole property of the surviving spouse upon the death of the decedent, the employer shall pay to the surviving spouse the total of the indebtedness, or that portion which is governed by the community property agreement, upon presentation of the agreement accompanied by an affidavit or

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declaration of the surviving spouse stating that the agreement was executed in good faith between the parties and had not been rescinded by the parties before the decedent's death.

(4) In all cases, the employer shall require proof of the claimant's relationship to the decedent by affidavit or declaration, and shall require the claimant to acknowledge receipt of the payment in writing.

(5) Any payments made by an employer pursuant to the provisions of RCW 49.48.115 and 49.48.120 shall operate as a full and complete discharge of the employer's indebtedness to the extent of the payment, and no employer shall thereafter be liable to the decedent's estate, or the decedent's executor or administrator thereafter appointed.

(6) The employer may also pay the indebtedness upon presentation of an affidavit as provided in RCW 11.62.010. [2003 c 122 § 1; 1981 c 333 § 2; 1974 ex.s. c 117 § 42; 1967 c 210 § 1; 1939 c 139 § 2; RRS § 1464-2. FORMER PART OF SECTION: 1939 c 139 § 1; RRS § 1464-1 now codified as RCW 49.48.115.]

Application, construction—Severability—Effective date—1974 ex.s. c 117: See RCW 11.02.080 and notes following.

49.48.150 Sales representatives—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 49.48.160 through 49.48.190.

(1) "Commission" means compensation paid a sales representative by a principal in an amount based on a percentage of the dollar amount of certain orders for or sales of the principal's product.

(2) "Principal" means a person, whether or not the person has a permanent or fixed place of business in this state, who:

(a) Manufactures, produces, imports, or distributes a product for sale to customers who purchase the product for resale;

(b) Uses a sales representative to solicit orders for the product; and

(c) Compensates the sales representative in whole or in part by commission.

(3) "Sales representative" means a person who solicits, on behalf of a principal, orders for the purchase at wholesale of the principal's product, but does not include a person who places orders for his own account for resale, or purchases for his own account for resale, or sells or takes orders for the direct sale of products to the ultimate consumer. [1992 c 177 § 1.]

Severability—1992 c 177: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 177 § 7.]

49.48.160 Sales representatives—Contract—Agreement. (1) A contract between a principal and a sales representative under which the sales representative is to solicit wholesale orders within this state must be in writing and must set forth the method by which the sales representative's commission is to be computed and paid. The principal shall provide the sales representative with a copy of the contract. A provision in the contract establishing venue for an action arising under the contract in a state other than this state is void.

(2) When no written contract has been entered into, any agreement between a sales representative and a principal is

deemed to incorporate the provisions of RCW 49.48.150 through 49.48.190.

(3) During the course of the contract, a sales representative shall be paid the earned commission and all other monies earned or payable in accordance with the agreed terms of the contract, but no later than thirty days after receipt of payment by the principal for products or goods sold on behalf of the principal by the sales representative.

Upon termination of a contract, whether or not the agreement is in writing, all earned commissions due to the sales representative shall be paid within thirty days after receipt of payment by the principal for products or goods sold on behalf of the principal by the sales representative, including earned commissions not due when the contract is terminated. [1992 c 177 § 2.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.170 Sales representatives—Payment. A principal shall pay wages and commissions at the usual place of payment unless the sales representative requests that the wages and commissions be sent through registered mail. If, in accordance with a request by the sales representative, the sales representative's wages and commissions are sent through the mail, the wages and commissions are deemed to have been paid as of the date of their registered postmark. [1992 c 177 § 3.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.180 Sales representatives—Principal considered doing business in this state. A principal who is not a resident of this state and who enters into a contract subject to RCW 49.48.150 through 49.48.190 is considered to be doing business in this state for purposes of the exercise of personal jurisdiction over the principal. [1992 c 177 § 4.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.190 Sales representatives—Rights and remedies not exclusive—Waiver void. (1) RCW 49.48.150 through 49.48.190 supplement but do not supplant any other rights and remedies enjoyed by sales representatives.

(2) A provision of RCW 49.48.150 through 49.48.190 may not be waived, whether by express waiver or by attempt to make a contract or agreement subject to the laws of another state. A waiver of a provision of RCW 49.48.150 through 49.48.190 is void. [1992 c 177 § 5.]

Severability—1992 c 177: See note following RCW 49.48.150.

49.48.200 Overpayment of wages—Government employees. (1) Debts due the state or a county or city for the overpayment of wages to their respective employees may be recovered by the employer by deductions from subsequent wage payments as provided in RCW 49.48.210, or by civil action. If the overpayment is recovered by deduction from the employee's subsequent wages, each deduction shall not exceed: (a) Five percent of the employee's disposable earnings in a pay period other than the final pay period; or (b) the amount still outstanding from the employee's disposable earnings in the final pay period. The deductions from wages shall continue until the overpayment is fully recouped.

(2) Nothing in this section or RCW 49.48.210 or 49.48.220 prevents: (a) An employee from making payments in excess of the amount specified in subsection (1)(a) of this section to an employer; or (b) an employer and employee from agreeing to a different overpayment amount than that specified in the notice in RCW 49.48.210(1) or to a method other than a deduction from wages for repayment of the overpayment amount. [2004 c 7 § 1; 2003 c 77 § 1.]

Severability—2004 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 7 § 3.]

49.48.210 Overpayment of wages—Notice—Review—Appeal. (1) Except as provided in subsection (10) of this section, when an employer determines that an employee was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, a demand for payment within twenty calendar days of the date on which the employee received the notice, and the rights of the employee under this section.

(2) The notice may be served upon the employee in the manner prescribed for the service of a summons in a civil action, or be mailed by certified mail, return receipt requested, to the employee at his or her last known address.

(3) Within twenty calendar days after receiving the notice from the employer that an overpayment has occurred, the employee may request, in writing, that the employer review its finding that an overpayment has occurred. The employee may choose to have the review conducted through written submission of information challenging the overpayment or through a face-to-face meeting with the employer. If the request is not made within the twenty-day period as provided in this subsection, the employee may not further challenge the overpayment and has no right to further agency review, an adjudicative proceeding, or judicial review.

(4) Upon receipt of an employee's written request for review of the overpayment, the employer shall review the employee's challenge to the overpayment. Upon completion of the review, the employer shall notify the employee in writing of the employer's decision regarding the employee's challenge. The notification must be sent by certified mail, return receipt requested, to the employee at his or her last known address.

(5) If the employee is dissatisfied with the employer's decision regarding the employee's challenge to the overpayment, the employee may request an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW or, in the case of a county or city employee, an adjudicative proceeding provided pursuant to ordinance or resolution of the county or city. The employee's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the employer's notice of overpayment. The application must be served on and received by the employer within twenty-eight calendar days of the employee's receipt of the employer's decision following review of the employee's challenge. Notwithstanding RCW 34.05.413(3), agencies may not vary the requirements of this subsection (5) by rule or otherwise. The

employee must serve the employer by certified mail, return receipt requested.

(6) If the employee does not request an adjudicative proceeding within the twenty-eight-day period, the amount of the overpayment provided in the notice shall be deemed final and the employer may proceed to recoup the overpayment as provided in this section and RCW 49.48.200.

(7) Where an adjudicative proceeding has been requested, the presiding or reviewing officer shall determine the amount, if any, of the overpayment received by the employee.

(8) If the employee fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice sent to the employee after the employer's review of the employee's challenge to the overpayment to be assessed against the employee and subject to collection action by the employer as provided in RCW 49.48.200.

(9) Failure to make an application for a review by the employer as provided in subsections (3) and (4) of this section or an adjudicative proceeding within twenty-eight calendar days of the date of receiving notice of the employer's decision after review of the overpayment shall result in the establishment of a final debt against the employee in the amount asserted by the employer, which debt shall be collected as provided in RCW 49.48.200.

(10) When an employer determines that an employee covered by a collective bargaining agreement was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, and the rights of the employee under the collective bargaining agreement. Any dispute relating to the occurrence or amount of the overpayment shall be resolved using the grievance procedures contained in the collective bargaining agreement.

(11) As used in this section or RCW 49.48.210 [49.48.200] and 49.48.220:

(a) "City" means city or town;

(b) "Employer" means the state of Washington or a county or city, and any of its agencies, institutions, boards, or commissions; and

(c) "Overpayment" means a payment of wages for a pay period that is greater than the amount earned for a pay period. [2004 c 7 § 2; 2003 c 77 § 2.]

Severability—2004 c 7: See note following RCW 49.48.200.

49.48.220 Rules. The office of financial management shall adopt the rules necessary to implement chapter 77, Laws of 2003. [2003 c 77 § 3.]

Chapter 49.52 RCW

**WAGES—DEDUCTIONS—
CONTRIBUTIONS—REBATES**

Sections

- 49.52.010 Employees' benefit deductions and employer contributions are trust funds—Enforcement.
- 49.52.020 Lien of party rendering service.
- 49.52.030 Deductions in extrahazardous employment—Medical aid fund deductions excluded.
- 49.52.040 Actions to recover for service—Lien—Priority.

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- 49.52.050 Rebates of wages—False records—Penalty.
- 49.52.060 Authorized withholding.
- 49.52.070 Civil liability for double damages.
- 49.52.080 Presumption as to intent.
- 49.52.090 Rebates of wages on public works—Penalty.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

Mutual savings bank employees, pension, retirement, or health insurance benefits: RCW 32.04.082.

Public employees, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035, and 41.04.036.

49.52.010 Employees' benefit deductions and employer contributions are trust funds—Enforcement.

All moneys collected by any employer from his or its employees and all money to be paid by any employer as his contribution for furnishing, either directly, or through contract, or arrangement with a hospital association, corporation, firm or individual, of medicine, medical or surgical treatment, nursing, hospital service, ambulance service, dental service, burial service, or any or all of the above enumerated services, or any other necessary service, contingent upon sickness, accident or death, are hereby declared to be a trust fund for the purposes for which the same are collected. The trustees (or their administrator, representative, or agent under direction of the trustees) of such fund are authorized to take such action as is deemed necessary to ensure that the employer contributions are made including, but not limited to filing actions at law, and filing liens against moneys due to the employer from the performance of labor or furnishing of materials to which the employees contributed their services. Such trust fund is subject to the provisions of *chapter 48.52 RCW. [1975 c 34 § 1; 1927 c 307 § 1; RRS § 7614-1.]

***Reviser's note:** Chapter 48.52 RCW was repealed by 1979 ex.s. c 34 § 1.

49.52.020 Lien of party rendering service. In case any employer collecting moneys from his employees or making contributions to any type of benefit plan for any or all of the purposes specified in RCW 49.52.010, shall enter into a contract or arrangement with any hospital association, corporation, firm or individual, to furnish any such service to its employees, the association, corporation, firm or individual contracting to furnish such services, shall have a lien upon such trust fund prior to all other liens except taxes. The lien hereby created shall attach from the date of the arrangement or contract to furnish such services and may be foreclosed in the manner provided by law for the foreclosure of other liens on personal property. [1975 c 34 § 2; 1927 c 307 § 2; RRS § 7614-2.]

49.52.030 Deductions in extrahazardous employment—Medical aid fund deductions excluded.

All moneys realized by any employer from the employer's employees either by collection or by deduction from the wages or pay of employees intended or to be used for the furnishing to workers engaged in extrahazardous work, their families or dependents, of medical, surgical or hospital care and treatment, or for nursing, ambulance service, burial or any or all of the above enumerated services, or any service incidental to or furnished or rendered because of sickness, disease, accident or death, and all moneys owing by any employer therefor,

shall be and remain a fund for the purposes for which such moneys are intended to be used, and shall not constitute or become any part of the assets of the employer making such collections or deductions: PROVIDED, HOWEVER, That RCW 49.52.030 and 49.52.040 shall not apply to moneys collected or deducted as aforesaid for, or owing by employers to the state medical aid fund. Such moneys shall be paid over promptly to the physician or surgeon or hospital association or other parties to which such moneys are due and for the purposes for which such collections or deductions were made. [1989 c 12 § 16; 1929 c 136 § 1; RRS § 7713-1.]

49.52.040 Actions to recover for service—Lien—Priority. If any such employer shall default in any such payment to any physician, surgeon, hospital, hospital association or any other parties to whom any such payment is due, the sum so due may be collected by an action at law in the name of the physician, surgeon, hospital, hospital association or any other party to whom such payment is owing, or their assigns and against such defaulting employer, and in addition to such action, such claims shall have the same priority and lien rights as granted to the state for claims due the accident and medical aid funds by section 7682 of Remington's Compiled Statutes of Washington, 1922 [RCW 51.16.150 through 51.16.170], and acts amendatory thereto, which priority and lien rights shall be enforced in the same manner and under the same conditions as provided in said section 7682 [RCW 51.16.150 through 51.16.170]: PROVIDED, HOWEVER, That the said claims for physicians, surgeons, hospitals and hospital associations and others shall be secondary and inferior to any claims of the state and to any claims for labor. Such right of action shall be in addition to any other right of action or remedy. [1929 c 136 § 2; RRS § 7713-2.]

49.52.050 Rebates of wages—False records—Penalty. Any employer or officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who

(1) Shall collect or receive from any employee a rebate of any part of wages theretofore paid by such employer to such employee; or

(2) Wilfully and with intent to deprive the employee of any part of his wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; or

(3) Shall wilfully make or cause another to make any false entry in any employer's books or records purporting to show the payment of more wages to an employee than such employee received; or

(4) Being an employer or a person charged with the duty of keeping any employer's books or records shall wilfully fail or cause another to fail to show openly and clearly in due course in such employer's books and records any rebate of or deduction from any employee's wages; or

(5) Shall wilfully receive or accept from any employee any false receipt for wages;

Shall be guilty of a misdemeanor. [1941 c 72 § 1; 1939 c 195 § 1; Rem. Supp. 1941 § 7612-21.]

Severability—1939 c 195: "If any section, subsection, sentence or clause of this act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, subsection, sen-

tence or clause thereof not adjudged unconstitutional." [1939 c 195 § 5; RRS § 7612-25.] This applies to RCW 49.52.050 through 49.52.080.

49.52.060 Authorized withholding. The provisions of RCW 49.52.050 shall not make it unlawful for an employer to withhold or divert any portion of an employee's wages when required or empowered so to do by state or federal law or when a deduction has been expressly authorized in writing in advance by the employee for a lawful purpose accruing to the benefit of such employee nor shall the provisions of RCW 49.52.050 make it unlawful for an employer to withhold deductions for medical, surgical, or hospital care or service, pursuant to any rule or regulation: PROVIDED, That the employer derives no financial benefit from such deduction and the same is openly, clearly and in due course recorded in the employer's books. [1939 c 195 § 2; RRS § 7612-22.]

Penalty for coercion as to purchase of goods, meals, etc.: RCW 49.48.020.

Public employment, payroll deductions: RCW 41.04.020, 41.04.030, 41.04.035, and 41.04.036.

Wages to be paid in lawful money or negotiable order, penalty: RCW 49.48.010.

49.52.070 Civil liability for double damages. Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of subdivisions (1) and (2) of RCW 49.52.050 shall be liable in a civil action by the aggrieved employee or his assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations. [1939 c 195 § 3; RRS § 7612-23.]

49.52.080 Presumption as to intent. The violations by an employer or any officer, vice principal, or agent of any employer of any of the provisions of subdivisions (3), (4), and (5) of RCW 49.52.050 shall raise a presumption that any deduction from or underpayment of any employee's wages connected with such violation was wilful. [1939 c 195 § 4; RRS § 7612-24.]

49.52.090 Rebates of wages on public works—Penalty. Every person, whether as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes or receives, or conspires with another to take or receive, for his own use or the use of any other person acting with him any part or portion of the wages paid to any laborer, workman or mechanic, including a piece worker and working subcontractor, in connection with services rendered upon any public work within this state, whether such work is done directly for the state, or public body or officer thereof, or county, city and county, city, town, township, district or other political subdivision of the said state or for any contractor or subcontractor engaged in such public work for such an awarding or public body or officer, shall be guilty of a gross misdemeanor. [1935 c 29 § 1; RRS § 10320-1.]

Prevailing wages must be paid on public works: RCW 39.12.020.

Chapter 49.56 RCW

WAGES—PRIORITIES—PREFERENCES

Sections

- 49.56.010 Priority of wages in insolvency.
 49.56.020 Preference on death of employer.
 49.56.030 Priority in executions, attachments, etc.
 49.56.040 Labor claims paramount to claims by state agencies.

Chattel liens: Chapter 60.08 RCW.

Mechanics' and materialmen's liens: Chapter 60.04 RCW.

49.56.010 Priority of wages in insolvency. In all assignments of property made by any person to trustees or assignees on account of the inability of the person at the time of the assignment to pay his debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such persons to the amount of one hundred dollars, each, and for services rendered within sixty days previously, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of the assignor. [Code 1881 § 1972; 1877 p 223 § 34; RRS § 1204.]

Construction—1877 p 224: "In construing the provisions of this act, words used in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person, and the word writing includes printing." [1877 p 224 § 37.]

Construction—1877 p 224: "This act establishes the law of this territory respecting the subject to which it relates and its provisions and all proceedings under it are to be liberally construed with a view to effect its object." [1877 p 224 § 39.]

Repeal and saving—1877 p 224: "All acts relating to any kind or class of liens provided for in this act are hereby repealed, but no action or proceeding commenced before this act takes effect, and no right accrued is affected by such repeal but the proceedings therein must conform to the requirements of this act as far as applicable." [1877 p 224 § 38.]

Effective date—1877 p 224: "This act shall take effect and be in force from and after its passage and the approval thereof by the governor." (Approved, November 8th, 1877.) [1877 p 224 § 40.]

49.56.020 Preference on death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant and laborer for services rendered within sixty days next preceding the death of the employer, not exceeding one hundred dollars, rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering upon the estate and the allowance to the widow and infant children, and must be paid before other claims against the estate of the deceased person. [Code 1881 § 1973; 1877 p 223 § 35; RRS § 1205.]

49.56.030 Priority in executions, attachments, etc. In cases of executions, attachments and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks and laborers who have claims against the defendant for labor done, may give notice of their claims and the amount thereof, sworn to by the person making the claim to the creditor and the officer executing either of such writs at any time before the actual sale of property levied on, and unless such claim is disputed by the debtor or a creditor, such officer must pay to such person out of the proceeds of the sale, the amount each is entitled to receive for services rendered within sixty days next preceding the levy of the writ, not exceeding one hun-

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dred dollars. If any or all the claims so presented and claiming preference under this chapter, are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten days from the recovery thereof, and must prosecute his action with due diligence, or be forever barred from any claim of priority of payment thereof; and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim, until the determination of such action; and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim. [Code 1881 § 1974; 1877 p 223 § 36; RRS § 1206.]

49.56.040 Labor claims paramount to claims by state agencies. In distraint or insolvency proceedings affecting the assets of an employer, claims for labor, salaries or wages not to exceed six hundred dollars to each claimant which have been earned within three months before the date of the distraint or commencement of the proceeding shall be paramount and superior to any claim preferred or presented by an agency of the state: PROVIDED, That this section shall not apply to any compensation payable to an employer or to an officer, director, or stockholder of a corporate employer. [1967 ex.s. c 86 § 1.]

Chapter 49.60 RCW

DISCRIMINATION—
HUMAN RIGHTS COMMISSION

Sections

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Annual report on programs to reduce racial disproportionality: RCW 13.06.050.

Application forms—Licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Denial of civil rights: RCW 9.91.010.

Dog guide or service animal, interfering with: RCW 9.91.170.

Gender equality in higher education: Chapter 28B.110 RCW.

Individuals with disabilities, discrimination in public employment prohibited: RCW 70.84.080.

Interschool athletic and other extracurricular activities for students, discrimination prohibited: RCW 28A.600.200.

Malicious harassment because of a person's race, color, religion, ancestry, or national origin—Criminal penalty—Civil cause of action: RCW 9A.36.080.

Militia, organized, discrimination prohibited: RCW 38.40.110.

Sexual equality: State Constitution Art. 31 §§ 1, 2 (Amendment 61).

Sexual equality mandated for public schools: Chapter 28A.640 RCW.

Unfit buildings, discrimination prohibited: RCW 35.80.040.

49.60.010 Purpose of chapter. This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the

use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. [2007 c 187 § 1; 2006 c 4 § 1; 1997 c 271 § 1; 1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

Effective date—1995 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 259 § 7.]

Severability—1993 c 510: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 510 § 26.]

Severability—1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.]

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.]

Community renewal law—Discrimination prohibited: RCW 35.81.170.

49.60.020 Construction of chapter—Election of other remedies. The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Inclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage. [2007 c 187 § 2; 2006 c 4 § 2; 1993 c 510 § 2; 1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614-30.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.030 Freedom from discrimination—Declaration of civil rights. (1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Pro-

tection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce. [2007 c 187 § 3; 2006 c 4 § 3; 1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 69 § 17.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.040 Definitions (as amended by 2007 c 187). The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof((:)).

(2) "Commission" means the Washington state human rights commission((:)).

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit((:)).

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person((:)).

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment((:)).

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer((:)).

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed((:)).

(8) "National origin" includes "ancestry"((:)).

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a ((disabled)) person with a disability, to be treated as not welcome, accepted, desired, or solicited((:)).

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators,

and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution((;)).

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein((;)).

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services((;)).

(13) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof((;)).

(14) "Sex" means gender((;)).

(15) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth((;)).

(16) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur((;)).

(17) "Complainant" means the person who files a complaint in a real estate transaction((;)).

(18) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction((;)).

(19) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred((;)).

(20) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years((;)).

(21) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units((;)).

(22) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building((;)).

(23) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons((;)).

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a ((disabled person's)) person with a disability's sensory, mental, or physical disability.

(25) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed

forces reserves. [2007 c 187 § 4; 2006 c 4 § 4; 1997 c 271 § 3; 1995 c 259 § 2. Prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

49.60.040 Definitions (as amended by 2007 c 317). The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

(2) "Commission" means the Washington state human rights commission;

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed;

(8) "National origin" includes "ancestry";

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a ((disabled)) person with a disability, to be treated as not welcome, accepted, desired, or solicited;

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services;

(13) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(14) "Sex" means gender;

(15) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth;

(16) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur;

(17) "Complainant" means the person who files a complaint in a real estate transaction;

(18) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction;

(19) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred;

(20) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

(21) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units;

(22) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building;

(23) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons;

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a ~~((disabled person's))~~ sensory, mental, or physical disability of a person with a disability;

(25)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect. [2007 c 317 § 2; 2006 c 4 § 4; 1997 c 271 § 3; 1995 c 259 § 2. Prior: 1993 c 510 § 4; 1993 c 69 § 3; prior: 1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

Reviser's note: RCW 49.60.040 was amended twice during the 2007 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Finding—2007 c 317: "The legislature finds that the supreme court, in its opinion in *McClarty v. Totem Electric*, 157 Wn.2d 214, 137 P.3d 844 (2006), failed to recognize that the law against discrimination affords to state residents protections that are wholly independent of those afforded by the federal Americans with disabilities act of 1990, and that the law against discrimination has provided such protections for many years prior to passage of the federal act." [2007 c 317 § 1.]

Retroactive application—2007 c 317: "This act is remedial and retroactive, and applies to all causes of action occurring before July 6, 2006, and to all causes of action occurring on or after July 22, 2007." [2007 c 317 § 3.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

Construction—1961 c 103: "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.]

Severability—1957 c 37: See note following RCW 49.60.010.

Severability—1949 c 183: See note following RCW 49.60.010.

49.60.050 Commission created. There is created the "Washington state human rights commission," which shall be composed of five members to be appointed by the governor with the advice and consent of the senate, one of whom shall be designated as chairperson by the governor. [1985 c 185 § 3; 1981 c 338 § 9; 1957 c 37 § 5; 1955 c 270 § 2. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.051 Board name changed to Washington State Human Rights Commission. From and after August 9, 1971 the "Washington State Board Against Discrimination" shall be known and designated as the "Washington State Human Rights Commission". [1971 ex.s. c 52 § 2.]

49.60.060 Membership of commission. One of the original members of the commission shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom the individual succeeds.

A member shall be eligible for reappointment.

A vacancy in the commission shall be filled within thirty days, the remaining members to exercise all powers of the commission.

Any member of the commission may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon. [1985 c 185 § 4; 1955 c 270 § 3. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.070 Compensation and reimbursement for travel expenses of commission members. Each member of the commission shall be compensated in accordance with RCW 43.03.250 and, while in session or on official business, shall receive reimbursement for travel expenses incurred during such time in accordance with RCW 43.03.050 and 43.03.060. [1985 c 185 § 5; 1984 c 287 § 98; 1975-'76 2nd ex.s. c 34 § 145; 1955 c 270 § 4. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

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

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

49.60.080 Official seal. The commission shall adopt an official seal, which shall be judicially noticed. [1985 c 185 § 6; 1955 c 270 § 5. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.090 Offices of commission. The principal office of the commission shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state, and may establish such district offices as it deems necessary. [1985 c 185 § 7; 1957 c 37 § 6; 1955 c 270 § 6. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.100 Reports of commission. Subject to RCW 40.07.040, the commission, each biennium, shall report to the governor, describing the investigations, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, the recommendations it has issued, and the other work performed by it, and shall make such recommendations for further legislation as may appear desirable. The commission may present its reports to the legislature; the commission's reports shall be made available upon request. [1987 c 505 § 55; 1985 c 185 § 8; 1977 c 75 § 74; 1955 c 270 § 7. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

49.60.110 Commission to formulate policies. The commission shall formulate policies to effectuate the purposes of this chapter and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes. [1985 c 185 § 9; 1949 c 183 § 5; Rem. Supp. 1949 § 7614-24.]

49.60.120 Certain powers and duties of commission. The commission shall have the functions, powers, and duties:

(1) To appoint an executive director and chief examiner, and such investigators, examiners, clerks, and other employ-

ees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, amend, and rescind suitable rules to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, impartially investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, sexual orientation, race, creed, color, national origin, marital status, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, with other Washington state agencies, commissions, and other government entities, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities. [2007 c 187 § 5; 2006 c 4 § 5; 1997 c 271 § 4. Prior: 1993 c 510 § 6; 1993 c 69 § 4; 1985 c 185 § 10; 1973 1st ex.s. c 214 § 4; 1973 c 141 § 7; 1971 ex.s. c 81 § 1; 1957 c 37 § 7; 1955 c 270 § 8; prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1971 ex.s. c 81: "The effective date of this act shall be July 1, 1971." [1971 ex.s. c 81 § 6.]

Human rights commission to investigate unlawful use of refueling services for individuals with disabilities: RCW 49.60.360.

49.60.130 May create advisory agencies and conciliation councils. The commission has power to create such advisory agencies and conciliation councils, local, regional, or statewide, as in its judgment will aid in effectuating the purposes of this chapter. The commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; to foster

through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The commission may use organizations specifically experienced in dealing with questions of discrimination. [2007 c 187 § 6; 2006 c 4 § 6; 1997 c 271 § 5; 1993 c 510 § 7; 1985 c 185 § 11; 1975-'76 2nd ex.s. c 34 § 146; 1973 1st ex.s. c 214 § 5; 1973 c 141 § 8; 1971 ex.s. c 81 § 2; 1955 c 270 § 9. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

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

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

49.60.140 Commission may hold hearings and subpoena witnesses. The commission has power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations and other process or papers of the commission, its member, agent, or agency, either personally or by registered mail, return receipt requested, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The return post office receipt, when service is by registered mail, shall be proof of service of the same. [1985 c 185 § 12; 1955 c 270 § 10. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.150 Witnesses compelled to testify. No person shall be excused from attending and testifying or from producing records, correspondence, documents or other evidence in obedience to the subpoena of the commission or of any individual member, on the ground that the testimony or evidence required of the person may tend to incriminate or subject the person to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify. [1985 c 185 § 13; 1955 c 270 § 11. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

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49.60.160 Refusals may be punished as contempt of court. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court of any county within the jurisdiction of which the investigation, proceeding, or hearing is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. [1985 c 185 § 14; 1955 c 270 § 12. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

49.60.170 Witness fees—Deposition fees. Witnesses before the commission, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of this state. Witnesses whose depositions are taken and the person taking the same shall be entitled to same fees as are paid for like services in the courts of the state. [1985 c 185 § 15; 1955 c 270 § 13. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

Courts of record—Witnesses: Chapter 2.40 RCW.

Discovery and depositions: Title 5 RCW; see also Rules of Court, CR 26 through 37.

49.60.172 Unfair practices with respect to HIV or hepatitis C infection. (1) No person may require an individual to take an HIV test, as defined in chapter 70.24 RCW, or hepatitis C test, as a condition of hiring, promotion, or continued employment unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification for the job in question.

(2) No person may discharge or fail or refuse to hire any individual, or segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the results of an HIV test or hepatitis C test unless the absence of HIV or hepatitis C infection is a bona fide occupational qualification of the job in question.

(3) The absence of HIV or hepatitis C infection as a bona fide occupational qualification exists when performance of a particular job can be shown to present a significant risk, as defined by the board of health by rule, of transmitting HIV or hepatitis C infection to other persons, and there exists no means of eliminating the risk by restructuring the job.

(4) For the purpose of this chapter, any person who is actually infected with HIV or hepatitis C, but is not disabled as a result of the infection, shall not be eligible for any benefits under the affirmative action provisions of chapter 49.74 RCW solely on the basis of such infection.

(5) Employers are immune from civil action for damages arising out of transmission of HIV or hepatitis C to employees or to members of the public unless such transmission occurs as a result of the employer's gross negligence. [2003 c 273 § 2; 1988 c 206 § 903.]

Severability—1988 c 206: See RCW 70.24.900.

49.60.174 Evaluation of claim of discrimination—Actual or perceived HIV or hepatitis C infection. (1) For the purposes of determining whether an unfair practice under this chapter has occurred, claims of discrimination based on actual or perceived HIV or hepatitis C infection shall be evaluated in the same manner as other claims of discrimination based on sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a disabled person.

(2) Subsection (1) of this section shall not apply to transactions with insurance entities, health service contractors, or health maintenance organizations subject to RCW 49.60.030(1)(e) or 49.60.178 to prohibit fair discrimination on the basis of actual HIV or actual hepatitis C infection status when bona fide statistical differences in risk or exposure have been substantiated.

(3) For the purposes of this chapter:

(a) "HIV" means the human immunodeficiency virus, and includes all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the infected person immunodeficient; and

(b) "Hepatitis C" means the hepatitis C virus of any genotype. [2003 c 273 § 3; 1997 c 271 § 6; 1993 c 510 § 8; 1988 c 206 § 902.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1988 c 206: See RCW 70.24.900.

49.60.175 Unfair practices of financial institutions. It shall be an unfair practice to use the sex, race, creed, color, national origin, marital status, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability of any person, or the use of a trained dog guide or service animal by a person with a disability, concerning an application for credit in any credit transaction to determine the credit worthiness of an applicant. [2007 c 187 § 7; 2006 c 4 § 7; 1997 c 271 § 7; 1993 c 510 § 9; 1979 c 127 § 4; 1977 ex.s. c 301 § 14; 1973 c 141 § 9; 1959 c 68 § 1.]

Severability—1993 c 510: See note following RCW 49.60.010.

Fairness in lending act: RCW 30.04.500 through 30.04.515.

49.60.176 Unfair practices with respect to credit transactions. (1) It is an unfair practice for any person whether acting for himself, herself, or another in connection with any credit transaction because of race, creed, color, national origin, sex, marital status, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability:

(a) To deny credit to any person;

(b) To increase the charges or fees for or collateral required to secure any credit extended to any person;

(c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;

(d) To attempt to do any of the unfair practices defined in this section.

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(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon. [2007 c 187 § 8; 2006 c 4 § 8; 1997 c 271 § 8; 1993 c 510 § 10; 1979 c 127 § 5; 1973 c 141 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.178 Unfair practices with respect to insurance transactions. It is an unfair practice for any person whether acting for himself, herself, or another in connection with an insurance transaction or transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person because of sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this section. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060, health maintenance agreement is defined in RCW 48.46.020, and "health maintenance organization" is defined in RCW 48.46.020.

The fact that such unfair practice may also be a violation of chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an action brought under this section.

The insurance commissioner, under RCW 48.30.300, and the human rights commission, under chapter 49.60 RCW, shall have concurrent jurisdiction under this section and shall enter into a working agreement as to procedure to be followed in complaints under this section. [2006 c 4 § 9; 1997 c 271 § 9; 1993 c 510 § 11; 1984 c 32 § 1; 1979 c 127 § 6; 1974 ex.s. c 32 § 2; 1973 c 141 § 6.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.180 Unfair practices of employers. It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

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(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language. [2007 c 187 § 9; 2006 c 4 § 10; 1997 c 271 § 10; 1993 c 510 § 12; 1985 c 185 § 16; 1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Employment rights of persons serving in uniformed services: RCW 73.16.032.

Labor—Prohibited practices: Chapter 49.44 RCW.

Unfair practices in employment because of age of employee or applicant: RCW 49.44.090.

49.60.190 Unfair practices of labor unions. It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(2) To expel from membership any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory,

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mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. [2007 c 187 § 10; 2006 c 4 § 11; 1997 c 271 § 11; 1993 c 510 § 13; 1985 c 185 § 17; 1973 1st ex.s. c 214 § 8; 1973 c 141 § 11; 1971 ex.s. c 81 § 4; 1961 c 100 § 2; 1957 c 37 § 10. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

49.60.200 Unfair practices of employment agencies.

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, sexual orientation, creed, color, or national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language. [2007 c 187 § 11; 2006 c 4 § 12; 1997 c 271 § 12; 1993 c 510 § 14; 1973 1st ex.s. c 214 § 9; 1973 c 141 § 12; 1971 ex.s. c 81 § 5; 1961 c 100 § 3; 1957 c 37 § 11. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Fraud by employment agent: RCW 49.44.050.

49.60.205 Age discrimination—Limitation. No person shall be considered to have committed an unfair practice on the basis of age discrimination unless the practice violates RCW 49.44.090. It is a defense to any complaint of an unfair practice of age discrimination that the practice does not violate RCW 49.44.090. [1993 c 510 § 15; 1985 c 185 § 28.]

Severability—1993 c 510: See note following RCW 49.60.010.

49.60.210 Unfair practices—Discrimination against person opposing unfair practice—Retaliation against whistleblower.

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW. [1992 c 118

§ 4; 1985 c 185 § 18; 1957 c 37 § 12. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement. It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability: **PROVIDED**, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: **PROVIDED**, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice. [2007 c 187 § 12; 2006 c 4 § 13; 1997 c 271 § 13; 1993 c 510 § 16. Prior: 1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

Severability—1993 c 510: See note following RCW 49.60.010.

Denial of civil rights: RCW 9.91.010.

49.60.220 Unfair practice to aid violation. It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or any order issued thereunder. [1957 c 37 § 13. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

49.60.222 Unfair practices with respect to real estate transactions, facilities, or services. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, sexual orientation, race, creed, color, national origin, families with children status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability:

- (a) To refuse to engage in a real estate transaction with a person;
- (b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (d) To refuse to negotiate for a real estate transaction with a person;
- (e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her

attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, circulate, post, or mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct covered multifamily dwellings and premises in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained dog guide or service animal. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

Nothing in (a) or (b) of this subsection shall apply to: (i) A single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in *RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a person with a disability except as otherwise required by law. Nothing in this section affects the rights, responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter. Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(7) Nothing in this chapter shall apply to real estate transactions involving the sharing of a dwelling unit, or rental or sublease of a portion of a dwelling unit, when the dwelling unit is to be occupied by the owner or sublessor. For purposes of this section, "dwelling unit" has the same meaning as in RCW 59.18.030. [2007 c 187 § 13; 2006 c 4 § 14. Prior: 1997 c 400 § 3; 1997 c 271 § 14; 1995 c 259 § 3; prior: 1993

c 510 § 17; 1993 c 69 § 5; 1989 c 61 § 1; 1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

*Reviser's note: RCW 18.85.010 was recodified as RCW 18.85.011 pursuant to 2008 c 23 § 49; and RCW 18.85.010 was also amended by 2008 c 23 § 1, changing and/or removing the definitions of "real estate broker" and "salesperson," effective July 1, 2010.

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, disability, etc. It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or with any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled. [2007 c 187 § 14; 2006 c 4 § 15; 1997 c 271 § 15. Prior: 1993 c 510 § 18; 1993 c 69 § 6; 1979 c 127 § 9; 1969 ex.s. c 167 § 5.]

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.2235 Unfair practice to coerce, intimidate, threaten, or interfere regarding secured real estate transaction rights. It is an unlawful practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, rights regarding real estate transactions secured by RCW 49.60.030, 49.60.040, and 49.60.222 through 49.60.224. [1993 c 69 § 7.]

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.224 Real property contract provisions restricting conveyance, encumbrance, occupancy, or use to persons of particular race, disability, etc., void—Unfair practice. (1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or with any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained

dog guide or service animal by a person who is blind, deaf, or physically disabled is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title. [2007 c 187 § 15; 2006 c 4 § 16; 1997 c 271 § 16; 1993 c 69 § 8; 1979 c 127 § 10; 1969 ex.s. c 167 § 6.]

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.225 Relief for unfair practice in real estate transaction—Damages—Penalty. (1) When a reasonable cause determination has been made under RCW 49.60.240 that an unfair practice in a real estate transaction has been committed and a finding has been made that the respondent has engaged in any unfair practice under RCW 49.60.250, the administrative law judge shall promptly issue an order for such relief suffered by the aggrieved person as may be appropriate, which may include actual damages as provided by the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable relief. Such order may, to further the public interest, assess a civil penalty against the respondent:

(a) In an amount up to ten thousand dollars if the respondent has not been determined to have committed any prior unfair practice in a real estate transaction;

(b) In an amount up to twenty-five thousand dollars if the respondent has been determined to have committed one other unfair practice in a real estate transaction during the five-year period ending on the date of the filing of this charge; or

(c) In an amount up to fifty thousand dollars if the respondent has been determined to have committed two or more unfair practices in a real estate transaction during the seven-year period ending on the date of the filing of this charge, for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, sexual orientation, families with children status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person who is blind, deaf, or physically disabled. Enforcement of the order and appeal therefrom by the complainant or respondent may be made as provided in RCW 49.60.260 and 49.60.270. If acts constituting the unfair practice in a real estate transaction that is the object of the charge are determined to have been committed by the same natural person who has been previously determined to have committed acts constituting an unfair practice in a real estate transaction, then the civil penalty of up to fifty thousand dollars may be imposed without regard to the period of time within which any subsequent unfair practice in a real estate transaction occurred. All civil penalties assessed under this section shall be paid into the state treasury and credited to the general fund.

(2) Such order shall not affect any contract, sale, conveyance, encumbrance, or lease consummated before the issuance of an order that involves a bona fide purchaser, encum-

brancer, or tenant who does not have actual notice of the charge filed under this chapter.

(3) Notwithstanding any other provision of this chapter, persons awarded damages under this section may not receive additional damages pursuant to RCW 49.60.250. [2007 c 187 § 16; 2006 c 4 § 17; 1997 c 271 § 17; 1995 c 259 § 4. Prior: 1993 c 510 § 20; 1993 c 69 § 9; 1985 c 185 § 19; 1979 c 127 § 11; 1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.226 Cooperative agreements between units of government for processing complaints. The commission and units of local government administering ordinances with provisions similar to the real estate provisions of the law against discrimination are authorized and directed to enter into cooperative agreements or arrangements for receiving and processing complaints so that duplication of functions shall be minimized and multiple hearings avoided. No complainant may secure relief from more than one instrumentality of state, or local government, nor shall any relief be granted by any state or local instrumentality if relief has been granted or proceedings are continuing in any federal agency, court, or instrumentality, unless such proceedings have been deferred pending state action. [1985 c 185 § 20; 1969 ex.s. c 167 § 8.]

Severability—1969 ex.s. c 167: See note following RCW 49.60.010.

49.60.227 Declaratory judgment action to strike discriminatory provision of real property contract. If a written instrument contains a provision that is void by reason of RCW 49.60.224, the owner, occupant, or tenant of the property which is subject to the provision or the homeowners' association board may cause the provision to be stricken from the public records by bringing an action in the superior court in the county in which the property is located. The action shall be an in rem, declaratory judgment action whose title shall be the description of the property. The necessary party to the action shall be the owner, occupant, or tenant of the property or any portion thereof. The person bringing the action shall pay a fee set under RCW 36.18.012.

If the court finds that any provisions of the written instrument are void under RCW 49.60.224, it shall enter an order striking the void provisions from the public records and eliminating the void provisions from the title or lease of the property described in the complaint. [2006 c 58 § 3; 1995 c 292 § 18; 1993 c 69 § 10; 1987 c 56 § 2.]

Finding—Intent—2006 c 58: See note following RCW 64.38.028.

Severability—1993 c 69: See note following RCW 49.60.030.

Intent—1987 c 56 § 2: "The legislature finds that some real property deeds and other written instruments contain discriminatory covenants and restrictions that are contrary to public policy and are void. The continued existence of these covenants and restrictions is repugnant to many property owners and diminishes the free enjoyment of their property. It is the intent of RCW 49.60.227 to allow property owners to remove all remnants of discrimination from their deeds." [1987 c 56 § 1.]

49.60.230 Complaint may be filed with commission.
(1) Who may file a complaint:

(a) Any person claiming to be aggrieved by an alleged unfair practice may, personally or by his or her attorney, make, sign, and file with the commission a complaint in writing under oath or by declaration. The complaint shall state the name of the person alleged to have committed the unfair practice and the particulars thereof, and contain such other information as may be required by the commission.

(b) Whenever it has reason to believe that any person has been engaged or is engaging in an unfair practice, the commission may issue a complaint.

(c) Any employer or principal whose employees, or agents, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a written complaint under oath or by declaration asking for assistance by conciliation or other remedial action.

(2) Any complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination except that complaints alleging an unfair practice in a real estate transaction pursuant to RCW 49.60.222 through 49.60.225 must be so filed within one year after the alleged unfair practice in a real estate transaction has occurred or terminated and a complaint alleging whistleblower retaliation must be filed within two years. [2008 c 266 § 7. Prior: 1993 c 510 § 21; 1993 c 69 § 11; 1985 c 185 § 21; 1957 c 37 § 16; 1955 c 270 § 15; prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

Application—Severability—2008 c 266: See RCW 42.40.910 and 42.40.901.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings—Rules. After the filing of any complaint, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt investigation and ascertainment of the facts alleged in the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be provided to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the commission's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation, and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation, and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the commission setting forth the terms of said agreement. No order shall be entered by the commission at this stage of the proceedings except upon such written agreement, except that during the period beginning with the filing of complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225, and

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ending with the filing of a finding of reasonable cause or a dismissal by the commission, the commission staff shall, to the extent feasible, engage in conciliation with respect to such complaint. Any conciliation agreement arising out of conciliation efforts by the commission shall be an agreement between the respondent and the complainant and shall be subject to the approval of the commission. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this chapter.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof provided to the complainant and the respondent.

The commission may adopt rules, including procedural time requirements, for processing complaints alleging an unfair practice with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225 and which may be consistent with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), but which in no case shall exceed or be more restrictive than the requirements or standards of such act. [1995 c 259 § 5. Prior: 1993 c 510 § 22; 1993 c 69 § 12; 1985 c 185 § 22; 1981 c 259 § 1; 1957 c 37 § 17; 1955 c 270 § 16; prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

RCW 49.60.240 through 49.60.280 applicable to complaints concerning unlawful use of refueling services for individuals with disabilities: RCW 49.60.360.

49.60.250 Hearing of complaint by administrative law judge—Limitation of relief—Penalties—Order—Arbitration. (1) In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission: PROVIDED, That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with

or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed twenty thousand dollars, and including a requirement for report of the matter on compliance. Relief available for violations of RCW 49.60.222 through 49.60.224 shall be limited to the relief specified in RCW 49.60.225.

(6) If a determination is made that retaliatory action, as defined in RCW 42.40.050, has been taken against a whistleblower, as defined in RCW 42.40.020, the administrative law judge may, in addition to any other remedy, require restoration of benefits, back pay, and any increases in compensation that would have occurred, with interest; impose a civil penalty upon the retaliator of up to five thousand dollars; and issue an order to the state employer to suspend the retaliator for up to thirty days without pay. At a minimum, the administrative law judge shall require that a letter of reprimand be placed in the retaliator's personnel file. No agency shall issue any nondisclosure order or policy, execute any nondisclosure agreement, or spend any funds requiring information that is public under the public records act, chapter 42.56 RCW, be kept confidential; except that nothing in this section shall affect any state or federal law requiring information be kept confidential. All penalties recovered shall be paid into the state treasury and credited to the general fund.

(7) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW 34.05.510 through 34.05.598, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(8) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(9) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law judge concludes that the complaint was frivolous, unreasonable, or groundless.

(10) The commission shall establish rules of practice to govern, expedite, and effectuate the foregoing procedure.

(11) Instead of filing with the commission, a complainant may pursue arbitration conducted by the American arbitration association or another arbitrator mutually agreed by the parties, with the cost of arbitration shared equally by the complainant and the respondent. [2008 c 266 § 8. Prior: 1993 c 510 § 23; 1993 c 69 § 14; 1992 c 118 § 5; 1989 c 175 § 115; 1985 c 185 § 23; 1983 c 293 § 1; 1981 c 259 § 2; 1957 c 37 § 18; 1955 c 270 § 17; prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

Findings—Intent—2008 c 266: See note following RCW 42.40.020.

Application—Severability—2008 c 266: See RCW 42.40.910 and 42.40.901.

Severability—1993 c 510: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

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

Effective date—1981 c 259: "Sections 2, 3, 4 and 5 of this 1981 act shall take effect upon the enactment of House Bill 101, 1981 Regular Session." [1981 c 259 § 7.] Sections 2, 3, 4, and 5 of 1981 c 259 consist of amendments to RCW 49.60.250, 49.60.260, and 49.60.270 and the enactment of RCW 49.60.330, respectively. House Bill 101 was enacted as chapter 67, Laws of 1981. It was signed by the governor on April 25, 1981. Since chapter 67, Laws of 1981 took effect on July 1, 1982, the apparent intent is for sections 2, 3, 4, and 5 of 1981 c 259 to take effect on that date. For effective date of 1981 c 67, see note following RCW 34.12.010.

Assignment of administrative law judge for human rights commission proceedings: RCW 34.12.037.

49.60.260 Enforcement of orders of administrative law judge—Appellate review of court order. (1) The commission or any person entitled to relief of a final order may petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission or any person entitled to relief of a final order shall cause a notice of the petition to be sent by certified mail to all parties or their representatives.

(2) If within sixty days after the date the administrative law judge's order concerning an unfair practice in a real estate transaction is entered, no petition has been filed under subsection (1) of this section and the commission has not sought enforcement of the final order under this section, any person entitled to relief under the final order may petition for a decree enforcing the order in the superior courts of the state of Washington for the county in which the unfair practice in a real estate transaction under RCW 49.60.222 through 49.60.224 is alleged to have occurred.

(3) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

(4) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the administrative order to appear in court at a time desig-

nated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission or any person entitled to relief of any final order shall immediately serve the noncomplying party with a copy of the court order and the petition.

(5) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

- (a) The order is regular on its face;
- (b) The order has not been complied with; and
- (c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under RCW 34.05.510 through 34.05.598, and the person has given no valid excuse for failing to use that remedy.

(6) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to appellate review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. The review shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases. [1995 c 259 § 6; 1993 c 69 § 15; 1989 c 175 § 116; 1988 c 202 § 47; 1985 c 185 § 24; 1981 c 259 § 3; 1971 c 81 § 118; 1957 c 37 § 21. Prior: 1949 c 183 § 9, part; Rem Supp. 1949 § 7614-27A, part.]

Rules of court: Cf. *RAP 2.2, 18.22.*

Effective date—1995 c 259: See note following RCW 49.60.010.

Severability—1993 c 69: See note following RCW 49.60.030.

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

Severability—1988 c 202: See note following RCW 2.24.050.

Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.270 Appeal from orders of administrative law judge. Any respondent or complainant, including the commission, aggrieved by a final order of an administrative law judge may obtain judicial review of such order as provided under the administrative procedure act, chapter 34.05 RCW. From the time a petition for review is filed, the court has jurisdiction to grant to any party such temporary relief or restraining order as it deems just and suitable. If the court affirms the order, it shall enter a judgment and decree enforcing the order as affirmed. [1985 c 185 § 25; 1981 c 259 § 4; 1957 c 37 § 22. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.280 Court shall expeditiously hear and determine. Petitions filed under RCW 49.60.260 and 49.60.270 shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the court under this chapter shall take precedence over all other matters, except matters of the same character. [1957 c 37 § 23. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

49.60.310 Misdemeanor to interfere with or resist commission. Any person who wilfully resists, prevents, impedes, or interferes with the commission or any of its

members or representatives in the performance of duty under this chapter, or who wilfully violates an order of the commission, is guilty of a misdemeanor; but procedure for the review of the order shall not be deemed to be such wilful conduct. [1985 c 185 § 26; 1961 c 100 § 4; 1957 c 37 § 26; 1949 c 183 § 10; Rem. Supp. 1949 § 7614-28.]

49.60.320 Governor may act on orders against state or political subdivisions. In any case in which the commission shall issue an order against any political or civil subdivision of the state, or any agency, or instrumentality of the state or of the foregoing, or any officer or employee thereof, the commission shall transmit a copy of such order to the governor of the state. The governor shall take such action to secure compliance with such order as the governor deems necessary. [1985 c 185 § 27; 1949 c 183 § 11; Rem. Supp. 1949 § 7614-29.]

49.60.330 First-class cities of over one hundred twenty-five thousand population—Administrative remedies authorized—Superior court jurisdiction. Any county or any city classified as a first-class city under RCW 35.01.010 with over one hundred twenty five thousand population may enact resolutions or ordinances consistent with this chapter to provide administrative and/or judicial remedies for any form of discrimination proscribed by this chapter. The imposition of such administrative remedies shall be subject to judicial review. The superior courts shall have jurisdiction to hear all matters relating to violation and enforcement of such resolutions or ordinances, including petitions for preliminary relief, the award of such remedies and civil penalties as are consistent with this chapter, and enforcement of any order of a county or city administrative law judge or hearing examiner pursuant to such resolution or ordinance. Any local resolution or ordinance not inconsistent with this chapter may provide, after a finding of reasonable cause to believe that discrimination has occurred, for the filing of an action in, or the removal of the matter to, the superior court. [1993 c 69 § 16; 1983 c 5 § 2; 1981 c 259 § 5.]

Severability—1993 c 69: See note following RCW 49.60.030.

Effective date—1981 c 259: See note following RCW 49.60.250.

49.60.340 Election for civil action in lieu of hearing—Relief. (1) Any complainant on whose behalf the reasonable cause finding was made, a respondent, or an aggrieved person may, with respect to real estate transactions pursuant to RCW 49.60.222 through 49.60.225, elect to have the claims on which reasonable cause was found decided in a civil action under RCW 49.60.030(2) in lieu of a hearing under RCW 49.60.250. This election must be made not later than twenty days after the service of the reasonable cause finding. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates. Any reasonable cause finding issued by the commission pursuant to the procedures contained in this chapter shall become final twenty days after service of the reasonable cause finding unless a written notice of election is received by the commission within the twenty-day period.

(2) If an election is made under subsection (1) of this section, the commission shall authorize not later than thirty days after the election is made, and the attorney general shall commence, a civil action on behalf of the aggrieved person in a superior court of the state of Washington seeking relief under this section.

(3) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right in that civil action.

(4) In a civil action under this section, if the court finds that an unfair practice in a real estate transaction has occurred or is about to occur, the court may grant any relief that a court could grant with respect to such an unfair practice in a real estate transaction in a civil action under RCW 49.60.030(2). If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(5) In any administrative proceeding under this section where the respondent is the prevailing party, a complainant who intervenes by filing a notice of independent appearance may be liable for reasonable attorneys' fees and costs only to the extent that the intervening participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

(6) In any administrative proceeding brought under RCW 49.60.225 or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court in its discretion may allow the prevailing party, other than the commission, reasonable attorneys' fees and costs. [1993 c 69 § 13.]

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.350 Temporary or preliminary relief—Superior court jurisdiction—Petition of commission. (1) The superior courts of the state of Washington shall have jurisdiction upon petition of the commission, through the attorney general, to seek appropriate temporary or preliminary relief to enjoin any unfair practice in violation of RCW 49.60.222 through 49.60.225, from which prompt judicial action is necessary to carry out the purposes of this chapter.

(2) The commencement of a civil action under this section does not preclude the initiation or continuation of administrative proceedings under this chapter. [1993 c 69 § 2.]

Severability—1993 c 69: See note following RCW 49.60.030.

49.60.360 Refueling services for disabled drivers—Violation—Investigation—Intentional display of plate or placard invalid or not legally issued prohibited—Fine—Notice to disabled persons. (1) Every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility, shall provide, upon request, refueling service to disabled drivers, unaccompanied by passengers capable of safely providing refueling service, of vehicles which display a disabled person's license plate or placard issued by the department of licensing. The price charged for the motor vehicle fuel in such a case shall be no greater than that which the facility otherwise would charge the public generally to

purchase motor vehicle fuel without refueling service. This section does not require a facility to provide disabled drivers with services, including but not limited to checking oil or cleaning windshields, other than refueling services.

(2) This section does not apply to:

(a) Exclusive self-service gas stations which have remotely controlled gas pumps and which never provide pump island service; and

(b) Convenience stores which sell gasoline, which have remotely controlled gas pumps and which never provide pump island service.

(3) Any person who, as a responsible managing individual setting service policy of a station or facility or as an employee acting independently against set service policy, acts in violation of this section is guilty of a misdemeanor. This subsection shall be enforced by the prosecuting attorney.

(4) The human rights commission shall, upon the filing of a verified written complaint by any person, investigate the actions of any person, firm, partnership, association, trustee, or corporation alleged to have violated this section. The complaint shall be in the form prescribed by the commission. The commission may, upon its own motion, issue complaints and conduct investigations of alleged violations of this section.

RCW 49.60.240 through 49.60.280 shall apply to complaints under this section.

(5) In addition to those matters referred pursuant to subsection (3) of this section, the prosecuting attorney may investigate and prosecute alleged violations of this section.

(6) Any person who intentionally displays a license plate or placard which is invalid, or which was not lawfully issued to that person, for the purpose of obtaining refueling service under subsection (1) of this section shall be subject to a civil fine of one hundred dollars for each such violation.

(7) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility.

(8) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person who is issued a disabled person's license plate or placard.

(9) For the purposes of this section, "refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

(10) Nothing in this section limits or restricts the rights or remedies provided under chapter 49.60 RCW. [1994 c 262 § 17; 1985 c 309 § 1. Formerly RCW 70.84.090.]

49.60.370 Liability for killing or injuring dog guide or service animal—Penalty in addition to other remedies or penalties—Recovery of attorneys' fees and costs—No duty to investigate. (1) A person who negligently or maliciously kills or injures a dog guide or service animal is liable for a penalty of one thousand dollars, to be paid to the user of the animal. The penalty shall be in addition to and not in lieu of any other remedies or penalties, civil or criminal, provided by law.

(2) A user or owner of a dog guide or service animal, whose animal is negligently or maliciously injured or killed,

is entitled to recover reasonable attorneys' fees and costs incurred in pursuing any civil remedy.

(3) The commission has no duty to investigate any negligent or malicious acts referred to under this section. [1997 c 271 § 23; 1988 c 89 § 1. Formerly RCW 70.84.100.]

49.60.380 License waiver for dog guide and service animals. A county, city, or town shall honor a request by a blind person or hearing impaired person not to be charged a fee to license his or her dog guide, or a request by a physically disabled person not to be charged a fee to license his or her service animal. [1997 c 271 § 24; 1989 c 41 § 1. Formerly RCW 70.84.120.]

49.60.390 Rule-making authority—Deadline—1997 c 271. The Washington state human rights commission shall adopt rules implementing chapter 271, Laws of 1997 no later than March 1, 1998. [1997 c 271 § 25.]

49.60.400 Discrimination, preferential treatment prohibited. (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(7) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state.

(8) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

(9) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of

this section. [1999 c 3 § 1 (Initiative Measure No. 200, approved November 3, 1998).]

49.60.401 Short title—1999 c 3. RCW 49.60.400 shall be known and cited as the Washington State Civil Rights Act. [1999 c 3 § 2 (Initiative Measure No. 200, approved November 3, 1998).]

Chapter 49.64 RCW

EMPLOYEE BENEFIT PLANS

Sections

49.64.010	Duration of trusts for employee benefits.
49.64.020	Trusts exempted from limitation as to duration.
49.64.030	Employee benefit plans—Payment or refund as discharge—Adverse claims.
49.64.040	Dental care assistance plans—Options required.

Health care savings accounts authorized: Chapter 48.68 RCW.

49.64.010 Duration of trusts for employee benefits.

Any trust heretofore or hereafter created for the purposes and of the type enumerated in RCW 49.64.020, whether in real or personal property or in real and personal property, may continue for such time as may be necessary to accomplish the purposes of the trust and shall not be invalid as violating any statute or rule of law against perpetuities, or against accumulations of earnings, or concerning the suspension of the power of alienation of the title to property, or otherwise limiting the duration of trusts. [1955 c 158 § 1.]

49.64.020 Trusts exempted from limitation as to duration. Trusts which are entitled to the exemption from limitation as to their duration provided for in RCW 49.64.010 must be:

(1) Created by an employer primarily for the benefit of some or all of the employees of such employer or the families or appointees of such employees, under any pension, profit-sharing, stock bonus, retirement, disability, death benefit or other similar types of employee-benefit plans; and

(2) Contributed to by the employer or employees or both; and

(3) Existing for the purpose of distributing to or for the benefit of some or all of such employees (either before or after their employment ceases), their families or appointees, the earnings or principal, or earnings and principal, of the trust. [1955 c 158 § 2.]

49.64.030 Employee benefit plans—Payment or refund as discharge—Adverse claims. Notwithstanding the provisions of RCW 26.16.030, whenever payment or refund is made to an employee, former employee, or his beneficiary or estate pursuant to and in full compliance with a written retirement, death or other employee benefit plan or savings plan, such payment or refund shall fully discharge the employer and any trustee or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former employer, where the payment is made by the employer or former employer, has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to

be entitled to such payment or refund or some part thereof, or where a trustee or insurance company is making the payment, such notice has been received by the trustee or insurance company at its home office or its principal place of business within this state, and if none, such notice may be made on the secretary of state: PROVIDED, HOWEVER, That nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than employer and the trustee or insurance company making such payment or refund. [1953 c 45 § 1. Formerly RCW 49.52.065.]

Employees' benefit deductions are trust funds: RCW 49.52.010.

49.64.040 Dental care assistance plans—Options required. (1) Unless the context clearly requires otherwise, in this section "dental care assistance plan" means any plan of dental insurance offered by an insurer as defined by chapter 48.01 RCW and any agreement for dental care benefits entered into or renewed after January 1, 1989, provided by a health care service contractor as defined by chapter 48.44 RCW.

(2) Each employer, public or private, that offers its employees a dental care assistance plan and each employee benefits fund that offers its members a dental care assistance plan limiting the provider of dental care to designated providers or group of providers, shall make available to and inform its employees or members of the option of enrolling in an alternative dental care assistance plan that permits the employees or members to obtain dental care services from any licensed dental care provider of their choice. The portion of the premium paid by the employer for the limiting plan shall be comparable to, but in no case greater than, the portion of the premium paid by the employer for the other plan. If employees are members of a bona fide bargaining unit covered by a labor-management collective bargaining agreement, the selection of the options required by this section may be specified in the agreement. The provisions of this section are not mandatory if the employees are covered by Taft-Hartley health care trust, except that the labor-management trustees may contract with a dental care assistance plan if a feasibility study determines it is to the advantage of the members: PROVIDED, That this section shall only apply to employers with greater than twenty-five employees under coverage. [1988 c 259 § 1.]

Chapter 49.66 RCW

HEALTH CARE ACTIVITIES

Sections

49.66.010	Purpose—Policy—Declaration.
49.66.020	Definitions.
49.66.030	Bargaining unit.
49.66.040	Unfair labor practice by health care activity.
49.66.050	Unfair labor practice by employee organization or agent.
49.66.060	Strike and picketing.
49.66.070	Relief from unfair labor practice—Actions—Remedial orders.
49.66.080	Rules and regulations—Procedures.
49.66.090	Board of arbitration—Members—Selection—Chair.
49.66.100	Board of arbitration—Hearings—Findings.
49.66.110	Board of arbitration—Standards or guidelines.
49.66.120	Arbitrator—Compensation—Expenses.
49.66.900	Severability—1972 ex.s. c 156.

49.66.010 Purpose—Policy—Declaration. It is the public policy of the state to expedite the settlement of labor disputes arising in connection with health care activities, in order that there may be no lessening, however temporary, in the quality of the care given to patients. It is the legislative purpose by this chapter to promote collective bargaining between health care activities and their employees, to protect the right of employees of health care activities to organize and select collective bargaining units of their own choosing.

It is further determined that any agreements involving union security including an all-union agreement or agency agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee must pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise pay dues. The employee shall furnish written proof that this has been done. If the employee and representative of the labor organization do not reach agreement on the matter, the department shall designate such organization. [1973 2nd ex.s. c 3 § 1; 1972 ex.s. c 156 § 1.]

49.66.020 Definitions. As used in this chapter:

(1) "Health care activity" includes any hospital, nursing home, institution, agency or establishment, exclusive of those operated by the state, its municipalities, or political subdivisions, having for one of its principal purposes the preservation of health or the care of sick, aged or infirm persons.

(2) "Bargaining unit" includes any group of employees of a health care activity having substantially common interests with respect to working conditions. The composition of a bargaining unit may be determined by common consent between an employer and its employees, or, in the event either party shall apply to the director of labor and industries for a determination of the composition of a bargaining unit, it shall be determined by the director of labor and industries or his delegated representative. No bargaining unit shall be found appropriate if it includes guards together with other employees.

(3) "Employee" includes any registered nurse or licensed practical nurse or service personnel performing services for wages for a health care activity. The term shall not apply to a member of a religious order assigned to a health care activity by the order as a part of his obligations to it; nor shall it apply to persons performing services in connection with healing by prayer or spiritual means alone in accordance with the tenets and practices of recognized church or religious denominations by adherents thereof; nor shall it apply to supervisors.

(4) "Employer" includes any person, agency, corporation, company or other organization engaged in the operation of a health care activity, whether for profitable or charitable purposes.

(5) "Supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if

in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Supervisor includes registered nurses only if administrative supervision is his or her primary duty and activity.

(6) "Guard" means any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.

(7) "Director" means the director of the department of labor and industries.

(8) "Department" means the department of labor and industries. [1973 2nd ex.s. c 3 § 2; 1972 ex.s. c 156 § 2.]

49.66.030 Bargaining unit. An employee association shall be deemed the properly designated representative of a bargaining unit when it can show evidence that bargaining rights have been assigned to it by a majority of the employees in the bargaining unit. Should questions arise concerning the representative status of any employee organization claiming to represent a bargaining unit of employees, upon petition by such an organization, it shall be the duty of the director, acting by himself or through a designee to investigate and determine the composition of the organization. Any organization found authorized by not less than thirty percent of the employees of a bargaining unit shall be eligible to apply for an election to determine its rights to represent the unit. If more than one organization shall claim to represent any unit, the director, or his designee, may conduct an election by secret ballot to determine which organization shall be authorized to represent the unit. In order to be certified as a bargaining representative, an employee organization must receive, in a secret ballot election, votes from a majority of the employees who vote in the election, except that nothing in this section shall prohibit the voluntary recognition of a labor organization as a bargaining representative by an employer upon a showing of reasonable proof of majority. In any election held pursuant to this section, there shall be a choice on the ballot for employees to designate that they do not wish to be represented by any bargaining representative. No representation election shall be directed in any bargaining unit or any subdivision thereof within which, in the preceding twelve-month period, a valid election has been held. Thirty percent of the employees of an employer may file a petition for a secret ballot election to ascertain whether the employee organization which has been certified or is currently recognized by their employer as their bargaining representative is no longer their bargaining representative.

No employee organization shall be certified as the representative of employees in a bargaining unit of guards, if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. The determination shall be based upon a plurality of votes cast in such election, and shall remain in effect for a period of not less than one year. In determining appropriate bargaining units, the director shall limit such units to groups consisting of registered nurses, licensed practical nurses or service personnel: PROVIDED, HOWEVER, That if a majority of each such classification desires inclusion within a single bargaining unit, they may

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combine into a single unit. [1973 2nd ex.s. c 3 § 3; 1972 ex.s. c 156 § 3.]

49.66.040 Unfair labor practice by health care activity. It shall be deemed an unfair labor practice, and unlawful, for any health care activity to:

(1) Interfere with, restrain or coerce employees in any manner in the exercise of their right of self-organization: PROVIDED, That the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization having bargaining as one of its functions;

(3) Discriminate in regard to hire, terms, or conditions of employment in order to discourage membership in any employee organization having collective bargaining as one of its functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of employees; and it shall be a requirement of good faith bargaining that the parties be willing to reduce to writing, and have their representatives sign, any agreement arrived at through negotiation and discussion. [1972 ex.s. c 156 § 4.]

49.66.050 Unfair labor practice by employee organization or agent. It shall be an unfair labor practice and unlawful, for any employee organization or its agent to:

(1) Restrain or coerce (a) employees in the exercise of their right to refrain from self-organization, or (b) an employer in the selection of its representatives for purposes of collective bargaining or the adjustment of grievances;

(2) Cause or attempt to cause an employer to discriminate against an employee in violation of subsection (3) of RCW 49.66.040 or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) Refuse to meet and bargain in good faith with an employer, provided it is the duly designated representative of the employer's employees for purposes of collective bargaining;

(4) Require of employees covered by a union security agreement the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the director finds excessive or discriminatory under all the circumstances. In making such a finding, the director shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(5) Cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(6) Enter into any contract or agreement, express or implied, whereby an employer or other person ceases or

refrains, or agrees to cease or refrain, from handling, using, selling, transporting or otherwise dealing in any of the products or services of any other employer or person, or to cease doing business with any other employer or person, and any such contract or agreement shall be unenforceable and void; or

(7) Engage in, or induce or encourage any individual employed by any employer or to engage in, an activity prohibited by RCW 49.66.060. [1973 2nd ex.s. c 3 § 4; 1972 ex.s. c 156 § 5.]

49.66.060 Strike and picketing. No employee organization, bargaining representative, person or employee shall authorize, sanction, engage in, or participate in a strike (including but not limited to a concerted work stoppage of any kind, concerted slowdown or concerted refusal or failure to report for work or perform work) or picketing against an employer under any circumstances, whether arising out of a recognition dispute, bargaining impasse or otherwise: PROVIDED, That nothing in this section shall prohibit picketing or other publicity for the sole purpose of truthfully advising the public of the existence of a dispute with the employer, unless an effect of such picketing or other publicity is (a) to induce any employee of the employer or any other individual, in the course of his employment, not to pick up, deliver or transfer goods, not to enter the employer's premises, or not to perform services; or (b) to induce such an employee or individual to engage in a strike. [1972 ex.s. c 156 § 6.]

49.66.070 Relief from unfair labor practice—Actions—Remedial orders. The director or any employee organization qualified to apply for an election under RCW 49.66.030 as now or hereafter amended or any employer may maintain in its name or in the name of its members legal action in any county in which jurisdiction of the employer or employee organization may be obtained, to seek relief from the commission of an unfair labor practice: PROVIDED, That such employer or employee organization exhausts the administrative remedies under rules and regulations promulgated by the department prior to seeking such court action.

The department is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. Any party aggrieved by any remedial order is entitled to the judicial review thereof in accordance with the provisions of chapter 34.05 RCW. [1973 2nd ex.s. c 3 § 5; 1972 ex.s. c 156 § 7.]

49.66.080 Rules and regulations—Procedures. The director shall have the power to make such rules and regulations not inconsistent with this chapter, including the establishment of procedures for the hearing and determination of charges alleging unfair labor practices, and for a determination on application by either party when an impasse has arisen, and as he shall determine are necessary to effectuate its purpose and to enable him to carry out its provisions. [1973 2nd ex.s. c 3 § 6; 1972 ex.s. c 156 § 8.]

49.66.090 Board of arbitration—Members—Selection—Chair. In the event that a health care activity and an employees' bargaining unit shall reach an impasse, the mat-

ters in dispute shall be submitted to a board of arbitration composed of three arbitrators for final and binding resolution. The board shall be selected in the following manner: Within ten days, the employer shall appoint one arbitrator and the employees shall appoint one arbitrator. The two arbitrators so selected and named shall within ten days agree upon and select the name of a third arbitrator who shall act as chairman. If, upon the expiration of the period allowed therefor the arbitrators are unable to agree on the selection of a third arbitrator, such arbitrator shall be appointed at the request of either party in accordance with RCW 7.04A.110, and that person shall act as chair of the arbitration board. [2005 c 433 § 44; 1973 2nd ex.s. c 3 § 7; 1972 ex.s. c 156 § 9.]

Application—Captions not law—Savings—Effective date—2005 c 433: See RCW 7.04A.290 through 7.04A.310 and 7.04A.900.

49.66.100 Board of arbitration—Hearings—Findings. The arbitration board, acting through its chairman, shall call a hearing to be held within ten days after the date of the appointment of the chairman. The board shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings shall be taken. Any oral or documentary evidence and other data deemed relevant by the board may be received in evidence. The board shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by the board material to a just determination of the issues in dispute and to issue subpoenas. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the board may invoke the jurisdiction of any superior court and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. The hearing conducted by the arbitrators shall be concluded within twenty days of the time of commencement and, within ten days after conclusion of the hearings, the arbitrator shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the employees' negotiating agent or its attorney or other designated representative and to the employer or the employer's attorney or designated representative. The determination of the dispute made by the board shall be final and binding upon both parties. [1972 ex.s. c 156 § 10.]

49.66.110 Board of arbitration—Standards or guidelines. In making its determination, the board of arbitrators shall be mindful of the legislative purpose enumerated in RCW 49.66.010 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(1) Wage rates or other conditions of employment of the health care activity in question as compared with prevailing wage rates or other conditions of employment in the local operating area involved.

(2) Wage rates or other working conditions as compared with wage rates or other working conditions maintained for the same or similar work of workers in the local area.

(3) The overall compensation of employees having regard not only to wages for time actually worked but also for time not actually worked, including vacations, holidays and other excused time and for all fringe benefits received.

(4) Interest and welfare of the public.

(5) Comparison of peculiarities of employment in regard to other comparable trades or professions, specifically:

(a) Physical qualifications.

(b) Educational qualifications.

(c) Job training and skills.

(6) Efficiency of operation of the health care activity.

[1972 ex.s. c 156 § 11.]

49.66.120 Arbitrator—Compensation—Expenses.

The arbitrator so selected by the parties shall be paid at the daily rate or rates not to exceed the usual or customary rates paid to arbitrators in addition to travel expenses at the rates provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such sums together with all expenses of the hearing shall be borne equally by the parties to the arbitration proceedings. [1975-'76 2nd ex.s. c 34 § 147; 1973 2nd ex.s. c 3 § 8; 1972 ex.s. c 156 § 12.]

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

49.66.900 Severability—1972 ex.s. c 156.

If any portion of this chapter, or its application to any particular health care activity or class of health care activity, should be held invalid, the remainder of the chapter, or its application to other health care activities, or other classes thereof, shall not be affected. [1972 ex.s. c 156 § 13.]

Chapter 49.70 RCW

WORKER AND COMMUNITY RIGHT TO KNOW ACT

Sections

49.70.010 Legislative findings.
 49.70.020 Definitions.
 49.70.100 Employee may request workplace survey or material safety data sheet.
 49.70.105 Foreign language translation of written materials.
 49.70.110 Discharge or discipline of employee prohibited—Application of discrimination statutes.
 49.70.115 Agricultural employees—Information and training on hazardous chemicals.
 49.70.119 Agricultural employees—Pesticides—Records.
 49.70.140 Educational brochures and public service announcements.
 49.70.150 Civil action authorized.
 49.70.160 Request for additional information—Confidentiality.
 49.70.165 Trade secret exemptions.
 49.70.170 Worker and community right to know fund—Employer assessments—Audits—Appeal of assessment.
 49.70.175 Worker and community right to know fund—Expenditure—Disbursements.
 49.70.177 Penalties for late payment of fees—Collection of fees and penalties.
 49.70.180 Application of enforcement and administrative procedures of Washington industrial safety and health act.
 49.70.190 Compliance with chapter—Notice—Fines—Injunctive relief.
 49.70.200 Adoption of rules.
 49.70.210 Application of chapter to consumer products.
 49.70.900 Short title.
 49.70.905 Severability—1984 c 289.

49.70.010 Legislative findings. The legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety, and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to monitor adequately and detect any adverse health effects attributable thereto; that individuals themselves are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed action concerning their employment and their living conditions.

The legislature further declares that local health, fire, police, safety, and other government officials require detailed information about the identity, characteristics, and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to plan adequately for, and respond to, emergencies, enforce compliance with applicable laws and regulations concerning these substances, and to compile records of exposures to hazardous substances over a period of time that will facilitate the diagnosis, treatment, and prevention of disease.

The legislature further declares that the extent of the toxic contamination of the air, water, and land in this state has caused a high degree of concern among its residents and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The legislature therefore determines that while these substances have contributed to the high quality of life we enjoy in our state, it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this state may gain access to this information. [1984 c 289 § 2.]

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

(1) "Department" means the department of labor and industries.

(2) "Employee" means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this chapter whether by way of manual labor or otherwise. However, for the purposes of this chapter, employee shall not mean immediate family members of the officers of any corporation, partnership, sole proprietorship or other business entity or officers of any closely held corporation engaged in agricultural production of crops or livestock.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that engages in any business, industry, profession, or activity in this state and employs one or more employees or who contract with one or more persons, the essence of which is the personal labor of such person or persons and

includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations. [1985 c 409 § 1.]

49.70.100 Employee may request workplace survey or material safety data sheet. An employee or employee representative may request, in writing, from the employer, a copy of a workplace survey or a material safety data sheet, filed pursuant to this chapter for the employee's work area. The employer shall supply this material within three working days of the request. This section shall not apply to employees of vessels while the employees are on the water. [1989 c 11 § 22; 1984 c 289 § 15.]

Severability—1989 c 11: See note following RCW 9A.56.220.

49.70.105 Foreign language translation of written materials. (1) The department shall prepare and make available to employers or the public, upon request, a translation in any of the five most common foreign languages used in the workplace, of a written hazard communication program, a material safety data sheet, or written materials prepared by the department to inform employees of their rights relating to hazard communication standards under this chapter and chapter 49.17 RCW.

(2) An employer employing employees who have trouble communicating in English shall make reasonable efforts to post any notices in the employees' native languages as provided by the department. [1985 c 409 § 2.]

49.70.110 Discharge or discipline of employee prohibited—Application of discrimination statutes. No employer may discharge, cause to be discharged, or otherwise discipline, penalize, or discriminate against any employee because the employee or the employee's representative has exercised any right established in this chapter. The discrimination provisions of chapter 49.17 RCW apply to this chapter. [1984 c 289 § 16.]

49.70.115 Agricultural employees—Information and training on hazardous chemicals. (1) An employer shall provide employees engaged in agricultural production of crops or livestock or agricultural services with information and training on hazardous chemicals in their workplace at the time of their initial assignment, and whenever a new hazard is introduced into their work area, such instruction shall be tailored to the types of hazards to which the employees will be exposed. Seasonal and temporary employees who are not exposed to hazardous chemicals in their work area need not be trained.

(2) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are accessible to agricultural employees upon request.

(3) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced. [1985 c 409 § 3.]

49.70.119 Agricultural employees—Pesticides—Records. (1) An employer who applies pesticides in connection with the production of an agricultural crop, or who

causes pesticides to be applied in connection with such production, shall keep records for each application, which shall include the following information:

(a) The location of the land where the pesticide was applied or site where the pesticide was stored;

(b) The year, month, day, and time the pesticide was applied;

(c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that was applied or stored;

(d) The crop or site to which the pesticide was applied;

(e) The amount of pesticide applied per acre, or other appropriate measure;

(f) The concentration of pesticide that was applied;

(g) The number of acres, or other appropriate measure, to which pesticide was applied;

(h) If applicable, the licensed applicator's name, address, and telephone number and the name of the individual or individuals making the application;

(i) The direction and estimated velocity of the wind at the time the pesticide was applied: PROVIDED, That this subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and

(j) Any other reasonable information required by the director.

(2) The records shall be updated on the same day that a pesticide is applied. If the employer has been provided a copy of a pesticide application record under RCW 17.21.100(2)(b), the copy may be used as the record of the pesticide application required under this section. The employer shall maintain and preserve the pesticide application records for no less than seven years from the date of the application of the pesticide to which the records refer.

(3) The pesticide application records shall be readily accessible to the employer's employees and their designated representatives in a central location in the workplace beginning on the day the application is made and for at least thirty days following the application. The employee or representative shall be entitled to view the pesticide application records and make his or her own record from the information contained in the application records. New or newly assigned employees shall be made aware of the accessibility of the application records before working with pesticides or in a work area containing pesticides.

(4)(a) An employer subject to this section who stores pesticides shall at least once in each calendar year perform an inventory of the pesticides stored in any work area. The pesticide inventory records shall include the following information:

(i) The location of the site where the pesticide is stored;

(ii) The year, month, day, and time the pesticide was first stored;

(iii) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide that is stored; and

(iv) The amount of pesticide in storage at the time of the inventory.

The inventory records shall be maintained and preserved for no less than seven years.

(b) In addition to performing the annual pesticide inventory required under this subsection, an employer shall maintain a record of pesticide purchases made between the annual inventory dates. In lieu of this purchase record, an employer may obtain from distributors from whom pesticides are purchased a statement obligating the distributor to maintain the purchase records on behalf of the employer and in satisfaction of the employer's obligations under this subsection. The director may require the submission of all purchase records from employers or distributors, covering the purchases during a specified period of time or in a specified geographical area.

(5) If activities for which the records are maintained cease, the records shall be filed with the department. If an employer subject to this section is succeeded or replaced in that function by another person, the person who succeeds or replaces the employer shall retain the records as required by this section but is not liable for violations committed by the former employer under this chapter or rules adopted under this chapter, including violations relating to the retention and preservation of records.

(6)(a) The records required under this section shall be readily accessible to the department for inspection. Copies of the records shall be provided, on request, to: An employee or the employee's designated representative in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, treating health care personnel, the pesticide incident reporting and tracking review panel, or department representative. The designated representative or treating health care personnel are not required to identify the employee represented or treated. The department shall keep the name of any affected employee confidential in accordance with RCW 49.17.080(1). When a request for records is made under this subsection by treating health care personnel and the record is required for determining treatment, copies of the record shall be provided immediately. For all other requests, copies of the records shall be provided within seventy-two hours.

(b) Copies of records provided to any person or entity under this subsection (6) shall, if so requested, be provided or made available on a form adopted under subsection (10) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(c) If an employer has reason to suspect that an employee is ill or injured because of an exposure to one or more pesticides, the employer shall immediately provide the employee a copy of the relevant pesticide application records.

(7) If a request for a copy of a record is made under this section and the employer refuses to provide a copy, the requester may notify the department of the request and the employer's refusal. Within seven working days, the department shall request that the employer provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The employer shall provide copies of the records to the department within twenty-four hours after the department's request.

(8) The department shall include inspection of the records required under this section as part of any on-site

inspection of a workplace conducted under this chapter or chapter 49.17 RCW. The inspection shall determine whether the records are readily transferable to a form adopted by the department, and readily accessible to employees. However, no employer subject to a department inspection may be inspected under this subsection (8) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (8) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(9) If an employer has failed to maintain and preserve the records or provide access to or copies of the records as required under this section, the employer shall be subject to penalties authorized under RCW 49.17.180.

(10) The department of labor and industries and the department of agriculture shall jointly adopt, by rule, forms that satisfy the information requirements of this section and RCW 17.21.100. [1992 c 173 § 3; 1989 c 380 § 77.]

Effective dates—1992 c 173: See note following RCW 17.21.100.

Severability—1989 c 380: See RCW 15.58.942.

49.70.140 Educational brochures and public service announcements. The department shall produce educational brochures and public service announcements detailing information available to citizens under this chapter. These educational materials shall be sent to each county health department. As necessary, the department shall provide information needed to update these educational materials. [1984 c 289 § 20.]

49.70.150 Civil action authorized. A person may bring a civil action on his or her own behalf against a manufacturer, supplier, employer, or user to compel compliance with the provisions of this chapter or any rule promulgated under this chapter subject to the provisions of Title 51 RCW. The superior court shall have jurisdiction over these actions. The court may award costs of litigation to the prevailing party, including reasonable attorney and expert witness fees. [1984 c 289 § 21.]

49.70.160 Request for additional information—Confidentiality. The department may request from an employer submitting surveys to it further information concerning the surveys, and the employer shall provide the additional information upon the request. The employer may require the department to provide reasons why further information is needed and to sign an agreement protecting the confidentiality of any additional information provided under this section. [1984 c 289 § 23.]

49.70.165 Trade secret exemptions. (1) The department shall adopt rules in accordance with chapter 34.05 RCW establishing criteria for evaluating the validity of trade secret claims and procedures for issuing a trade secret exemption. Manufacturers or importers that make a trade secret claim to the department must notify direct purchasers if a

trade secret claim has been made on a product being offered for sale.

(2) If a trade secret claim exists, a manufacturer, importer, or employer may require a written statement of need or confidentiality agreement before the specific chemical identity of a hazardous substance is released. However, if a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous substance is necessary for emergency or first aid treatment, the manufacturer, importer, or employer shall immediately disclose the specific chemical identity to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, as defined by rule, as soon as circumstances permit.

(3) Any challenge to the denial of a trade secret claim shall be heard by an administrative law judge in accordance with chapter 34.05 RCW. [1985 c 409 § 4.]

49.70.170 Worker and community right to know fund—Employer assessments—Audits—Appeal of assessment. (1) The worker and community right to know fund is hereby established in the custody of the state treasurer. The department shall deposit all moneys received under this chapter in the fund. Moneys in the fund may be spent only for the purposes of this chapter following legislative appropriation. Disbursements from the fund shall be on authorization of the director or the director's designee. During the 2003-2005 fiscal biennium, moneys in the fund may also be used by the military department for the purpose of assisting the state emergency response commission and coordinating local emergency planning activities. The fund is subject to the allotment procedure provided under chapter 43.88 RCW.

(2) The department shall assess each employer who reported ten thousand four hundred or more worker hours in the prior calendar year an annual fee to provide for the implementation of this chapter. The department shall promulgate rules establishing a fee schedule for all employers who reported ten thousand four hundred or more worker hours in the prior calendar year and are engaged in business operations having a standard industrial classification, as designated in the standard industrial classification manual prepared by the federal office of management and budget, within major group numbers 01 through 08 (agriculture and forestry industries), numbers 10 through 14 (mining industries), numbers 15 through 17 (construction industries), numbers 20 through 39 (manufacturing industries), numbers 41, 42, and 44 through 49 (transportation, communications, electric, gas, and sanitary services), number 75 (automotive repair, services, and garages), number 76 (miscellaneous repair services), number 80 (health services), and number 82 (educational services). The department shall establish the annual fee for each employer who reported ten thousand four hundred or more worker hours in the prior calendar year in industries identified by this section, provided that fees assessed shall not be more than two dollars and fifty cents per full time equivalent employee. The annual fee shall not exceed fifty thousand dollars. The fees shall be collected solely from employers whose industries have been identified by rule

under this chapter. The department shall promulgate rules allowing employers who do not have hazardous substances at their workplace to request an exemption from the assessment and shall establish penalties for fraudulent exemption requests. All fees collected by the department pursuant to this section shall be collected in a cost-efficient manner and shall be deposited in the fund.

(3) Records required by this chapter shall at all times be open to the inspection of the director, or his designee including, the traveling auditors, agents or assistants of the department provided for in RCW 51.16.070 and 51.48.040. The information obtained from employer records under the provisions of this section shall be subject to the same confidentiality requirements as set forth in RCW 51.16.070.

(4) An employer may appeal the assessment of the fee or penalties pursuant to the procedures set forth in Title 51 RCW and accompanying rules except that the employer shall not have the right of appeal to superior court as provided in Title 51 RCW. The employer from whom the fee or penalty is demanded or enforced, may however, within thirty days of the board of industrial insurance appeal's final order, pay the fee or penalty under written protest setting forth all the grounds upon which such fee or penalty is claimed to be unlawful, excessive or otherwise improper and thereafter bring an action in superior court against the department to recover such fee or penalty or any portion of the fee or penalty which was paid under protest.

(5) Repayment shall be made to the general fund of any moneys appropriated by law in order to implement this chapter. [2004 c 276 § 911; 2001 2nd sp.s. c 7 § 913; 1999 c 309 § 917; 1986 c 310 § 1; 1984 c 289 § 24.]

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

49.70.175 Worker and community right to know fund—Expenditure—Disbursements. Funds in the worker and community right to know fund established under RCW 49.70.170 may be spent by the department of ecology to implement RCW 70.102.020 (1) through (3) following legislative appropriation. Disbursements from the fund shall be on authorization of the director of the department of ecology. [1985 c 410 § 5.]

49.70.177 Penalties for late payment of fees—Collection of fees and penalties. If payment of any fee assessed under RCW 49.70.170 is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the fee. If the fee is not received within thirty days after the due date, there shall be assessed a total penalty of ten percent of the amount of the fee. If the fee is not received within sixty days after the due date, there shall be assessed a total penalty of twenty percent of the amount of the fee. No penalty added may be less than ten dollars. If a warrant is issued by the department for the collection of fees, penalties, and interest, there shall be an additional penalty of five percent of the amount of the fee, but not less than five dollars nor more than one hundred dollars. Warrants shall

earn interest at the rate of one percent per month, or fraction thereof, from and after the date of entry of the warrant. The department may utilize the procedures for collection of fees, penalties, and interest set forth in Title 51 RCW. [1986 c 310 § 2.]

49.70.180 Application of enforcement and administrative procedures of Washington industrial safety and health act. Unless reference is specifically made to another chapter, this chapter shall be implemented and enforced including penalties, violations, citations, and other administrative procedures pursuant to chapter 49.17 RCW. [1984 c 289 § 25.]

49.70.190 Compliance with chapter—Notice—Fines—Injunctive relief. If a manufacturer, supplier, employer, or user refuses or fails to provide the department with any data sheets, workplace surveys, or other papers, documents, or information required by this chapter, the department may give written notice to the manufacturer, supplier, employer, or user demanding immediate compliance. If the manufacturer, supplier, employer, or user fails to begin to comply with the terms of the notice within fourteen days of receipt, the department may levy a fine of up to fifty dollars per affected employee per day, not to exceed five thousand dollars per day from the final date for compliance allowed by this section or by the department. In any case where the non-compliance continues for more than fifteen days or where the department determines the failure to comply creates a potential health or safety hazard to employees or hinders the department's performance of its duties under this chapter, the department may, in lieu of levying a fine or further fines, petition the superior court of Thurston county or the county where the manufacturer, supplier, employer, or user is located for an order enjoining the manufacturer, employer, supplier, or user from further noncompliance and granting any other remedies that may be appropriate. The court may award the department costs of litigation, including attorney's fees, if the department is the prevailing party. [1984 c 289 § 26.]

49.70.200 Adoption of rules. Except as otherwise provided in this chapter, the department, after consultation with the department of agriculture, shall adopt any rules necessary to carry out its responsibilities under this chapter. [1984 c 289 § 27.]

49.70.210 Application of chapter to consumer products. (1) It is the intent of the legislature that this chapter shall not apply to products that are generally made available to the noncommercial consumer: PROVIDED, That such "consumer" products used by employees in the workplace are used in substantially the same manner, form, and concentration as they are used by noncommercial consumers, and that the product exposure is not substantially greater to the employee than to the noncommercial consumer during normal and accepted use of that product.

(2) The department shall adopt rules in accordance with chapter 34.05 RCW to implement this section. This section shall not affect the department's authority to implement and

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enforce the Washington industrial safety and health act, chapter 49.17 RCW, at least as effectively as the federal occupational safety and health act. [1987 c 365 § 1.]

49.70.900 Short title. This chapter shall be known and may be cited as the "worker and community right to know act." [1984 c 289 § 1.]

49.70.905 Severability—1984 c 289. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 289 § 30.]

Chapter 49.74 RCW AFFIRMATIVE ACTION

Sections

49.74.005	Legislative findings—Purpose.
49.74.010	Commission.
49.74.020	Affirmative action rules—Noncompliance—Notification—Hearing.
49.74.030	Noncompliance—Conciliation—Order.
49.74.040	Failure to reach conciliation agreement—Administrative hearing—Appeal.
49.74.050	Superior court—Remedies.

49.74.005 Legislative findings—Purpose. Discrimination because of race, creed, color, national origin, age, sex, marital status, or the presence of any sensory, mental, or physical handicap is contrary to the findings of the legislature and public policy. The legislature finds and declares that racial minorities, women, persons in protected age groups, persons with disabilities, Vietnam-era veterans, and disabled veterans are underrepresented in Washington state government employment.

The purpose of this chapter is to provide for enforcement measures for affirmative action within Washington state government employment and institutions of higher education in order to eliminate such underrepresentation. [1985 c 365 § 7.]

49.74.010 Commission. As used in this chapter, "commission" means the Washington state human rights commission. [1985 c 365 § 8.]

49.74.020 Affirmative action rules—Noncompliance—Notification—Hearing. If the commission reasonably believes that a state agency, an institution of higher education, or the state patrol has failed to comply with an affirmative action rule adopted under RCW 41.06.150 or 43.43.340, the commission shall notify the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol of the noncompliance, as well as the director of personnel. The commission shall give the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol an opportunity to be heard on the failure to comply. [1993 c 281 § 57; 1985 c 365 § 9.]

Effective date—1993 c 281: See note following RCW 41.06.022.

49.74.030 Noncompliance—Conciliation—Order.

The commission in conjunction with the department of personnel or the state patrol, whichever is appropriate, shall attempt to resolve the noncompliance through conciliation. If an agreement is reached for the elimination of noncompliance, the agreement shall be reduced to writing and an order shall be issued by the commission setting forth the terms of the agreement. The noncomplying state agency, institution of higher education, or state patrol shall make a good faith effort to conciliate and make a full commitment to correct the noncompliance with any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 41.06.150(6) and 43.43.340(5), whichever is appropriate. [2002 c 354 § 246; 2002 c 354 § 245; 1993 c 281 § 58; 1985 c 365 § 10.]

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

Effective date—1993 c 281: See note following RCW 41.06.022.

49.74.040 Failure to reach conciliation agreement—Administrative hearing—Appeal. If no agreement can be reached under RCW 49.74.030, the commission may refer the matter to the administrative law judge for hearing pursuant to RCW 49.60.250. If the administrative law judge finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct the noncompliance, the administrative law judge shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The administrative law judge may order any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 41.06.150(6) and 43.43.340(5), whichever is appropriate.

An order by the administrative law judge may be appealed to superior court. [2002 c 354 § 248; 2002 c 354 § 247; 1985 c 365 § 11.]

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

49.74.050 Superior court—Remedies. If the superior court finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct the noncompliance, the court, in addition to any other penalties and sanctions prescribed by law, shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The court may require any action deemed appropriate by the court which is consistent with the intent of this chapter. [1985 c 365 § 12.]

Chapter 49.76 RCW**DOMESTIC VIOLENCE LEAVE**

Sections

49.76.010	Legislative findings.
49.76.020	Definitions.
49.76.030	Domestic violence leave—Victims and family members—Purpose.
49.76.040	Documentation of leave—Notice of purpose—Confidentiality.
49.76.050	Retention of pay or benefits—Exceptions—Health coverage.
49.76.060	Scope—Application—Expansion of rights.
49.76.070	Enforcement—Complaint—Investigation—Notice of infraction.

49.76.080	Enforcement—Penalty for infraction.
49.76.090	Enforcement—Record confidentiality—Exceptions.
49.76.100	Enforcement—Remedies—Civil actions.
49.76.110	Effect of administrative findings and conclusions on civil action.
49.76.120	Retaliation against employee.
49.76.130	Notice to employees—Department of labor and industries.
49.76.140	Notice to employees—Prosecutors—Victims' advocates.
49.76.150	Authority to adopt rules.
49.76.900	Effective date—2008 c 286.

49.76.010 Legislative findings. (1) It is in the public interest to reduce domestic violence, sexual assault, and stalking by enabling victims to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries, and to reduce the devastating economic consequences of domestic violence, sexual assault, and stalking to employers and employees. Victims of domestic violence, sexual assault, and stalking should be able to recover from and cope with the effects of such violence and participate in criminal and civil justice processes without fear of adverse economic consequences.

(2) One of the best predictors of whether a victim of domestic violence, sexual assault, or stalking will be able to stay away from an abuser is his or her degree of economic independence. However, domestic violence, sexual assault, and stalking often negatively impact victims' ability to maintain employment.

(3) An employee who is a victim of domestic violence, sexual assault, or stalking, or an employee whose family member is a victim, must often take leave from work due to injuries, court proceedings, or safety concerns requiring legal protection.

(4) Thus, it is in the public interest to provide reasonable leave from employment for employees who are victims of domestic violence, sexual assault, or stalking, or for employees whose family members are victims, to participate in legal proceedings, receive medical treatment, or obtain other necessary services. [2008 c 286 § 1.]

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

(1) "Child," "spouse," "parent," "parent-in-law," "grandparent," and "sick leave and other paid time off" have the same meanings as in RCW 49.12.265.

(2) "Dating relationship" has the same meaning as in RCW 26.50.010.

(3) "Department," "director," "employer," and "employee" have the same meanings as in RCW 49.12.005.

(4) "Domestic violence" has the same meaning as in RCW 26.50.010.

(5) "Family member" means any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship.

(6) "Intermittent leave" and "reduced leave schedule" have the same meanings as in RCW 49.78.020.

(7) "Sexual assault" has the same meaning as in RCW 70.125.030.

(8) "Stalking" has the same meaning as in RCW 9A.46.110. [2008 c 286 § 2.]

49.76.030 Domestic violence leave—Victims and family members—Purpose. An employee may take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule, with or without pay, to:

(1) Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

(2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

(3) Obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

(4) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or

(5) Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking. [2008 c 286 § 3.]

49.76.040 Documentation of leave—Notice of purpose—Confidentiality. (1) As a condition of taking leave for any purpose described in RCW 49.76.030, an employee shall give an employer advance notice of the employee's intention to take leave. The timing of the notice shall be consistent with the employer's stated policy for requesting such leave, if the employer has such a policy. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his or her designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

(2) When an employee requests leave under RCW 49.76.030 the employer may require that the request be supported by verification that:

(a) The employee or employee's family member is a victim of domestic violence, sexual assault, or stalking; and

(b) The leave taken was for one of the purposes described in RCW 49.76.030.

(3) If an employer requires verification, verification must be provided in a timely manner. In the event that advance notice of the leave cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, and the employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave.

(4) An employee may satisfy the verification requirement of this section by providing the employer with one or more of the following:

(a) A police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

(c) Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional. The provision of documentation under this section does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subsection (4)(c) pursuant to RCW 5.60.060, 70.123.075, 70.123.076, or 70.125.065; or

(d) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes described in RCW 49.76.030.

(5) If the victim of domestic violence, sexual assault, or stalking is the employee's family member, verification of the familial relationship between the employee and the victim may include, but is not limited to, a statement from the employee, a birth certificate, a court document, or other similar documentation.

(6) An employee who is absent from work pursuant to RCW 49.76.030 may elect to use the employee's sick leave and other paid time off, compensatory time, or unpaid leave time.

(7) An employee is required to provide only the information enumerated in subsection (2) of this section to establish that the employee's leave is protected under this chapter. An employee is not required to produce or discuss any information with the employer that is beyond the scope of subsection (2) of this section, or that would compromise the employee's safety or the safety of the employee's family member in any way, and an employer is prohibited from requiring any such disclosure.

(8)(a) Except as provided in (b) of this subsection, an employer shall maintain the confidentiality of all information provided by the employee under this section, including the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this chapter, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

(b) Information given by an employee may be disclosed by an employer only if:

(i) Requested or consented to by the employee;

(ii) Ordered by a court or administrative agency; or

(iii) Otherwise required by applicable federal or state law. [2008 c 286 § 4.]

49.76.050 Retention of pay or benefits—Exceptions—Health coverage. (1) The taking of leave under

RCW 49.76.030 may not result in the loss of any pay or benefits to the employee that accrued before the date on which the leave commenced.

(2) Upon an employee's return, an employer shall either:

(a) Restore the employee to the position of employment held by the employee when the leave commenced; or

(b) Restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(3)(a) This section does not apply if the employment from which the individual takes leave is with a staffing company and the individual is assigned on a temporary basis to perform work at or services for another organization to support or supplement the other organization's workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the organization to which the individual is assigned.

(b) This section does not apply if an employee was hired for a specific term or only to perform work on a discrete project, the employment term or project is over, and the employer would not otherwise have continued to employ the employee.

(4) To the extent allowed by law, an employer shall maintain coverage under any health insurance plan for an employee who takes leave under RCW 49.76.030. The coverage must be maintained for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had not taken the leave. [2008 c 286 § 5.]

49.76.060 Scope—Application—Expansion of rights.

(1) The rights provided in chapter 286, Laws of 2008 are in addition to any other rights provided by state and federal law.

(2) Nothing in this chapter shall be construed to discourage employers from adopting policies that provide greater leave rights to employees who are victims of domestic violence, sexual assault, or stalking than those required by chapter 286, Laws of 2008.

(3) Nothing in chapter 286, Laws of 2008 shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement, or any employment benefit program or plan, that provides greater leave rights to employees than the rights provided by chapter 286, Laws of 2008. [2008 c 286 § 6.]

49.76.070 Enforcement—Complaint—Investigation—Notice of infraction. Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation has occurred, the director shall issue a notice of infraction. Appeal from the director's decision is governed by chapter 34.05 RCW. [2008 c 286 § 7.]

49.76.080 Enforcement—Penalty for infraction. (1) If an employer is found to have committed an infraction under RCW 49.76.070, the director may impose upon the employer a fine of up to five hundred dollars for the first

infraction and a fine of up to one thousand dollars for each subsequent infraction committed within three years of a previous infraction.

(2) The director may also order an employer found to have committed an infraction under RCW 49.76.070 to comply with RCW 49.76.050(2). [2008 c 286 § 9.]

49.76.090 Enforcement—Record confidentiality—Exceptions. (1) Except as provided in subsection (2) of this section, information contained in the department's complaint files and records of employees under this chapter is confidential and shall not be open to public inspection.

(2) Except as limited by state or federal statute or regulations:

(a) The information in subsection (1) of this section may be provided to public employees in the performance of their official duties; and

(b) A complainant or a representative of a complainant, be it an individual or an organization, may review a complaint file or receive specific information therefrom upon the presentation of the signed authorization of the complainant. [2008 c 286 § 10.]

49.76.100 Enforcement—Remedies—Civil actions.

(1) Any employee deeming herself or himself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees.

(2) The remedy provided by this section is in addition to any common law remedy or other remedy that may be available to an employee.

(3) An employee is not required to exhaust administrative remedies before filing a civil action to enforce this chapter. [2008 c 286 § 12.]

49.76.110 Effect of administrative findings and conclusions on civil action. Any finding, determination, conclusion, declaration, or notice of infraction made for the purposes of enforcing this chapter by the director or by an appeal tribunal, administrative law judge, or reviewing officer is neither conclusive nor binding in any civil action filed pursuant to RCW 49.76.100 or in any other common law or civil action, regardless of whether the prior action was between the same or related parties or involved the same facts. [2008 c 286 § 8.]

49.76.120 Retaliation against employee. No employer may discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee:

(1) Exercised rights under RCW 49.76.030;

(2) Filed or communicated to the employer an intent to file a complaint under RCW 49.76.070 or 49.76.100; or

(3) Participated or assisted, as a witness or otherwise, in another employee's attempt to exercise rights under RCW 49.76.030, 49.76.070, or 49.76.100. [2008 c 286 § 11.]

49.76.130 Notice to employees—Department of labor and industries. The department shall include notice of the provisions of this chapter in the next reprinting of employment posters printed under RCW 49.78.340. Employers shall post this notice as required in RCW 49.78.340. [2008 c 286 § 13.]

49.76.140 Notice to employees—Prosecutors—Victims' advocates. Prosecuting attorney and victim/witness offices are encouraged to make information regarding this chapter available for distribution at their offices. [2008 c 286 § 14.]

49.76.150 Authority to adopt rules. The director shall adopt rules as necessary to implement this chapter. [2008 c 286 § 15.]

49.76.900 Effective date—2008 c 286. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]. [2008 c 286 § 18.]

Chapter 49.77 RCW

MILITARY FAMILY LEAVE ACT

Sections

49.77.010	Military family leave.
49.77.020	Definitions.
49.77.030	Entitlement to leave—Notice requirement—Prohibited acts—Administration—Enforcement.

49.77.010 Military family leave. In order to support the families of military personnel serving in military conflicts, and to assure that these families are able to spend time together after being notified of an impending call or order to active duty and before deployment and during a military member's leave from deployment, the legislature hereby creates the military family leave act. [2008 c 71 § 1.]

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

(1) "Department" and "spouse" have the same meanings as in RCW 49.78.020.

(2) "Employee" means a person who performs service for hire for an employer, for an average of twenty or more hours per week, and includes all individuals employed at any site owned or operated by an employer, but does not include an independent contractor.

(3) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state; (b) the state, state institutions, and state agencies; and (c) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(4) "Period of military conflict" means a period of war declared by the United States Congress, declared by executive order of the president, or in which a member of a reserve

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component of the armed forces is ordered to active duty pursuant to either sections 12301 and 12302 of Title 10 of the United States Code or Title 32 of the United States Code. [2008 c 71 § 2.]

49.77.030 Entitlement to leave—Notice requirement—Prohibited acts—Administration—Enforcement.

(1) During a period of military conflict, an employee who is the spouse of a member of the armed forces of the United States, national guard, or reserves who has been notified of an impending call or order to active duty or has been deployed is entitled to a total of fifteen days of unpaid leave per deployment after the military spouse has been notified of an impending call or order to active duty and before deployment or when the military spouse is on leave from deployment.

(2) An employee who takes leave under this chapter is entitled: (a) To be restored to a position of employment in the same manner as an employee entitled to leave under chapter 49.78 RCW is restored to a position of employment, as specified in RCW 49.78.280; and (b) to continue benefits in the same manner as an employee entitled to leave under chapter 49.78 RCW continues benefits, as specified in RCW 49.78.290.

(3) An employee who seeks to take leave under this chapter must provide the employer with notice, within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, of the employee's intention to take leave under this chapter.

(4) An employer from which an employee seeks to take leave or takes leave under this chapter shall not engage in prohibited acts as specified in RCW 49.78.300.

(5) An employee who takes leave under this chapter may elect to substitute any of the accrued leave to which the employee may be entitled for any part of the leave provided under this chapter.

(6) The department shall administer the provisions of this chapter, and may adopt rules as necessary to implement this chapter.

(7) This chapter shall be enforced as provided in chapter 49.78 RCW. [2008 c 71 § 3.]

Chapter 49.78 RCW

FAMILY LEAVE

Sections

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49.78.400	Rules.
49.78.410	Construction.
49.78.900	Severability—1989 1st ex.s. c 11.
49.78.901	Effective date—1989 1st ex.s. c 11.
49.78.902	Severability—2006 c 59.
49.78.903	Captions not law—2006 c 59.

Military family leave act: Chapter 49.77 RCW.

49.78.010 Legislative findings. The legislature finds that the demands of the workplace and of families need to be balanced to promote family stability and economic security. Workplace leave policies are desirable to accommodate changes in the workforce such as rising numbers of dual-career couples, working single parents, and an aging population. In addition, given the mobility of American society, many people no longer have available community or family support networks and therefore need additional flexibility in the workplace. The legislature declares it to be in the public interest to provide reasonable leave for medical reasons, for the birth or placement of a child, and for the care of a family member who has a serious health condition. [2006 c 59 § 1; 1989 1st ex.s. c 11 § 1.]

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

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department.

(4)(a) "Employee" means a person who has been employed: (i) For at least twelve months by the employer with respect to whom leave is requested under RCW 49.78.220; and (ii) for at least one thousand two hundred fifty hours of service with the employer during the previous twelve-month period.

(b) "Employee" does not mean a person who is employed at a worksite at which the employer as defined in (a) of this subsection employs less than fifty employees if the total number of employees employed by that employer within seventy-five miles of that worksite is less than fifty.

(5) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which employs fifty or more employees for each working day during each of twenty or more calendar workweeks in the current or preceding calendar year; (b) the state, state institutions, and state agencies; and (c) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(6) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions

except benefits that are provided by a practice or written policy of an employer or through an employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

(7) "Family member" means a child, parent, or spouse of an employee.

(8) "Health care provider" means: (a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or (c) any other person determined by the director to be capable of providing health care services.

(9) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

(10) "Leave for a family member's serious health condition" means leave as described in RCW 49.78.220(1)(c).

(11) "Leave for the birth or placement of a child" means leave as described in RCW 49.78.220(1) (a) or (b).

(12) "Leave for the employee's serious health condition" means leave as described in RCW 49.78.220(1)(d).

(13) "Parent" means the biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(14) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(15) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(16)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity;

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this chapter.

(c) Conditions for which cosmetic treatments are administered are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease are examples of conditions that do not meet the definition of a "serious health condition" and do not qualify for leave under this chapter. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions provided all the other conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services upon referral by a health care provider. Absence from work because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this chapter.

(e) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this chapter even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days.

(17) "Spouse" means a husband or wife, as the case may be. [2006 c 59 § 2; 1996 c 178 § 14; 1989 1st ex.s. c 11 § 2.]

Effective date—1996 c 178: See note following RCW 18.35.110.

49.78.090 Administration. The department of labor and industries shall administer the provisions of this chapter. [1989 1st ex.s. c 11 § 9.]

49.78.220 Entitlement to leave. (1) Subject to RCW 49.78.260, an employee is entitled to a total of twelve work-weeks of leave during any twelve-month period for one or more of the following:

(a) Because of the birth of a child of the employee and in order to care for the child;

(b) Because of the placement of a child with the employee for adoption or foster care;

(c) In order to care for a family member of the employee, if the family member has a serious health condition; or

(d) Because of a serious health condition that makes the employee unable to perform the functions of the position of the employee.

(2) The entitlement to leave for the birth or placement of a child expires at the end of the twelve-month period beginning on the date of such birth or placement. [2006 c 59 § 3.]

49.78.230 Leave taken intermittently or on reduced leave schedule. (1)(a) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule with the employer's agreement. The employer's agreement is not required, however, for leave during which the employee has a serious health condition in connection with the birth of a child or if the newborn child has a serious health condition.

(b) Leave may be taken intermittently or on a reduced leave schedule when medically necessary for medical treatment of a serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(i) Intermittent leave may be taken for a serious health condition that requires treatment by a health care provider periodically, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks.

(ii) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

(c) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one hour or less.

(d) The taking of leave intermittently or on a reduced leave schedule under this section may not result in a reduction in the total amount of leave to which the employee is entitled under RCW 49.78.220 beyond the amount of leave actually taken.

(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, for a family member's serious health condition or the employee's serious health condition

when the condition is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that:

- (a) Has equivalent pay and benefits; and
- (b) Better accommodates recurring periods of leave than the regular employment position of the employee. [2006 c 59 § 4.]

49.78.240 Unpaid leave permitted—Relationship to paid leave. (1) Except as provided in subsection (2) of this section, leave granted under RCW 49.78.220 may consist of unpaid leave.

(2) If an employer provides paid leave for fewer than twelve workweeks, the additional weeks of leave necessary to attain the twelve workweeks of leave required under this chapter may be provided without compensation. [2006 c 59 § 5.]

49.78.250 Foreseeable leave. (1) If the necessity for leave for the birth or placement of a child is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

(2) If the necessity for leave for a family member's serious health condition or the employee's serious health condition is foreseeable based on planned medical treatment, the employee:

- (a) Must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member, as appropriate; and
- (b) Must provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for a family member's serious health condition or the employee's serious health condition, except that if the date of the treatment requires leave to begin in less than thirty days, the employee must provide such notice as is practicable. [2006 c 59 § 6.]

49.78.260 Spouses employed by same employer. If spouses entitled to leave under this chapter are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve workweeks during any twelve-month period, if such leave is taken: (1) For the birth or placement of a child; or (2) for a parent's serious health condition. [2006 c 59 § 7.]

49.78.270 Certification. (1) An employer may require that a request for leave for a family member's serious health condition or the employee's serious health condition be supported by a certification issued by the health care provider of the employee or of the family member, as appropriate. The employee must provide, in a timely manner, a copy of the certification to the employer.

(2) Certification provided under subsection (1) of this section is sufficient if it states:

- (a) The date on which the serious health condition commenced;
- (b) The probable duration of the condition;
- (c) The appropriate medical facts within the knowledge of the health care provider regarding the condition;
- (d)(i) For purposes of leave for a family member's serious health condition, a statement that the employee is needed to care for the family member and an estimate of the amount of time that such employee is needed to care for the family member; and
- (ii) For purposes of leave for the employee's serious health condition, a statement that the employee is unable to perform the functions of the position of the employee;
- (e) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment;
- (f) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for the employee's serious health condition, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and

(g) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for a family member's serious health condition, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the family member who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(3) If the employer has reason to doubt the validity of the certification provided under subsection (1) of this section for leave for a family member's serious health condition or the employee's serious health condition, the employer may require, at the expense of the employer, that the employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (2) of this section for the leave. The second health care provider may not be employed on a regular basis by the employer.

(4) If the second opinion described in subsection (3) of this section differs from the opinion in the original certification provided under subsection (1) of this section, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (2) of this section. The opinion of the third health care provider concerning the information certified under subsection (2) of this section is considered to be final and is binding on the employer and the employee.

(5) The employer may require that the employee obtain subsequent recertifications on a reasonable basis. [2006 c 59 § 8.]

49.78.280 Employment protection. (1)(a) Except as provided in (b) of this subsection, any employee who takes

leave under RCW 49.78.220 for the intended purpose of the leave is entitled, on return from the leave:

(i) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(ii) To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment at a workplace within twenty miles of the employee's workplace when leave commenced.

(b) The taking of leave under RCW 49.78.220 may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(c) Nothing in this section entitles any restored employee to:

(i) The accrual of any seniority or employment benefits during any period of leave; or

(ii) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) As a condition of restoration under (a) of this subsection for an employee who has taken leave for the employee's serious health condition, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this subsection (1)(d) supersedes a valid local law or a collective bargaining agreement that governs the return to work of such employees.

(e) Nothing in this subsection (1) prohibits an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(2) An employer may deny restoration under subsection (1) of this section to any salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

(a) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(b) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and

(c) The leave has commenced and the employee elects not to return to employment after receiving the notice. [2006 c 59 § 9.]

49.78.290 Employment benefits. During any period of leave taken under RCW 49.78.220, if the employee is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, including any spouse and dependent coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent of the applicable premium for the leave period. [2006 c 59 § 10.]

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49.78.300 Prohibited acts. (1) It is unlawful for any employer to:

(a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this chapter; or

(b) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

(a) Filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this chapter;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter. [2006 c 59 § 11.]

49.78.310 Complaint investigations by director.

Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation may have occurred, a hearing must be held in accordance with chapter 34.05 RCW. The director must issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees. [2006 c 59 § 12.]

49.78.320 Civil penalty. An employer who is found, in accordance with RCW 49.78.310, to have violated a requirement of this chapter and the rules adopted under this chapter, is subject to a civil penalty of not less than one thousand dollars for each violation. Civil penalties must be collected by the department and deposited into the family and medical leave enforcement account. [2006 c 59 § 13.]

49.78.330 Civil action by employees. (1) Any employer who violates RCW 49.78.300 is liable:

(a) For damages equal to:

(i) The amount of:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(B) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee;

(ii) The interest on the amount described in (a)(i) of this subsection calculated at the prevailing rate; and

(iii) An additional amount as liquidated damages equal to the sum of the amount described in (a)(i) of this subsection and the interest described in (a)(ii) of this subsection, except that if an employer who has violated RCW 49.78.300 proves to the satisfaction of the court that the act or omission which violated RCW 49.78.300 was in good faith and that the

employer had reasonable grounds for believing that the act or omission was not a violation of RCW 49.78.300, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under (a)(i) and (ii) of this subsection, respectively; and

(b) For such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) An action to recover the damages or equitable relief prescribed in subsection (1) of this section may be maintained against any employer in any court of competent jurisdiction by any one or more employees for and on behalf of:

(a) The employees; or

(b) The employees and other employees similarly situated.

(3) The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant. [2006 c 59 § 14.]

49.78.340 Notice—Penalties. Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the director, setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a charge. Any employer that willfully violates this section may be subject to a civil penalty of not more than one hundred dollars for each separate offense. Any penalties collected by the department under the [this] section shall be deposited into the family and medical leave enforcement account. [2006 c 59 § 15.]

49.78.350 Family and medical leave enforcement account. The family and medical leave enforcement account is created in the custody of the state treasurer. Any penalties collected under RCW 49.78.320 or 49.78.340 shall be deposited into the account and shall be used only for the purposes of administering and enforcing this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2006 c 59 § 16.]

49.78.360 Effect on other laws. Nothing in this chapter shall be construed: (1) To modify or affect any state or local law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability; or (2) to supersede any provision of any local law that provides greater family or medical leave rights than the rights established under this chapter. [2006 c 59 § 17.]

49.78.370 Effect on existing employment benefits. Nothing in this chapter diminishes the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this chapter. The rights established for employees under this chapter may not be diminished by any collective bargaining agreement or any employment benefit program or plan. [2006 c 59 § 18.]

49.78.380 Encouragement of more generous leave policies. Nothing in this chapter shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this chapter. [2006 c 59 § 19.]

49.78.390 Relationship to federal family and medical leave act. (1) Leave under this chapter and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6). [2006 c 59 § 20.]

49.78.400 Rules. The director shall adopt rules as necessary to implement this chapter. [2006 c 59 § 21.]

49.78.410 Construction. This chapter must be construed to the extent possible in a manner that is consistent with similar provisions, if any, of the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6), and that gives consideration to the rules, precedents, and practices of the federal department of labor relevant to the federal act. [2006 c 59 § 22.]

49.78.900 Severability—1989 1st ex.s. c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 1st ex.s. c 11 § 25.]

49.78.901 Effective date—1989 1st ex.s. c 11. This act shall take effect September 1, 1989. [1989 1st ex.s. c 11 § 27.]

49.78.902 Severability—2006 c 59. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2006 c 59 § 24.]

49.78.903 Captions not law—2006 c 59. Captions used in this act are not any part of the law. [2006 c 59 § 25.]

Chapter 49.86 RCW FAMILY LEAVE INSURANCE

Sections

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49.86.902	Effective dates—2007 c 357.

49.86.005 Findings. The legislature finds that, although family leave laws have assisted individuals to balance the demands of the workplace with their family responsibilities, more needs to be done to achieve the goals of parent and child bonding, workforce stability, and economic security. In particular, the legislature finds that many individuals do not have access to family leave laws, and those who do may not be in a financial position to take family leave that is unpaid, and that employer-paid benefits meet only a relatively small part of this need. The legislature declares it to be in the public interest to establish a program that: (1) Allows parents to bond with a newborn or newly placed child; (2) provides limited and additional income support for a reasonable period while an individual is away from work on family leave; (3) reduces the impact on state income support programs by increasing an individual's ability to provide caregiving services for a child while maintaining an employment relationship; and (4) establishes a wage replacement benefit to be coordinated with current existing state and federal family leave laws. [2007 c 357 § 1.]

Joint legislative task force—2007 c 357: "(1)(a) The joint legislative task force on family leave insurance is established, with thirteen members as provided in this subsection.

(i) The chair and the ranking member of the senate labor, commerce, research and development committee.

(ii) The chair and the ranking member of the house commerce and labor committee.

(iii) The majority leader of the senate shall appoint one member from each of the two largest caucuses of the senate.

(iv) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(v) The majority leader of the senate and the speaker of the house of representatives jointly shall appoint four nonlegislative members of the task force, which shall include one member representing large business, one member representing small business, one member representing labor, and one member representing advocates for family leave.

(vi) The governor shall appoint one member of the task force.

(b) The department of labor and industries and the employment security department shall cooperate with the task force and shall each maintain a liaison representative, who shall be a nonvoting member.

(c) The majority leader of the senate and the speaker of the house of representatives jointly shall appoint the cochairs of the task force from among the legislative members of the task force. The cochairs shall convene the initial meeting of the task force. A steering committee consisting of the legislative members of the task force shall advise the cochairs on the meetings and other activities of the task force.

(2) The task force shall study the establishment of a family leave insurance program including, but not limited to, the following:

(a) The manner in which the benefits and the administrative costs should be financed;

(b) The manner in which the program should be implemented and administered;

(c) Any government efficiencies that should be adopted to improve program administration and reduce program costs; and

(d) The impacts, if any, of the family leave insurance program on the unemployment compensation system, and options for mitigating such impacts.

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(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research. The task force may hire additional staff with specific technical expertise if such expertise is necessary to carry out the mandates of this study, and only if an appropriation is specifically provided for this purpose.

(4) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The task force shall report its findings and recommendations, which shall include recommendations as to the specific manner in which the benefits and the administrative costs should be financed as well as proposed legislation, to the legislature by January 1, 2008.

(7) This section expires July 1, 2009." [2007 c 357 § 2.]

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

(1) "Application year" means the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family leave insurance benefits and, thereafter, the twelve-month period beginning with the first day of the calendar week in which the individual next files an application for family leave insurance benefits after the expiration of the individual's last preceding application year.

(2) "Calendar quarter" means the same as in RCW 50.04.050.

(3) "Child" means a biological or an adopted child.

(4) "Department" means the state agency to be directed to administer the family leave insurance program.

(5) "Director" means the director of the department.

(6) "Employer" means: (a) The same as in RCW 50.04.080; and (b) the state and its political subdivisions.

(7) "Employment" has the meaning provided in RCW 50.04.100.

(8) "Family leave" means leave: (a) Because of the birth of a child of the employee and in order to care for the child; or (b) because of the placement of a child with the employee for adoption.

(9) "Family leave insurance benefits" means the benefits payable under RCW 49.86.050 and 49.86.060.

(10) "Federal family and medical leave act" means the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

(11) "Qualifying year" means the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's application year.

(12) "Regularly working" means the average number of hours per workweek that an individual worked in the two quarters of the individual's qualifying year in which total wages were highest. [2007 c 357 § 3.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.020 Family leave insurance program. (1) The department shall establish and administer a family leave

insurance program and pay family leave insurance benefits as specified in this chapter.

(2) The department shall establish procedures and forms for filing claims for benefits under this chapter. The department shall notify the employer within five business days of a claim being filed under RCW 49.86.030.

(3) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records by the employment security department, so long as an individual consents to the disclosure as required under RCW 49.86.030(4).

(4) Information contained in the files and records pertaining to an individual under this chapter are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records on the presentation of the signed authorization of the individual. An employer or the employer's duly authorized representative may review the records of an individual employed by the employer in connection with a pending claim. At the department's discretion, other persons may review records when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter.

(5) The department shall develop and implement an outreach program to ensure that individuals who may be eligible to receive family leave insurance benefits under this chapter are made aware of these benefits. Outreach information shall explain, in an easy to understand format, eligibility requirements, the claims process, weekly benefit amounts, maximum benefits payable, notice requirements, reinstatement and nondiscrimination rights, confidentiality, and coordination of leave under this chapter and other laws, collective bargaining agreements, and employer policies. Outreach information shall be available in English and other primary languages as defined in RCW 74.04.025. [2007 c 357 § 4.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.030 Eligibility for benefits. Beginning October 1, 2009, family leave insurance benefits are payable to an individual during a period in which the individual is unable to perform his or her regular or customary work because he or she is on family leave if the individual:

(1) Files a claim for benefits in each week in which the individual is on family leave, and as required by rules adopted by the director;

(2) Has been employed for at least six hundred eighty hours in employment during the individual's qualifying year;

(3) Establishes an application year. An application year may not be established if the qualifying year includes hours worked before establishment of a previous application year;

(4) Consents to the disclosure of information or records deemed private and confidential under chapter 50.13 RCW. Initial disclosure of this information and these records by the employment security department to the department is solely for purposes related to the administration of this chapter. Further disclosure of this information or these records is subject to RCW 49.86.020(3);

(5) Discloses whether or not he or she owes child support obligations as defined in RCW 50.40.050; and

(6) Documents that he or she has provided the employer from whom family leave is to be taken with written notice of the individual's intention to take family leave in the same manner as an employee is required to provide notice in RCW 49.78.250. [2007 c 357 § 5.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.040 Disqualification from benefits. An individual is disqualified from family leave insurance benefits beginning with the first day of the calendar week, and continuing for the next fifty-two consecutive weeks, in which the individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this chapter. [2007 c 357 § 6.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.050 Duration of benefits—Payment of benefits.

(1) The maximum number of weeks during which family leave insurance benefits are payable in an application year is five weeks. However, benefits are not payable during a waiting period consisting of the first seven calendar days of family leave taken in an application year, whether the first seven calendar days of family leave are employer paid or unpaid.

(2)(a) The first payment of benefits must be made to an individual within two weeks after the claim is filed or the family leave began, whichever is later, and subsequent payments must be made semimonthly thereafter.

(b) The payment of benefits under this chapter shall not be considered a binding determination of the obligations of the department under this chapter. The acceptance of compensation by the individual shall likewise not be considered a binding determination of his or her rights under this chapter. Whenever any payment of benefits under this chapter has been made and timely appeal therefrom has been made where the final decision is that the payment was improper, the individual shall repay it and recoupment may be made from any future payment due to the individual on any claim under this chapter. The director may exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(c) If an individual dies before he or she receives a payment of benefits, the payment shall be made by the department and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015. [2007 c 357 § 7.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.060 Amount of benefits. The amount of family leave insurance benefits shall be determined as follows:

(1) The weekly benefit shall be two hundred fifty dollars per week for an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week.

(2) If an individual who at the time of beginning family leave was regularly working thirty-five hours or more per week is on family leave for less than thirty-five hours but at least eight hours in a week, the individual's weekly benefit shall be .025 times the maximum weekly benefit times the number of hours of family leave taken in the week. Benefits are not payable for less than eight hours of family leave taken in a week.

(3) For an individual who at the time of beginning family leave was regularly working less than thirty-five hours per week, the department shall calculate a prorated schedule for a weekly benefit amount and a minimum number of hours of family leave that must be taken in a week for benefits to be payable, with the prorated schedule based on the amounts and the calculations specified under subsections (1) and (2) of this section.

(4) If an individual discloses that he or she owes child support obligations under RCW 49.86.030 and the department determines that the individual is eligible for benefits, the department shall notify the applicable state or local child support enforcement agency and deduct and withhold an amount from benefits in a manner consistent with RCW 50.40.050.

(5) If the internal revenue service determines that family leave insurance benefits under this chapter are subject to federal income tax and an individual elects to have federal income tax deducted and withheld from benefits, the department shall deduct and withhold the amount specified in the federal internal revenue code in a manner consistent with RCW 49.86.070. [2007 c 357 § 8.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.070 Federal income tax. (1) If the internal revenue service determines that family leave insurance benefits under this chapter are subject to federal income tax, the department must advise an individual filing a new claim for family leave insurance benefits, at the time of filing such claim, that:

(a) The internal revenue service has determined that benefits are subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the federal internal revenue code; and

(d) The individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from benefits must remain in the family leave insurance account until transferred to the federal taxing authority as a payment of income tax.

(3) The director shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax. [2007 c 357 § 9.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.080 Erroneous payments—Payments induced by willful misrepresentation—Claim rejected after payments. If family leave insurance benefits are paid errone-

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ously or as a result of willful misrepresentation, or if a claim for family leave benefits is rejected after benefits are paid, RCW 51.32.240 shall apply, except that appeals are governed by RCW 49.86.120, penalties are paid into the family leave insurance account, and the department shall seek repayment of benefits from the recipient. [2007 c 357 § 10.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.090 Leave and employment protection. (1) During a period in which an individual receives family leave insurance benefits or earns waiting period credits under this chapter, the individual is entitled to family leave and, at the established ending date of leave, to be restored to a position of employment with the employer from whom leave was taken.

(2) The individual entitled to leave under this section shall be restored to a position of employment in the same manner as an employee entitled to leave under chapter 49.78 RCW is restored to a position of employment, as specified in RCW 49.78.280.

(3) This section applies only to an individual if:

(a) The employer from whom the individual takes family leave employs more than twenty-five employees; and

(b) The individual has been employed for at least twelve months by that employer, and for at least one thousand two hundred fifty hours of service with that employer during the previous twelve-month period.

(4) This section shall be enforced as provided in chapter 49.78 RCW. [2007 c 357 § 11.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.100 Employment by same employer. If spouses or people involved in a legal relationship established under chapter 26.60 RCW who are entitled to leave under this chapter are employed by the same employer, the employer may require that spouses or people involved in such a relationship governed by Title 26 RCW not take such leave concurrently. [2007 c 357 § 12.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.110 Elective coverage. (1) An employer of individuals not covered by this chapter or a self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for all individuals in its employ for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The employer or self-employed person must file a notice of election in writing with the director, as required by the department. The election becomes effective on the date of filing the notice.

(2) An employer or self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the three-year period of coverage, or at such other times as the director may prescribe by rule, by filing written notice with the director, such withdrawal to take effect not sooner than thirty days after filing the notice. Within five days of filing written notice of the withdrawal with the director, an employer must provide written notice of

the withdrawal to all individuals in the employer's employ. [2007 c 357 § 13.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.120 Appeals. (1) A person aggrieved by a decision of the department under this chapter must file a notice of appeal with the director, by mail or personally, within thirty days after the date on which a copy of the department's decision was communicated to the person. Upon receipt of the notice of appeal, the director shall request the assignment of an administrative law judge in accordance with chapter 34.05 RCW to conduct a hearing and issue a proposed decision and order. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(2) The administrative law judge's proposed decision and order shall be final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party petitions for review by the director. If the director's review is timely requested, the director may order additional evidence by the administrative law judge. On the basis of the evidence before the administrative law judge and such additional evidence as the director may order to be taken, the director shall render a decision affirming, modifying, or setting aside the administrative law judge's decision. The director's decision becomes final and not subject to further appeal unless, within thirty days after the decision is communicated to the interested parties, a party files a petition for judicial review as provided in chapter 34.05 RCW. The director is a party to any judicial action involving the director's decision and shall be represented in the action by the attorney general.

(3) If, upon administrative or judicial review, the final decision of the department is reversed or modified, the administrative law judge or the court in its discretion may award reasonable attorneys' fees and costs to the prevailing party. Attorneys' fees and costs owed by the department, if any, are payable from the family leave insurance account. [2007 c 357 § 14.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.130 Prohibited acts—Discrimination—Enforcement. An employer, temporary help company, employment agency, employee organization, or other person may not discharge, expel, or otherwise discriminate against a person because he or she has filed or communicated to the employer an intent to file a claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding, under this chapter, at any time, including during the waiting period described in RCW 49.86.050 and the period in which the person receives family leave insurance benefits under this chapter. This section shall be enforced as provided in RCW 51.48.025. [2007 c 357 § 15.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.140 Coordination of leave. (1)(a) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993

(Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) or under chapter 49.78 RCW.

(b) An employer may require that leave taken under this chapter be taken concurrently or otherwise coordinated with leave allowed under the terms of a collective bargaining agreement or employer policy, as applicable, for the birth or placement of a child. The employer must give individuals in its employ written notice of this requirement.

(2)(a) This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for the birth or placement of a child.

(b) An individual's right to leave under this chapter may not be diminished by a collective bargaining agreement entered into or renewed or an employer policy adopted or retained after July 1, 2008. Any agreement by an individual to waive his or her rights under this chapter is void as against public policy. [2007 c 357 § 16.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.150 Continuing entitlement or contractual rights—Not created. This chapter does not create a continuing entitlement or contractual right. The legislature reserves the right to amend or repeal all or part of this chapter at any time, and a benefit or other right granted under this chapter exists subject to the legislature's power to amend or repeal this chapter. There is no vested private right of any kind against such amendment or repeal. [2007 c 357 § 17.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.160 Rules. The director may adopt rules as necessary to implement this chapter. In adopting rules, the director shall maintain consistency with the rules adopted to implement the federal family and medical leave act, and chapter 49.78 RCW, to the extent such rules are not in conflict with this chapter. [2007 c 357 § 18.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.170 Family leave insurance account. The family leave insurance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes of the family leave insurance program. Only the director of the department of labor and industries or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments. [2007 c 357 § 19.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.180 Family leave insurance account funds—Investment. Whenever, in the judgment of the state investment board, there shall be in the family leave insurance account funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board shall have full power to invest, reinvest, manage, contract, or

sell or exchange investments acquired with such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise. [2007 c 357 § 20.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.190 Initial program administration—Loans. (Expires October 1, 2011.) If necessary to ensure that money is available in the family leave insurance account for the initial administration of the family leave insurance program, the director of labor and industries may, from time to time before July 1, 2009, lend funds from the supplemental pension fund to the family leave insurance account. These loaned funds may be expended solely for the initial administration of the program under this chapter. The director of labor and industries shall repay the supplemental pension fund, plus its proportionate share of earnings from investment of moneys in the supplemental pension fund during the loan period, from the family leave insurance account within two years of the date of the loan. This section expires October 1, 2011. [2007 c 357 § 22.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.200 Authority to contract. (Expires October 1, 2011.) (1) The department of labor and industries may contract or enter into interagency agreements with other state agencies for the initial administration of the family leave insurance program.

(2) This section expires October 1, 2011. [2007 c 357 § 24.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.210 Reports. Beginning September 1, 2010, the department shall report to the legislature by September 1st of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts. [2007 c 357 § 26.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

49.86.900 Severability—2007 c 357. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 357 § 27.]

49.86.901 Captions not law—2007 c 357. Captions used in this act are not any part of the law. [2007 c 357 § 28.]

49.86.902 Effective dates—2007 c 357. (1) Sections 3 through 18 and 26 of this act take effect July 1, 2008.

(2) Sections 2 and 19 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 8, 2007]. [2007 c 357 § 30.]

Title 50

UNEMPLOYMENT COMPENSATION

Chapters

- 50.01 General provisions.
- 50.04 Definitions.
- 50.06 Temporary total disability.
- 50.08 Establishment of department.
- 50.12 Administration.
- 50.13 Records and information—Privacy and confidentiality.
- 50.16 Funds.
- 50.20 Benefits and claims.
- 50.22 Extended and additional benefits.
- 50.24 Contributions by employers.
- 50.29 Employer experience rating.
- 50.32 Review, hearings, and appeals.
- 50.36 Penalties.
- 50.38 Labor market information and economic analysis.
- 50.40 Miscellaneous provisions.
- 50.44 Special coverage provisions.
- 50.50 Indian tribes.
- 50.60 Shared work compensation plans—Benefits.
- 50.62 Special employment assistance.
- 50.65 Washington service corps.
- 50.70 Programs for dislocated forest products workers.
- 50.72 Youthbuild program.
- 50.98 Construction.

Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty: RCW 49.44.100.

Displaced homemaker act: Chapter 28B.04 RCW.

Industrial insurance: Title 51 RCW.

Job skills training program: RCW 28C.04.400 through 28C.04.420.

Unfair practices of employment agencies: RCW 49.60.200.

Chapter 50.01 RCW GENERAL PROVISIONS

Sections

- 50.01.005 Short title.
- 50.01.010 Preamble.

50.01.005 Short title. This title shall be known and may be cited as the "Employment Security Act." [1953 ex.s. c 8 § 24; 1945 c 35 § 1; Rem. Supp. 1945 § 9998-140.]

50.01.010 Preamble. Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of shar-

ing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum. [2005 c 133 § 2; 2003 2nd sp.s. c 4 § 1; 1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: "To establish additional capacity within the employment security department, the department is authorized to add two full-time equivalent employees to develop economic models for estimating the impacts of policy changes on the unemployment insurance system and the unemployment trust fund." [2005 c 133 § 8.]

Conflict with federal requirements—2003 2nd sp.s. c 4: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2003 2nd sp.s. c 4 § 36.]

Severability—2003 2nd sp.s. c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 2nd sp.s. c 4 § 37.]

Effective date—2003 2nd sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 2nd sp.s. c 4 § 39.]

Chapter 50.04 RCW DEFINITIONS

Sections

- 50.04.020 Base year—Alternative base year.
- 50.04.030 Benefit year.
- 50.04.040 Benefits.
- 50.04.050 Calendar quarter.
- 50.04.060 Commissioner.
- 50.04.065 Common paymaster or pay agent.
- 50.04.070 Contributions.
- 50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state.

50.04.073	Contributions—As including "payments in lieu of contributions"—Scope.
50.04.075	Dislocated worker.
50.04.080	Employer.
50.04.090	Employing unit.
50.04.100	Employment.
50.04.110	Employment—Situation of service.
50.04.115	Employment—Out-of-state service, election.
50.04.116	Employment—Out-of-state service, when included—"American employer" defined.
50.04.120	Employment—Localized service.
50.04.125	Employment—Foreign degree-granting institutions—Employee services localized in country of domicile.
50.04.140	Employment—Exception tests.
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50.04.148	Employment—Services performed by musician or entertainer.
50.04.150	Employment—Agricultural labor.
50.04.155	Service performed in agricultural labor for farm operator or crew leader.
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"Application for initial determination" defined: RCW 50.20.140.

"Claim for benefits" defined: RCW 50.20.140.

"Claim for waiting period" defined: RCW 50.20.140.

50.04.020 Base year—Alternative base year. "Base year" with respect to each individual, shall mean either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately preceding the first day of the individual's benefit year.

For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar

quarters as the base year, the department shall use the last four completed calendar quarters as the base year.

Computations using the last four completed calendar quarters shall be based on available wage items processed as of the close of business on the day preceding the date of application. The department shall promptly contact employers to request assistance in obtaining wage information for the last completed calendar quarter if it has not been reported at the time of initial application. [1994 c 3 § 1; 1987 c 278 § 1; 1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998-142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1994 c 3: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 3 § 4.]

Severability—1994 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 3 § 5.]

Effective dates—1994 c 3: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 3, 1994.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1994.

(3) Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [February 26, 1994]." [1994 c 3 § 6.]

Effective date—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: PROVIDED, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 ex.s. c 2 § 25.]

50.04.030 Benefit year. "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: PROVIDED, HOWEVER, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of

a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: PROVIDED, HOWEVER, That a benefit year cannot be established if the base year wages include wages earned prior to the establishment of a prior benefit year unless the individual worked and earned wages since the last separation from employment immediately before the application for initial determination in the previous benefit year if the applicant was an unemployed individual at the time of application, or since the initial separation in the previous benefit year if the applicant was not an unemployed individual at the time of filing an application for initial determination for the previous benefit year, of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If an individual's prior benefit year was based on the last four completed calendar quarters, a new benefit year shall not be established until the new base year does not include any hours used in the establishment of the prior benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1991 c 117 § 1; 1990 c 245 § 1. Prior: 1987 c 278 § 2; 1987 c 256 § 1; 1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 2; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998-143; prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—1991 c 117: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1991 c 117 § 5.]

Severability—1991 c 117: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 117 § 6.]

Effective dates—1991 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and sections 1 and 4 [of this act] shall take effect July 1, 1991, and section 3 [of this act] shall take effect July 7, 1991, for new claims filed on or after July 7, 1991." [1991 c 117 § 7.]

Conflict with federal requirements—1990 c 245: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1990 c 245 § 11.]

Effective dates—1990 c 245: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take

effect immediately [March 28, 1990].

(2) Sections 2, 3, and 6 through 9 of this act shall take effect on July 1, 1990." [1990 c 245 § 12.]

Effective dates—Construction—1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature: PROVIDED, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

Effective dates—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 8, 1973]. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.040 Benefits. "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998-144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

50.04.050 Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998-145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.060 Commissioner. "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998-146. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

50.04.065 Common paymaster or pay agent. (1) For purposes of this title, "common paymaster" or "common pay agent" means an independent third party who contracts with, and represents, two or more employers, and who files a combined tax report for those employers.

(2) Common paymaster combined tax reporting is prohibited. "Common paymaster" does not meet the definition of a joint account under RCW 50.24.170.

(3) A common pay agent or common paymaster is not an employer as defined in RCW 50.04.080 or an employing unit as defined in RCW 50.04.090. [2007 c 146 § 16.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.04.070 Contributions. "Contributions" means the money payments due to the state unemployment compensation fund as provided in RCW 50.24.010, to the federal interest payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014. [1985 ex.s. c 5 § 4; 1983 1st ex.s. c 13 § 9; 1971 c 3 § 1; 1951 c 215 § 1; 1945 c 35 § 8; Rem. Supp. 1945 § 9998-147. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state. The terms "contributions" and "payments in lieu of contributions" used in this title, whether singular or plural, designate the money payments to be made to the state unemployment compensation fund, to the federal interest payment fund under RCW 50.16.070, or to the special account in the administrative contingency fund under RCW 50.24.014 and are deemed to be taxes due to the state of Washington. [1985 ex.s. c 5 § 5; 1983 1st ex.s. c 13 § 10; 1971 c 3 § 3; 1959 c 266 § 8.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Construction—1959 c 266: "The provisions of section 8 of this amendatory act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions nor as affecting any proceeding instituted thereunder." [1959 c 266 § 9.]

50.04.073 Contributions—As including "payments in lieu of contributions"—Scope. The term "contributions" as used in this title shall be deemed to include "payments in lieu of contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil and criminal sanctions. [1983 1st ex.s. c 23 § 1; 1971 c 3 § 4.]

Conflict with federal requirements—1983 1st ex.s. c 23: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1983 1st ex.s. c 23 § 26.]

Effective dates—Construction—1983 1st ex.s. c 23: "(1) Sections 6, 8, 17, 18, 19, and 25 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect as follows:

(a) Sections 17, 18, 19, and 25 of this act shall take effect on June 30, 1983;

(b) Sections 6 and 8 of this act shall take effect on July 3, 1983, and shall be effective for benefit years commencing on or after that date.

(2) Sections 4 and 13 of this act shall take effect on October 1, 1983. Sections 7, 11, and 12 of this act shall also take effect on October 1, 1983, and shall be effective for all weeks of benefits paid on or after that date." [1983 1st ex.s. c 23 § 27.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.075 Dislocated worker. "Dislocated worker" means any individual who:

(1) Has been terminated or received a notice of termination from employment;

(2) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and

(3) Is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for their skills in that occupation or industry. [1984 c 181 § 1.]

Dislocated worker's eligibility for benefits: RCW 50.20.043.

50.04.080 Employer. (1) "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

(2) For the purposes of collection remedies available under chapter 50.24 RCW, "employer," in the case of a corporation or limited liability company, includes persons found personally liable for any unpaid contributions and interest and penalties on those contributions under RCW 50.24.230.

(3) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employer" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160. [2007 c 146 § 19; 1985 c 41 § 1; 1971 c 3 § 5; 1949 c 214 § 2; 1945 c 35 § 9; Rem. Supp. 1949 § 9998-148. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—2007 c 146: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 146 § 21.]

Severability—2007 c 146: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 146 § 22.]

Conflict with federal requirements—1985 c 41: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 41 § 2.]

Severability—1985 c 41: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 41 § 3.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.090 Employing unit. (1) "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977, which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. "Employing unit" includes Indian tribes as defined in RCW 50.50.010.

(2) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employing unit" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160. [2007 c 146 § 20; 2001 1st sp.s. c 11 § 1; 1983 1st ex.s. c 23 § 2; 1977 ex.s. c 73 § 1; 1947 c 215 § 2; 1945 c 35 § 10; Rem. Supp. 1947 § 9998-149. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Severability—Effective date—Retroactive application—2001 1st sp.s. c 11: See RCW 50.50.900 through 50.50.903.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.100 Employment. "Employment", subject only to the other provisions of this title, means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

Except as provided by RCW 50.04.145, personal services performed for an employing unit by one or more contractors or subcontractors acting individually or as a partnership, which do not meet the provisions of RCW 50.04.140, shall be considered employment of the employing unit: PROVIDED, HOWEVER, That such contractor or subcontractor shall be an employer under the provisions of this title in respect to personal services performed by individuals for such contractor or subcontractor. [1982 1st ex.s. c 18 § 14; 1945 c 35 § 11; Rem. Supp. 1945 § 9998-150. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.110 Employment—Situs of service. The term "employment" shall include an individual's entire service performed within or without or both within and without this state, if

- (1) The service is localized in this state; or

(2008 Ed.)

(2) The service is not localized in any state, but some of the service is performed in this state, and

(a) the base of operations, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(b) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state; or

(3) The service is performed within the United States, the Virgin Islands or Canada, if

(a) such service is not covered under the unemployment compensation law of any other state, the Virgin Islands or Canada, and

(b) the place from which the service is directed or controlled is in this state. [1971 c 3 § 6; 1945 c 35 § 12; Rem. Supp. 1945 § 9998-151. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 19; 1937 c 162 § 19.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.115 Employment—Out-of-state service, election. Services not covered under RCW 50.04.110 or 50.04.116 which are performed entirely without this state, with respect to no part of which contributions, interest, or penalties are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this title if the individual performing such services is a resident of this state and the commissioner approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this title. [1983 1st ex.s. c 23 § 3; 1971 c 3 § 8; 1945 c 35 § 13; Rem. Supp. 1945 § 9998-152. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1937 c 162 § 19. Formerly RCW 50.04.130.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.116 Employment—Out-of-state service, when included—"American employer" defined. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada, and in the case of the Virgin Islands after December 31, 1971 and prior to January 1 of the year following the year in which the United States secretary of labor approves the unemployment compensation law of the Virgin Islands under section 3304(a) of the Internal Revenue Code of 1954) in the employ of an American employer (other than service which is deemed "employment" under the provisions of RCW 50.04.110 or 50.04.120 or the parallel provisions of another state's law), if:

(1) The employer's principal place of business in the United States is located in this state; or

(2) The employer has no place of business in the United States but:

(a) The employer is an individual who is a resident of this state; or

(b) The employer is a corporation which is organized under the laws of this state; or

(c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(3) None of the criteria in subsections (1) and (2) of this section is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the laws of this state.

(4) An "American employer", for the purposes of this section, means a person who is:

(a) An individual who is a resident of the United States; or

(b) A partnership if two-thirds or more of the partners are residents of the United States; or

(c) A trust, if all of the trustees are residents of the United States; or

(d) A corporation organized under the laws of the United States or of any state. [1977 ex.s. c 292 § 1; 1971 c 3 § 7.]

Effective dates—1977 ex.s. c 292: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That sections 6, 12, 14, 15, 16, and 18 of this 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 292 § 28.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.120 Employment—Localized service. Service shall be deemed to be localized within a state, if

(1) the service is performed entirely within the state; or

(2) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions. [1945 c 35 § 14; Rem. Supp. 1945 § 9998-153. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.125 Employment—Foreign degree-granting institutions—Employee services localized in country of domicile. The services of employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 50.04.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution as defined in RCW 28B.90.010 in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile. [1993 c 181 § 8.]

50.04.140 Employment—Exception tests. Services performed by an individual for remuneration shall be deemed

to be employment subject to this title unless and until it is shown to the satisfaction of the commissioner that:

(1)(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service.

(2) Or as a separate alternative, it shall not constitute employment subject to this title if it is shown that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(b) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(d) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(e) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(f) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting. [1991 c 246 § 6; 1945 c 35 § 15; Rem. Supp. 1945 § 9998-154. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

50.04.145 Employment—Exclusions. The term "employment" shall not include services which require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW rendered by an individual when:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(7) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW. [2008 c 102 § 1; 1983 1st ex.s. c 23 § 25; 1982 1st ex.s. c 18 § 13.]

Conflict with federal requirements—Severability—2008 c 102: See notes following RCW 51.08.070.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.148 Employment—Services performed by musician or entertainer. (1) The term "employment" shall not include services performed by a musician or entertainer under a written contract with a purchaser of the services for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. The contract shall designate the leader of the music or entertainment group. A music or entertainment business or a leader of a music or entertainment group shall be considered an employer and not a purchaser of music or entertainment services.

(2008 Ed.)

(2) Any musician or entertainer who performs for a music or entertainment business or as a member of a music or entertainment group is deemed an employee of the business or group and the business or the leader of the group shall be required to register as an employer with the department.

(3) Purchasers of services under subsection (1) of this section shall not be subject to RCW 50.24.130 relating to a principal's liability for unpaid contributions if the services are purchased from a business or group registered as an employer with the department.

(4) The term "music or entertainment business" or "group" as used in this section means an employer whose principal business activity is music or entertainment. The term does not include those entities who provide music or entertainment for members or patrons incidental to their principal business activity, and does not include an individual employing musicians or entertainers on a casual basis. [1985 c 47 § 1.]

Effective date—1985 c 47: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect July 1, 1985." [1985 c 47 § 2.]

50.04.150 Employment—Agricultural labor. Except as otherwise provided in RCW 50.04.155, the term "employment" shall not include service performed in agricultural labor by individuals who are enrolled as students and regularly attending classes, or are between two successive academic years or terms, at an elementary school, a secondary school, or an institution of higher education as defined in RCW 50.44.037 and in the case of corporate farms not covered under RCW 50.04.155, the provisions regarding family employment in RCW 50.04.180 shall apply.

Agricultural labor is defined as services performed:

(1) On a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wild life, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or

(2) In packing, packaging, grading, storing, or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations. The exclusions from the term "employment" provided in this paragraph shall not be deemed to be applicable with respect to commercial packing houses, commercial storage establishments, commercial canning, commercial freezing, or any other commercial processing or with respect to services performed in connection with the cultivation, raising, harvesting and processing of oysters or raising and harvesting of mushrooms or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption. [1989 c 380 § 78; 1977 ex.s. c 292 § 2; 1957 c 264 § 1; 1947 c 215 § 3; 1945 c 35 § 16; Rem. Supp. 1945 § 9998-155. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective date—1989 c 380 §§ 78-81: "Sections 78 through 81 of this act shall take effect on January 1, 1990." [1989 c 380 § 91.]

Conflict with federal requirements—1989 c 380: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1989 c 380 § 89.]

Severability—1989 c 380: See RCW 15.58.942.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.155 Service performed in agricultural labor for farm operator or crew leader. (1) Service performed in agricultural labor on and after January 1, 1978, for a farm operator or crew leader will be deemed services in employment if the farm operator or crew leader:

(a) Paid twenty thousand dollars or more as remuneration to individuals employed in agricultural labor during any calendar quarter in the current or preceding calendar year; or

(b) Employed ten or more individuals in agricultural labor for some portion of the day in each of twenty different calendar weeks in either the current or preceding calendar year regardless of whether they were employed at the same moment of time or whether or not the weeks were consecutive.

(2) A farm operator is the owner or tenant of the farmlands who stands to gain or lose economically from the operations of the farm. Employment will be considered employment by the farm operator unless it is established to the satisfaction of the commissioner that the services were performed in the employ of a crew leader. The risk of nonpersuasion is upon the farm operator. The operator will nonetheless be liable for contributions under RCW 50.24.130 even though services performed on the operator's farmlands would not be sufficient to bring the services under the term employment if services performed on the operator's land in the employ of a crew leader would be covered and the crew leader has failed to pay contributions on the services. For the purposes of the preceding sentence and RCW 50.24.130, all moneys paid or payable to the crew leader by the farm operator shall be deemed paid for services unless there is a written contract clearly specifying the amounts of money to be attributed to items other than services of the crew leader or the crew leader's employees.

(3) For the purposes of this section, a crew leader is a person who furnishes individuals to perform services in agricultural labor for the benefit of any other person, who pays for the services performed in agricultural labor (either on his or her own behalf or on behalf of the other person), and who has not made a written agreement making himself or herself an employee of the other person: PROVIDED, That no person shall be deemed a crew leader unless he or she is established independently of the person for whom the services are performed and either has a valid certificate of registration under the farm labor contractor registration act of 1963 or substantially all the members of his or her crew operate or maintain tractors, mechanized harvesting or crop dusting

equipment, or any other mechanized equipment which is provided by the crew leader. [1977 ex.s. c 292 § 3.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.160 Employment—Domestic service. Services performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority shall not be considered services in employment unless the services are performed after December 31, 1977, for a person who paid remuneration of one thousand dollars or more to individuals employed in this domestic service in any calendar quarter in the current or the preceding calendar year. The terms local college club and local chapter of a college fraternity or sorority shall not be deemed to include alumni clubs or chapters. [1977 ex.s. c 292 § 4; 1947 c 215 § 4; 1945 c 35 § 17; Rem. Supp. 1947 § 9998-156. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.165 Employment—Corporate officers—Election of coverage. (*Effective until January 1, 2009.*) Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400, other than those covered by chapter 50.44 RCW, shall not be considered services in employment. However, a corporation may elect to cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. If the employer fails to notify any corporate officer, then that person shall not be considered to be a corporate officer for the purposes of this section. [1993 c 290 § 2; 1993 c 58 § 1; 1991 c 72 § 57; 1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

Conflict with federal requirements—1993 c 58: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 58 § 4.]

Severability—1993 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 58 § 5.]

Effective date—1993 c 58: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect March 6, 1993." [1993 c 58 § 6.] 1993 c 58 was signed by the governor on April 19, 1993.

Conflict with federal requirements—1986 c 110: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 110 § 2.]

Severability—1986 c 110: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 110 § 3.]

Effective date—1986 c 110: "This act shall take effect July 1, 1986." [1986 c 110 § 4.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—1981 c 35: See note following RCW 50.22.030.

50.04.165 Employment—Corporate officers—Election of coverage—Notification—Reinstatement of coverage. (Effective January 1, 2009.) (1)(a) Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400 are considered services in employment. However, a corporation, other than those covered by chapters 50.44 and 50.50 RCW, may elect to exempt from coverage under this title as provided in subsection (2) of this section, any bona fide officer of a public company as defined in RCW 23B.01.400 who:

(i) Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation;

(ii) Is a shareholder of the corporation;

(iii) Exercises substantial control in the daily management of the corporation; and

(iv) Whose primary responsibilities do not include the performance of manual labor.

(b) A corporation, other than those covered by chapters 50.44 and 50.50 RCW, that is not a public company as defined in RCW 23B.01.400 may exempt from coverage under this title as provided in subsection (2) of this section:

(i) Eight or fewer bona fide officers who: Voluntarily agree to be exempted from coverage; are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation; and

(ii) Any number of officers if all the exempted officers are related by blood within the third degree or marriage.

(c) Determinations with respect to the status of persons performing services for a corporation must be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance controls over form, and mandatory coverage under this title extends to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(2)(a) The corporation must notify the department when it elects to exempt one or more corporate officers from coverage. The notice must be in a format prescribed by the department and signed by the officer or officers being exempted and by another corporate officer verifying the decision to be exempt from coverage.

(b) The election to exempt one or more corporate officers from coverage under this title may be made when the corporation registers as required under RCW 50.12.070. The corporation may also elect exemption at any time following registration; however, an exemption will be effective only as of the first day of a calendar year. A written notice from the

corporation must be sent to the department by January 15th following the end of the last calendar year of coverage. Exemption from coverage will not be retroactive, and the corporation is not eligible for a refund or credit for contributions paid for corporate officers for periods before the effective date of the exemption.

(3) A corporation may elect to reinstate coverage for one or more officers previously exempted under this section, subject to the following:

(a) Coverage may be reinstated only at set intervals of five years beginning with the calendar year that begins five years after January 1, 2009.

(b) Coverage may only be reinstated effective the first day of the calendar year. A written notice from the corporation must be sent to the department by January 15th following the end of the last calendar year the exemption from coverage will apply.

(c) Coverage will not be reinstated if the corporation: Has committed fraud related to the payment of contributions within the previous five years; is delinquent in the payment of contributions; or is assigned the array calculation factor rate for nonqualified employers because of a failure to pay contributions when due as provided in RCW 50.29.025, or for related reasons as determined by the commissioner.

(d) Coverage will not be reinstated retroactively.

(4) Except for corporations covered by chapters 50.44 and 50.50 RCW, personal services performed by bona fide corporate officers for corporations described under RCW 50.04.080(3) and 50.04.090(2) are not considered services in employment, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160. [2007 c 146 § 4; 1993 c 290 § 2; 1993 c 58 § 1; 1991 c 72 § 57; 1986 c 110 § 1; 1983 1st ex.s. c 23 § 4; 1981 c 35 § 13.]

Effective date—2007 c 146 § 4: "Section 4 of this act takes effect January 1, 2009." [2007 c 146 § 24.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—1993 c 58: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 58 § 4.]

Severability—1993 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 58 § 5.]

Effective date—1993 c 58: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect March 6, 1993." [1993 c 58 § 6.] 1993 c 58 was signed by the governor on April 19, 1993.

Conflict with federal requirements—1986 c 110: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the

state or the granting of federal unemployment tax credits to employers in this state." [1986 c 110 § 2.]

Severability—1986 c 110: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 110 § 3.]

Effective date—1986 c 110: "This act shall take effect July 1, 1986." [1986 c 110 § 4.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Severability—1981 c 35: See note following RCW 50.22.030.

50.04.170 Employment—Maritime service. The term "employment" shall include an individual's entire service as an officer or member of a crew of an American vessel wherever performed and whether in intrastate or interstate or foreign commerce, if the employer maintains within this state at the beginning of the pay period an operating office from which the operations of the vessel are ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall not include services performed as an officer or member of the crew of a vessel not an American vessel and services on or in connection with an American vessel under a contract of service which is not entered into within the United States and during the performance of which the vessel does not touch at a port of the United States.

"American vessel", means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. [1949 c 214 § 3; 1947 c 215 § 5; 1945 c 35 § 18; Rem. Supp. 1949 § 9998-157. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.180 Family employment. The term "employment" shall not include service performed by an individual in the employ of his or her spouse, nor shall it include service performed by an unmarried individual under the age of eighteen years in the employ of his or her parent or step-parent. [1973 c 73 § 2; 1951 c 265 § 6; 1945 c 35 § 19; Rem. Supp. 1945 § 9998-158. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.205 Services performed by aliens. Except as provided in RCW 50.04.206, services performed by aliens legally or illegally admitted to the United States shall be considered services in employment subject to the payment of contributions to the extent that services by citizens are covered. [1990 c 245 § 2; 1977 ex.s. c 292 § 5.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.206 Employment—Nonresident alien. The term "employment" shall not include service that is per-

formed by a nonresident alien for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F), (H)(ii), (H)(iii), or (J) of section 101(a)(15) of the federal immigration and naturalization act, as amended, and that is performed to carry out the purpose specified in the applicable subparagraph of the federal immigration and naturalization act. [2006 c 13 § 22. Prior: 2003 2nd sp.s. c 4 § 27; 1990 c 245 § 3.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

50.04.210 Employment—Foreign governmental service. The term "employment" shall not include service performed in the employ of any other state or its political subdivisions, or of the United States government, or of any instrumentality of any other state or states or their political subdivisions, or the United States; except that if the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by congress, and from and after the date when such permission becomes effective all the provisions of this title shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: PROVIDED, That if this state should not be certified by the social security board under section 903 of the social security act, as amended, for any year, then the payment required of such instrumentalities with respect to such year shall be deemed to be erroneously collected and shall be refunded by the commissioner from the fund in accordance with the provisions of this title relating to adjustments and refunds of contributions, interest, or penalties which have been paid. [1983 1st ex.s. c 23 § 5; 1945 c 35 § 22; Rem. Supp. 1945 § 9998-161. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.04.220 Employment—Service covered by federal act. The term "employment" shall not include service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: PROVIDED, That the commissioner is hereby authorized to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective ten days after publication thereof in the manner provided in this title for publication of general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this title, acquired right to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this title. [1945 c 35 § 23; Rem.

Supp. 1945 § 9998-162. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.223 Employment—Massage practitioner. The term "employment" does not include services performed by a massage practitioner licensed under chapter 18.108 RCW in a massage business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed.

This exemption does not include services performed by a massage practitioner for an employer under chapter 50.44 RCW. [1994 c 3 § 2; 1993 c 167 § 1.]

Conflict with federal requirements—Severability—Effective dates—1994 c 3: See notes following RCW 50.04.020.

Effective date—1993 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1993." [1993 c 167 § 2.]

50.04.225 Employment—Barber and cosmetology services. The term "employment" does not include services performed in a barber shop or cosmetology shop by persons licensed under chapter 18.16 RCW if the person is a booth renter as defined in *RCW 18.16.020. [1991 c 324 § 17; 1985 c 7 § 117; 1982 1st ex.s. c 18 § 20.]

***Reviser's note:** RCW 18.16.020 was amended by 2002 c 111 § 2, deleting the definition of "booth renter."

Severability—1991 c 324: See RCW 18.16.910.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.04.230 Employment—Services of insurance agent, broker, or solicitor, real estate broker or real estate salesman, and investment company agent or solicitor. The term "employment" shall not include service performed by an insurance agent, insurance broker, or insurance solicitor or a real estate broker or a real estate salesman to the extent he or she is compensated by commission and service performed by an investment company agent or solicitor to the extent he or she is compensated by commission. The term "investment company", as used in this section is to be construed as meaning an investment company as defined in the act of congress entitled "Investment Company Act of 1940." [1991 c 246 § 7; 1947 c 5 § 24; 1945 c 35 § 24; Rem. Supp. 1947 § 9998-162a.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

50.04.232 Employment—Travel services. The term "employment" shall not include service performed by an outside agent who sells or arranges for travel services that are provided to a travel agent as defined and registered under RCW 19.138.021, to the extent the outside agent is compensated by commission. [1995 c 242 § 1.]

Conflict with federal requirements—1995 c 242: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the

state or the granting of federal unemployment tax credits to employers in this state." [1995 c 242 § 2.]

50.04.235 Employment—Outside salesman paid by commission. The term "employment" shall not include services as an outside salesman of merchandise paid solely by way of commission; and such services must have been performed outside of all the places of business of the enterprises for which such services are performed only. [1957 c 181 § 1.]

50.04.240 Employment—Newspaper delivery person. The term "employment" shall not include service as a newspaper delivery person selling or distributing newspapers on the street or from house to house. [2007 c 218 § 85; 1945 c 35 § 25; Rem. Supp. 1945 § 9998-163. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

50.04.245 Employment—Services performed for temporary services agency, employee leasing agency, or services referral agency. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, a third party pursuant to a contract with a temporary staffing services company or services referral agency constitutes employment for the temporary staffing services company or services referral agency when the agency is responsible, under contract or in fact, for the payment of wages in remuneration for the services performed.

(2) The temporary staffing services company or services referral agency is considered the employer as defined in RCW 50.04.080.

(3) For the purposes of this section:

(a) "Temporary staffing services company" means an individual or entity that engages in: Recruiting and hiring its own employees; finding other organizations that need the services of those employees; and assigning those employees on a temporary basis to perform work at or services for a client to support or supplement the client's workforces, or to provide assistance in special work situations, such as employee absences, skill shortages, and seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the client. "Temporary staffing services company" does not include professional employer organizations as defined in RCW 50.04.298, permanent employee leasing, or permanent employee placement services.

(b) "Services referral agency" means an individual or entity other than a professional employer organization as defined in RCW 50.04.298 that is engaged in the business of offering the services of one or more individuals to perform specific tasks for a third party. [2007 c 146 § 14; 1995 c 120 § 1.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—1995 c 120: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 120 § 2.]

50.04.248 Employment—Third-party payer. (1) Subject to the other provisions of this title, personal services performed for, or for the benefit of, an employer who utilizes a third-party payer constitutes employment for the employer. The third-party payer is not considered the employer as defined in RCW 50.04.080.

(2) For purposes of this section, "third-party payer" means an individual or entity that enters into an agreement with one or more employers to provide administrative, human resource, or payroll administration services, but does not provide an employment or coemployment relationship. Temporary staffing services companies, services referral agencies, professional employer organizations, and labor organizations are not third-party payers. [2007 c 146 § 15.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.04.255 Employment—Appraisal practitioner services. The term "employment" does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW in an appraisal business if the use of the business facilities is contingent upon compensation to the owner of the business facilities and the person receives no compensation from the owner for the services performed. This exemption does not include services performed by an appraisal practitioner certified or licensed under chapter 18.140 RCW for an employer under chapter 50.44 RCW. [1996 c 182 § 14.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

50.04.265 Employment—Indian tribes. The term "employment" includes services performed in the employ of an Indian tribe as provided in RCW 50.50.010. [2001 1st sp.s. c 11 § 2.]

Conflict with federal requirements—Severability—Effective date—Retroactive application—2001 1st sp.s. c 11: See RCW 50.50.900 through 50.50.903.

50.04.270 Employment—Casual labor. The term "employment" shall not include casual labor not in the course of the employer's trade or business (labor which does not promote or advance the trade or business of the employer). Temporary labor in the usual course of an employer's trade or business or domestic services as defined in RCW 50.04.160 shall not be deemed to be casual labor. [1977 ex.s. c 292 § 7; 1945 c 35 § 28; Rem. Supp. 1945 § 9998-166. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.04.275 Employment—Small performing arts. The term "employment" shall not include services performed by a person who is participating in a performance sponsored by an employer whose North American industry classification system code is within "711110," "711120," "711130," or "712110," so long as the person receives no remuneration other than a nominal stipend and the employer does not have more than three individuals in its employ during any portion of a day during the calendar year.

For purposes of this section, "stipend" means a fixed sum of money paid periodically to defray expenses. The stipend

is presumed to defray the person's incidental expenses involved in participating in the performance, including, but not limited to, meals, transportation, lodging, costumes, supplies, and child care. [2007 c 366 § 1.]

50.04.280 Employment—"Pay period" determination. If the services performed during one-half or more of any pay period by an individual for an employing unit constitute employment, all of the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for an employing unit do not constitute employment, then none of the services of such individual on behalf of such employing unit for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to an individual by the employing unit. [1945 c 35 § 29; Rem. Supp. 1945 § 9998-167. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

50.04.290 Employment office. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state as a part of a state controlled system of public employment offices, or by a federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices. All claims for unemployment compensation benefits, registrations for employment, and all job or placement referrals received or made by any of the employment offices as above defined and pursuant to regulation of the commissioner subsequent to December 31, 1941, are hereby declared in all respects to be valid. The commissioner is authorized to make such investigation, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this title as he deems necessary or appropriate to facilitate the administration of any state or federal unemployment compensation or public employment service law and in like manner to accept and utilize information, services and facilities made available to the state by the agency charged with the administration of any such unemployment compensation or public employment service law. Any such action taken by the commissioner subsequent to December 31, 1941, is hereby declared to be in all respects valid. [1945 c 35 § 30; Rem. Supp. 1945 § 9998-168. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

50.04.293 Misconduct. With respect to claims that have an effective date before January 4, 2004, "misconduct" means an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business. [2006 c 13 § 8. Prior: 2003 2nd sp.s. c 4 § 5; 1993 c 483 § 1.]

Retroactive application—2006 c 13 §§ 8-22: "(1) Sections 8 through 13 and 16 of this act apply retroactively to claims that have an effective date on or after January 4, 2004.

(2) Sections 14 and 15 of this act apply retroactively to claims that have an effective date on or after January 2, 2005.

(3) Sections 17 through 22 of this act apply retroactively to June 20, 2003." [2006 c 13 § 23.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates—Applicability—1993 c 483: "(1) Sections 1 and 8 through 11 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and shall be effective as to separations occurring after July 3, 1993.

(2) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective as to weeks claimed after July 3, 1993.

(3) Section 12 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993], and is effective as to new claims filed after July 3, 1993.

(4) Section 19 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 3, 1993, and is effective as to requests for relief of charges received after July 3, 1993.

(5) Sections 15, 17, and 18 of this act shall be effective as to new extended benefit claims filed after October 2, 1993.

(6) Sections 13 and 14 of this act shall take effect January 1, 1994.

(7) Sections 3, 4, and 5 of this act shall take effect January 2, 1994.

(8) Sections 20 and 21 of this act shall take effect for tax year 1994.

(9) Section 16 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]. [1993 c 483 § 23.]

Conflict with federal requirements—1993 c 483: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 483 § 24.]

Severability—1993 c 483: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 483 § 25.]

50.04.294 Misconduct—Gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; or

(c) Good faith errors in judgment or discretion.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee. [2006 c 13 § 9. Prior: 2003 2nd sp.s. c 4 § 6.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.295 Payments in lieu of contributions. "Payments in lieu of contributions" means money payments due to the state unemployment compensation fund as provided in RCW 50.44.060. [1971 c 3 § 2.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.298 Professional employer organizations—Coemployment—Covered employee. For the purposes of this title:

(1) "Professional employer organization" means a person or entity that enters into an agreement with one or more client employers to provide professional employer services. "Professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," "administrative employer," or any other name, when they provide professional employer services to client employers. The following are not classified as profes-

sional employer organizations: Independent contractors in RCW 50.04.140; temporary staffing services companies and services referral agencies as defined in RCW 50.04.245; third-party payers as defined in RCW 50.04.248; or labor organizations.

(2) "Client employer" means any employer who enters into a professional employer agreement with a professional employer organization.

(3) "Coemployer" means either a professional employer organization or a client employer that has entered into a professional employer agreement.

(4) "Covered employee" means an individual performing services for a client employer that constitutes employment under this title.

(5) "Professional employer services" means services provided by the professional employer organization to the client employer, which include, but are not limited to, human resource functions, risk management, or payroll administration services, in a coemployment relationship.

(6) "Coemployment relationship" means a relationship that is intended to be ongoing rather than temporary or project-specific, where the rights, duties, and obligations of an employer in an employment relationship are allocated between coemployers pursuant to a professional employer agreement and state law. A coemployment relationship exists only if a majority of the employees performing services to a client employer, or to a division or work unit of a client employer, are covered employees. In determining the allocation of rights and obligations in a coemployment relationship:

(a) The professional employer organization has only those employer rights and is subject only to those obligations specifically allocated to it by the professional employer agreement or state law;

(b) The client employer has those rights and obligations allocated to it by the professional employer agreement or state law, as well as any other right or obligation of an employer that is not specifically allocated by the professional employer agreement or state law.

(7) "Professional employer agreement" means a written contract between a client employer and a professional employer organization that provides for: (a) The coemployment of covered employees; and (b) the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees. [2007 c 146 § 8.]

Report on implementation and impact—2007 c 146 §§ 8-12: "The department shall report on the implementation of sections 8 through 12 of this act and its impacts on professional employer organizations, small businesses, and the integrity and operations of the unemployment insurance system operated under Title 50 RCW. The department shall report to the unemployment insurance advisory committee and to the appropriate committees of the legislature no later than December 1, 2010." [2007 c 146 § 13.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.04.300 State. "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico. [1977 ex.s. c 292 § 8; 1971 c 3 § 10; 1945 c 35 § 31; Rem. Supp. 1945 § 9998-169. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.04.310 Unemployed individual—Individual not "unemployed"—Corporate officer. (1) An individual is "unemployed" in any week during which the individual performs no services and with respect to which no remuneration is payable to the individual, or in any week of less than full time work, if the remuneration payable to the individual with respect to such week is less than one and one-third times the individual's weekly benefit amount plus five dollars. The commissioner shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to such types of unemployment as the commissioner deems necessary.

(2) An individual is not "unemployed" during any week which falls totally within a period during which the individual, pursuant to a collective bargaining agreement or individual employment contract, is employed full time in accordance with a definition of full time contained in the agreement or contract, and for which compensation for full time work is payable. This subsection may not be applied retroactively to an individual who had no guarantee of work at the start of such period and subsequently is provided additional work by the employer.

(3) An officer of a corporation who owns ten percent or more of the outstanding stock of the corporation, or a corporate officer who is a family member of an officer who owns ten percent or more of the outstanding stock of the corporation, whose claim for benefits is based on any wages with that corporation, is:

(a) Not "unemployed" in any week during the individual's term of office or ownership in the corporation, even if wages are not being paid;

(b) "Unemployed" in any week upon dissolution of the corporation or if the officer permanently resigns or is permanently removed from their appointment and responsibilities with that corporation in accordance with its articles of incorporation or bylaws.

As used in this section, "family member" means persons who are members of a family by blood or marriage as parents, stepparents, grandparents, spouses, children, brothers, sisters, stepchildren, adopted children, or grandchildren. [2007 c 146 § 5; 1984 c 134 § 1; 1973 2nd ex.s. c 7 § 1; 1945 c 35 § 32; Rem. Supp. 1945 § 9998-170. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1939 c 162 § 19.]

Effective date—2007 c 146 §§ 5, 6, and 10-12: "Sections 5, 6, and 10 through 12 of this act take effect January 1, 2008." [2007 c 146 § 25.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Application—1973 2nd ex.s. c 7: "This act shall apply to weeks of unemployment commencing on or after January 6, 1974." [1973 2nd ex.s. c 7 § 4.]

50.04.320 Wages, remuneration. (1) For the purpose of payment of contributions, "wages" means the remuneration paid by one employer during any calendar year to an individual in its employment under this title or the unemployment compensation law of any other state in the amount specified in RCW 50.24.010. If an employer (hereinafter referred

to as a successor employer) during any calendar year acquires substantially all the operating assets of another employer (hereinafter referred to as a predecessor employer) or assets used in a separate unit of a trade or business of a predecessor employer, and immediately after the acquisition employs in the individual's trade or business an individual who immediately before the acquisition was employed in the trade or business of the predecessor employer, then, for the purposes of determining the amount of remuneration paid by the successor employer to the individual during the calendar year which is subject to contributions, any remuneration paid to the individual by the predecessor employer during that calendar year and before the acquisition shall be considered as having been paid by the successor employer.

(2) For the purpose of payment of benefits, "wages" means the remuneration paid by one or more employers to an individual for employment under this title during his base year: PROVIDED, That at the request of a claimant, wages may be calculated on the basis of remuneration payable. The department shall notify each claimant that wages are calculated on the basis of remuneration paid, but at the claimant's request a redetermination may be performed and based on remuneration payable.

(3) For the purpose of payment of benefits and payment of contributions, the term "wages" includes tips which are received after January 1, 1987, while performing services which constitute employment, and which are reported to the employer for federal income tax purposes.

(4)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash. The reasonable cash value of compensation paid in any medium other than cash and the reasonable value of gratuities shall be estimated and determined in accordance with rules prescribed by the commissioner. Remuneration does not include payments to members of a reserve component of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, shall be considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract prior to its expiration date shall be considered remuneration. The proceeds shall be deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Except as provided in (c) of this subsection, the provisions of this subsection (4) pertaining to the assignment of previously accrued compensation shall not apply to individuals subject to RCW 50.44.050. [1998 c 162 § 1; 1995 c 296 § 1; 1986 c 21 § 1; 1984 c 134 § 2; 1983 1st ex.s. c 23 § 6;

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1983 c 67 § 1; 1970 ex.s. c 2 § 3; 1953 ex.s. c 8 § 2; 1951 c 265 § 3; 1949 c 214 § 4; 1947 c 215 § 6; 1945 c 35 § 33; Rem. Supp. 1949 § 9998-171. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Conflict with federal requirements—1998 c 162: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1998 c 162 § 2.]

Effective date—1998 c 162: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on the Sunday following the day that the governor signs this act [March 29, 1998] and is effective for initial claims filed on or after that Sunday." [1998 c 162 § 3.]

Severability—1995 c 296: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 296 § 5.]

Conflict with federal requirements—1995 c 296: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 296 § 6.]

Effective date—1995 c 296: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]." [1995 c 296 § 7.]

Conflict with federal requirements—1986 c 21: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 21 § 2.]

Severability—1986 c 21: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 21 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.323 Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits. (1) The amount of benefits payable to an individual for any week which begins after October 3, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week. However:

(a) The requirements of this subsection shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) Such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer; and

(ii) In the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment;

(b) The amount of any such a reduction shall take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment, in accordance with regulations prescribed by the commissioner; and

(c) No deduction shall be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

(2) In the event that a retroactive pension or retirement payment covers a period in which an individual received benefits under the provisions of this title, the amount in excess of the amount to which such individual would have been entitled had such retirement or pension payment been considered as provided in this section shall be recoverable under RCW 50.20.190.

(3) A lump sum payment accumulated in a plan described in this section paid to an individual eligible for such payment shall be prorated over the life expectancy of the individual computed in accordance with the commissioner's regulation.

(4) The resulting weekly benefit amount payable after reduction under this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(5) Any ambiguity in subsection (1) of this section should be construed in a manner consistent with 26 U.S.C. Sec. 3304 (a)(15) as last amended by P.L. 96-364. [1993 c 483 § 2; 1983 1st ex.s. c 23 § 7; 1981 c 35 § 1; 1980 c 74 § 1; 1973 2nd ex.s. c 7 § 2; 1973 1st ex.s. c 167 § 1; 1970 ex.s. c 2 § 19.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—1980 c 74: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 74 § 6.]

Effective dates—1980 c 74 §§ 1, 2, and 3: "Sections 1 and 2 of this amendatory act are necessary for the immediate preservation of the public peace, health, and safety, and the support of the state government and its existing public institutions, and shall take effect with weeks of unemployment beginning after March 31, 1980. Section 3 of this amendatory act shall take effect with benefit years beginning after June 30, 1980." [1980 c 74 § 7.]

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.330 Wages, remuneration—Retirement and disability payments excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of retirement, sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability. After December 31, 1950, the term "wages" shall not include:

(1) The amount of any payment made (including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment), to, or on behalf of, an individual or any of his dependents under a plan or system established by an employing unit which makes provision generally for individuals performing service for it (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (a) retirement, or (b) sickness or accident disability, or (c) medical or hospitalization expenses in connection with sickness or accident disability or (d) death;

(2) the amount of any payment by an employing unit to an individual performing service for it (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(3) the amount of any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employing unit to, or on behalf of, an individual performing services for it after the expiration of six calendar months following the last calendar month in which the individual performed services for such employing unit;

(4) the amount of any payment made by an employing unit to, or on behalf of, an individual performing services for it or his beneficiary (a) from or to a trust exempt from tax under section 165(a) of the federal internal revenue code at the time of such payment unless such payment is made to an individual performing services for the trust as remuneration for such services and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payments, meets the requirements of section 165(a)(3), (4), (5), and (6) of the federal internal revenue code; or

(5) the amount of any payment (other than vacation or sick pay) made to an individual after the month in which he attains the age of sixty-five, if he did not perform services for the employing unit in the period for which such payment is made. [1951 c 265 § 4; 1949 c 214 § 5; 1945 c 35 § 34; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.335 Wages, remuneration—Stock transfers excepted. After December 31, 2003, for the purpose of the payment of contributions, the term "wages" does not include an employee's income attributable to the transfer of shares of stock to the employee pursuant to his or her exercise of a

stock option granted for any reason connected with his or her employment. [2006 c 13 § 17. Prior: 2003 2nd sp.s. c 4 § 2.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.04.340 Wages, remuneration—Death benefits excepted. Prior to January 1, 1951, the term "wages" shall not include the amount of any payment by an employing unit for or on behalf of an individual in its employ under a plan or system established by such employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities or into a fund to provide for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.350 Wages, remuneration—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: PROVIDED, HOWEVER, That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.04.355 Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. (1) For computations made before January 1, 2007, the employment security department shall compute, on or before the fifteenth day of June of each year, an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" from information for the specified preceding calendar years including corrections thereof reported within three months after the close of the final year of the specified years by all employers as defined in RCW 50.04.080.

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(a) The "average annual wage" is the quotient derived by dividing the total remuneration reported by all employers for the preceding calendar year by the average number of workers reported for all months of the preceding calendar year and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(b) The "average weekly wage" is the quotient derived by dividing the "average annual wage" obtained under (a) of this subsection by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(c) The "average annual wage for contributions purposes" is the quotient derived by dividing by three the total remuneration reported by all employers subject to contributions for the preceding three consecutive calendar years and dividing this amount by the average number of workers reported for all months of these three years by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(2) For computations made on or after January 1, 2007, the employment security department shall compute, on or before the fifteenth day of June of each year, an "average annual wage," an "average weekly wage," and an "average annual wage for contributions purposes" from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080.

(a) The "average annual wage" is the quotient derived by dividing the total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(b) The "average weekly wage" is the quotient derived by dividing the "average annual wage" obtained under (a) of this subsection by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar.

(c) The "average annual wage for contributions purposes" is the quotient derived by dividing the total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [2003 2nd sp.s. c 4 § 15; 2000 c 2 § 1; 1977 ex.s. c 33 § 2; 1975 1st ex.s. c 228 § 1; 1973 c 73 § 3; 1970 ex.s. c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—2000 c 2: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 2 s 17.]

Severability—2000 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 2 § 18.]

Effective date—2000 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [February 7, 2000]." [2000 c 2 § 19.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: "All sections of this 1975 amendatory act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the first Sunday following signature by the governor [June 29, 1975]." [1975 1st ex.s. c 228 § 19.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.04.360 Week. "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

Chapter 50.06 RCW

TEMPORARY TOTAL DISABILITY

Sections

50.06.010	Purpose.
50.06.020	Allowable beneficiaries.
50.06.030	Application for initial determination of disability—Special base year—Special individual benefit year.
50.06.040	Laws and regulations governing amounts payable and right to benefits.
50.06.050	Use of wages and time worked for prior claims—Effect.
50.06.900	Application of chapter—Recipients of industrial insurance or crime victims compensation.
50.06.910	Partial invalidity of chapter.

50.06.010 Purpose. This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to persons who have suffered a temporary total disability and is a recognition by this legislature of the economic hardship confronting those persons who have not been promptly reemployed after a prolonged period of temporary total disability. [1993 c 483 § 3; 1984 c 65 § 1; 1975 1st ex.s. c 228 § 7.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.020 Allowable beneficiaries. The benefits of this chapter shall be allowed only to:

(1) Individuals who have suffered a temporary total disability and have received compensation under the industrial insurance or crime victims compensation laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability; or

(2) Individuals who are reentering the workforce after an absence of not less than thirteen consecutive calendar weeks resulting from temporary total physical disability because of a nonwork-related injury or illness: PROVIDED, That individuals authorized to receive benefits under this subsection are required to meet other eligibility requirements under Title 50 RCW. [1993 c 483 § 4; 1984 c 65 § 2; 1975 1st ex.s. c 228 § 8.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.030 Application for initial determination of disability—Special base year—Special individual benefit year. (1) In the case of individuals eligible under RCW 50.06.020(1), an application for initial determination made pursuant to this chapter, to be considered timely, must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability.

(2) In the case of individuals eligible under RCW 50.06.020(2), an application for initial determination must be filed in accordance with RCW 50.20.140 within twenty-six weeks following the week in which the period of temporary total physical disability commenced. This filing requirement is satisfied by filing a signed statement from the attending physician stating the date that the disability commenced and stating that the individual was unable to reenter the workforce during the time of the disability. The department may examine any medical information related to the disability. If the claim is appealed, a base year employer may examine the medical information related to the disability and require, at the employer's expense, that the individual obtain the opinion of a second health care provider selected by the employer concerning any information related to the disability.

(3) The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

(4) For the purpose of this chapter, a special base year is established for an individual consisting of either the first four of the last five completed calendar quarters or the last four completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance or crime victims compensation laws, or the week in which the individual reentered the workforce after an absence under subsection (2) of this section, as applicable, except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: PROVIDED HOWEVER, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 has been met, except that an individual meeting the eligibility requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: PROVIDED FUR-

THER, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year.

(5) For the purposes of establishing a benefit year, the department shall initially use the first four of the last five completed calendar quarters as the base year. If a benefit year is not established using the first four of the last five calendar quarters as the base year, the department shall use the last four completed calendar quarters as the base year. [2002 c 73 § 1; 1993 c 483 § 5; 1987 c 278 § 3; 1984 c 65 § 3; 1975 1st ex.s. c 228 § 9.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.040 Laws and regulations governing amounts payable and right to benefits. The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.050 Use of wages and time worked for prior claims—Effect. The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement or amount of benefits in any succeeding benefit year. [1975 1st ex.s. c 228 § 11.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.900 Application of chapter—Recipients of industrial insurance or crime victims compensation. (1) This chapter shall be available to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after June 29, 1975.

(2) This chapter shall also be available to individuals who suffer a temporary total disability compensable under crime victims compensation laws, after June 7, 1984. [1984 c 65 § 4; 1975 1st ex.s. c 228 § 12.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.06.910 Partial invalidity of chapter. Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

(2008 Ed.)

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Chapter 50.08 RCW

ESTABLISHMENT OF DEPARTMENT

Sections

- 50.08.010 Employment security department established.
- 50.08.020 Divisions established.
- 50.08.030 Administration of family services and programs.

Displaced homemaker act, departmental participation: RCW 28B.04.080.

Labor market information and economic analysis—Duties and authority: Chapter 50.38 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

50.08.010 Employment security department established. There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

50.08.020 Divisions established. There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency. [1973 1st ex.s. c 158 § 1; 1947 c 215 § 9; 1945 c 35 § 39; Rem. Supp. 1947 § 9998-177. Prior: 1943 c 127 § 9; 1939 c 214 § 7; 1937 c 162 § 9.]

Effective date—1973 1st ex.s. c 158: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973." [1973 1st ex.s. c 158 § 21.]

50.08.030 Administration of family services and programs. The commissioner shall administer family services and programs to promote the state's policy as provided in RCW 74.14A.025. [1992 c 198 § 10.]

Severability—Effective date—1992 c 198: See RCW 70.190.910 and 70.190.920.

**Chapter 50.12 RCW
ADMINISTRATION**

Sections

50.12.010	Commissioner's duties and powers.
50.12.020	Personnel appointed by commissioner.
50.12.031	Personnel board—Travel expenses of board.
50.12.040	Rule-making authority.
50.12.042	Rules—2003 2nd sp.s. c 4.
50.12.045	Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.
50.12.050	Reciprocal benefit arrangements.
50.12.060	Reciprocal coverage arrangements.
50.12.070	Employing unit records, reports, and registration—Unified business identifier account number records.
50.12.080	Arbitrary reports.
50.12.090	Interstate use of employing unit records.
50.12.100	Compulsory production of records and information.
50.12.120	Protection against self-incrimination.
50.12.130	Oaths and witnesses.
50.12.140	Destruction of office records.
50.12.150	Representation by attorney general.
50.12.160	Publication of title, rules and regulations, etc.
50.12.170	Services and fees of sheriffs.
50.12.180	State-federal cooperation.
50.12.190	Employment stabilization.
50.12.200	State advisory council—Committees and councils.
50.12.210	Employment services for handicapped—Report to legislative committees.
50.12.220	Penalties for late reports or contributions—Warning—Assessment—Waiver—Appeal.
50.12.230	Job skills training program—Department's duties.
50.12.235	Washington conservation corps—Department's duties.
50.12.240	On-the-job training—Employer qualifications established by rule.
50.12.245	Cooperation with workforce training and education coordinating board.
50.12.250	Information clearinghouse to assist in employment of persons of disability.
50.12.252	Information clearinghouse—Consultation on establishment.
50.12.280	Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation.
50.12.290	Printed materials—Department's duties.
50.12.300	Professional employer organizations—Reports and records.
50.12.310	Professional employer organizations—Revocation of authority to act as employer.

Administration of OASI plans for members of teachers' retirement and state employees' retirement systems: Chapters 41.33, 41.41 RCW.

Merit system: Chapter 41.06 RCW.

50.12.010 Commissioner's duties and powers. (1)

The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication and in the manner, not inconsistent with the provisions of this title, which the commissioner shall prescribe. The commissioner, in accordance with the provisions of this title, shall determine the organization and methods of procedure of the divisions referred to in this title, and shall have an official seal which shall be judicially noticed. The commissioner shall submit to the governor a report covering the administration and operation of this title during the preceding fiscal year, July 1 through June 30, and shall make such recommendations for amendments to this title as he deems proper. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall

be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and legislature and make recommendations with respect thereto.

(2) There is established a unit within the department for the purpose of detection and investigation of fraud under this title. The department will employ supervisory and investigative personnel for the program, who must be qualified by training and experience.

(3) The commissioner or the commissioner's duly authorized designee is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation for abuse or fraud under chapter 50.20 RCW. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. [2008 c 74 § 5; 1977 c 75 § 75; 1955 c 286 § 1; 1949 c 214 § 7; 1945 c 35 § 40; Rem. Supp. 1949 § 9998-178. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 12 § 2.]

Finding—2008 c 74: See note following RCW 51.04.024.

50.12.020 Personnel appointed by commissioner.

The commissioner is authorized to appoint and fix the compensation of such officers, accountants, experts, and other personnel as may be necessary to carry out the provisions of this title: PROVIDED, That such appointment shall be made on a nonpartisan merit basis in accordance with the provisions of this title relating to the selection of personnel. The commissioner may delegate to any person appointed such power and authority as the commissioner deems reasonable and proper for the effective administration of this title, including the right to decide matters placed in the commissioner's discretion under this title, and may in his or her discretion bond any person handling moneys or signing checks hereunder. [1985 c 96 § 1; 1973 1st ex.s. c 158 § 2; 1945 c 35 § 41; Rem. Supp. 1945 § 9998-179. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.031 Personnel board—Travel expenses of board. Members of the board shall be allowed travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while traveling to and from and attending regularly called meetings. [1975-'76 2nd ex.s. c 34 § 148; 1959 c 127 § 2.]

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

50.12.040 Rule-making authority. Permanent and emergency rules shall be adopted, amended, or repealed by the commissioner in accordance with the provisions of Title 34 RCW and the rules adopted pursuant thereto: PROVIDED, That the commissioner may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule.

[1995 c 403 § 109; 1973 1st ex.s. c 158 § 3; 1945 c 35 § 43; Rem. Supp. 1945 § 9998-181. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.042 Rules—2003 2nd sp.s. c 4. The commissioner of the employment security department may adopt such rules as are necessary to implement chapter 4, Laws of 2003 2nd sp. sess. [2003 2nd sp.s. c 4 § 34.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.12.045 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications. The commissioner may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under chapter 19.02 RCW. [1997 c 51 § 5.]

Intent—1997 c 51: See note following RCW 19.02.300.

50.12.050 Reciprocal benefit arrangements. As used in this section the terms "other state" and "another state" shall be deemed to include any state or territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign government and, where applicable, shall also be deemed to include the federal government or provisions of a law of the federal government, as the case may be.

As used in this section the term "claim" shall be deemed to include whichever of the following terms is applicable, to wit: "Application for initial determination", "claim for waiting period credit", or "claim for benefits".

The commissioner shall enter into an agreement with any other state whereby in the event an individual files a claim in another state against wages earned in employment in this state, or against wage credits earned in this state and in any other state or who files a claim in this state against wage credits earned in employment in any other state, or against wages earned in this state and in any other state, the claim will be paid by this state or another state as designated by the agreement in accordance with a determination on the claim as provided by the agreement and pursuant to the qualification and disqualification provisions of this title or under the provisions of the law of the designated paying state (including another state) or under such a combination of the provisions of both laws as shall be determined by the commissioner as being fair and reasonable to all affected interests, and whereby the wages of such individual, if earned in two or more states (including another state) may be combined, and further, whereby this state or another state shall reimburse the paying state in an amount which shall bear the same ratio to the amount of benefits already paid as the amount of wage credits transferred by this state or another state, and used in the deter-

mination, bear to the total wage credits used in computing the claimant's maximum amount of benefits potentially payable.

Whenever any claim is filed by an individual involving the combination of wages or a reciprocal arrangement for the payment of benefits, which is governed by the provisions of this section, the employment security department of this state, when not designated as the paying state, shall promptly make a report to the other state making the determination, showing wages earned in employment in this state.

The commissioner is hereby authorized to make to another state and to receive from another state reimbursements from or to the unemployment compensation fund in accordance with arrangements made pursuant to the provisions of this section. [1977 ex.s. c 292 § 9; 1971 c 3 § 11; 1959 c 266 § 1; 1949 c 214 § 8; 1945 c 35 § 44; Rem. Supp. 1949 § 9998-182. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.12.060 Reciprocal coverage arrangements. The commissioner is hereby authorized to enter into arrangements with the appropriate agencies of other states, foreign governments or the federal government whereby services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (1) in which any part of such individual's service is performed, or (2) in which such individual has his residence, or (3) in which the employing unit maintains a place of business: PROVIDED, That there is in effect, as to such services, an election by the employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state. [1945 c 35 § 45; Rem. Supp. 1945 § 9998-183. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.070 Employing unit records, reports, and registration—Unified business identifier account number records. (1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty deter-

mined by the commissioner, but not to exceed two hundred fifty dollars, to be collected as provided in RCW 50.24.120.

(2)(a) Each employer shall register with the department and obtain an employment security account number. Registration must include the names and social security numbers of the owners, partners, members, or corporate officers of the business, as well as their mailing addresses and telephone numbers and other information the commissioner may by rule prescribe. Registration of corporations must also include the percentage of stock ownership for each corporate officer, delineated by zero percent, less than ten percent, or ten percent or more. Any changes in the owners, partners, members, or corporate officers of the business, and changes in percentage of ownership of the outstanding shares of stock of the corporation, must be reported to the department at intervals prescribed by the commissioner under (b) of this subsection.

(b) Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security numbers of all such workers, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe.

(c) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection. [2008 c 120 § 7; 2007 c 146 § 1; 1997 c 54 § 2; 1983 1st ex.s. c 23 § 8; 1977 ex.s. c 33 § 3; 1975 1st ex.s. c 228 § 2; 1945 c 35 § 46; Rem. Supp. 1945 § 9998-184. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.12.080 Arbitrary reports. If any employing unit fails to make or file any report or return required by this title, or any regulation made pursuant hereto, the commissioner may, upon the basis of such knowledge as may be available to him, arbitrarily make a report on behalf of such employing unit and the report so made shall be deemed to be prima facie correct. In any action or proceedings brought for the recovery of contributions, interest, or penalties due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department, or a certificate that a return has been filed by or for an employer or estimated by reason of lack of a return, shall be prima facie evidence of the amount of such payroll for the period stated in the certificate. [1983 1st ex.s. c 23 § 9; 1951 c 215 § 2; 1945 c 35 § 47; Rem. Supp. 1945 § 9998-185. Prior: 1943 c 127 § 8.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.12.090 Interstate use of employing unit records. The records of an employer maintained in this state pertaining to employment of persons in another state shall be open to representatives of the commissioner to permit cooperation with other state unemployment compensation agencies in ascertaining information necessary to administer the unemployment compensation acts of such other states. [1945 c 35 § 48; Rem. Supp. 1945 § 9998-186.]

50.12.100 Compulsory production of records and information. In case of contumacy or refusal to obey subpoenas issued to any person, any court of the state within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by any duly authorized representative of the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear before such authorized representative, there to produce evidence, if so ordered, or there to give testimony touching the matter under investigation, or in question. Failure to obey such order of the court may be punished by said court as a contempt thereof. [1945 c 35 § 49; Rem. Supp. 1945 § 9998-187. Prior: 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.120 Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before any duly authorized representative of the commissioner or any appeal tribunal in obedience to the subpoena of such representative of the commissioner or such appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such indi-

vidual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. [1945 c 35 § 51; Rem. Supp. 1945 § 9998-189. Prior: 1943 c 127 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.130 Oaths and witnesses. In the discharge of the duties imposed by this title, the appeal tribunal and any duly authorized representative of the commissioner shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed to be necessary as evidence in connection with any dispute or the administration of this title. It shall be unlawful for any person, without just cause, to fail to comply with subpoenas issued pursuant to the provisions of this section. [1945 c 35 § 52; Rem. Supp. 1945 § 9998-190. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.140 Destruction of office records. The commissioner may destroy any form, claim, ledger, check, letter, or other record of the employment security department at the expiration of three years after such record was originated by or filed with the employment security department, except that warrants and claims, claim determination, employer liability forms and contribution reports may be destroyed at the expiration of six years after such form is originated by or filed with the employment security department, and except that this section shall not apply to records pertaining to grants, accounts or expenditures for administration, records of the unemployment compensation fund and the unemployment compensation administration fund. [1947 c 215 § 11; 1945 c 35 § 53; Rem. Supp. 1947 § 99998-191.]

Preservation and destruction of public records: Chapter 40.14 RCW.

50.12.150 Representation by attorney general. The attorney general shall be the general counsel of each and all divisions and departments under this title and it shall be his duty to institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of each, every, and all of the provisions of this title, and it shall be the duty of the attorney general to assign such assistants and attorneys as may be necessary to the exclusive duty of assisting each, every, and all divisions and departments created under this title in the enforcement of this title. The salaries of such assistants shall be paid out of the unemployment compensation administration fund, together with their expenses fixed by the attorney general and allowed by the treasurer of the unemployment compensation administration fund when approved upon vouchers by the attorney general. [1945 c 35 § 54; Rem. Supp. 1945 § 9998-192. Prior: 1937 c 162 § 17.]

Attorney general: Chapter 43.10 RCW.

50.12.160 Publication of title, rules and regulations, etc. The commissioner may cause to be printed for distribution to the public the text of this title, the regulations and general rules, and other material which he deems relevant and suitable. [1977 c 75 § 76; 1945 c 35 § 55; Rem. Supp. 1945 § 9998-193.]

(2008 Ed.)

50.12.170 Services and fees of sheriffs. The sheriff of any county, upon request of the commissioner or his duly authorized representative, or upon request of the attorney general, shall, for and on behalf of the commissioner, perform the functions of service, distraint, seizure, and sale, authority for which is granted to the commissioner or his duly authorized representative. No bond shall be required by the sheriff of any county for services rendered for the commissioner, his duly authorized representative, or the attorney general. The sheriff shall be allowed such fees as may be prescribed for like or similar official services. [1945 c 35 § 56; Rem. Supp. 1945 § 9998-194.]

County sheriff: Chapter 36.28 RCW.

50.12.180 State-federal cooperation. The commissioner, through the Washington state employment service division, shall establish and maintain free public employment offices in such places as may be necessary for the proper administration of this title and for the purpose of performing such duties as are within the purview of the act of congress entitled "An Act to provide for the establishment of a national employment system and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49(c), as amended).

In the administration of this title the commissioner shall cooperate to the fullest extent consistent with the provisions of this title, with any official or agency of the United States having powers or duties under the provisions of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act and there shall be observance of and compliance with the requirements thereof. The commissioner may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities, and make available to said board the state's records relating to the administration of this title, and furnish such copies thereof, at the expense of the board, as it may deem necessary for its purposes.

The commissioner shall comply with such provisions as the social security board, created by the social security act, approved August 14, 1935, as amended, may from time to time require, regarding reports and the correctness and verification thereof, and shall comply with the regulations of the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting the administration of this title. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in accordance with the conditions specified in Title XII of the social security act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

The commissioner is also authorized and empowered to take such steps, not inconsistent with law, as may be necessary for the purpose of procuring for the people of this state all of the benefits and assistance, financial and otherwise, provided, or to be provided for, by or pursuant to any act of congress.

Upon request therefor the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this title. [1973 1st ex.s. c 158 § 4; 1959 c 266 § 2; 1945 c 35 § 57; Rem. Supp. 1945 § 9998-195. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.12.190 Employment stabilization. The commissioner shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry and publish the results of investigations and research studies. [1945 c 35 § 58; Rem. Supp. 1945 § 9998-197. Prior: 1943 c 127 § 8; 1941 c 253 § 8; 1939 c 214 § 9; 1937 c 162 § 11.]

50.12.200 State advisory council—Committees and councils. The commissioner shall appoint a state advisory council composed of not more than nine men and women, of which three shall be representatives of employers, three shall be representatives of employees, and three shall be representatives of the general public. Such council shall aid the commissioner in formulating policies and discussing problems related to the administration of this title and of assuring impartiality and freedom from political influence in the solution of such problems. The council shall serve without compensation. The commissioner may also appoint committees, and industrial or other special councils, to perform appropriate services. Advisory council members shall be reimbursed for travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1982 1st ex.s. c 18 § 1; 1975-'76 2nd ex.s. c 34 § 149; 1953 ex.s. c 8 § 4; 1947 c 215 § 12; 1945 c 35 § 59; Rem. Supp. 1947 § 9998-197. Prior: 1941 c 253 § 17.]

Severability—1982 1st ex.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 18 § 22.]

Conflict with federal requirements—1982 1st ex.s. c 18: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this

act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1982 1st ex.s. c 18 § 21.]

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

50.12.210 Employment services for handicapped—Report to legislative committees. It is the policy of the state of Washington that persons with physical, mental, or sensory handicaps shall be given equal opportunities in employment. The legislature recognizes that handicapped persons have faced unfair discrimination in employment.

For these reasons, the state employment service division of the employment security department shall give particular and special attention service to those persons with physical, mental, or sensory handicaps which substantially limit one or more of their major life functions as defined under P.L. 93-112 and rules promulgated thereunder. Particular and special attention service shall include but not be limited to particular and special attention in counseling, referral, notification of job listings in advance of other persons, and other services of the employment service division.

Nothing in this section shall be construed so as to affect the veteran's preference or any other requirement of the United States department of labor.

The employment security department shall report to the house and senate commerce and labor committees by December 1, 1987, on its accomplishments under this section and on its future plans for implementation of this section. The department shall report to the above mentioned committees every odd-numbered year thereafter on its actions under this section.

The employment security department shall establish rules to implement this section. [1987 c 76 § 1; 1977 ex.s. c 273 § 1.]

50.12.220 Penalties for late reports or contributions—Warning—Assessment—Waiver—Appeal. (1) If an employer fails to file a timely report as required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the commissioner.

(2) An employer who files an incomplete or incorrectly formatted tax and wage report as required by RCW 50.12.070 must receive a warning letter for the first occurrence. The warning letter will provide instructions for accurate reporting or notify the employer how to obtain technical assistance from the department. Except as provided in subsections (3) and (4) of this section, for subsequent occurrences within five years of the last occurrence, the employer is subject to a penalty as follows:

(a) When no contributions are due: For the second occurrence, the penalty is seventy-five dollars; for the third occurrence, the penalty is one hundred fifty dollars; and for the fourth occurrence and for each occurrence thereafter, the penalty is two hundred fifty dollars.

(b) When contributions are due: For the second occurrence, the penalty is ten percent of the quarterly contributions due, but not less than seventy-five dollars and not more than two hundred fifty dollars; for the third occurrence, the penalty is ten percent of the quarterly contributions due, but not less than one hundred fifty dollars and not more than two

hundred fifty dollars; and for the fourth occurrence and each occurrence thereafter, the penalty is two hundred fifty dollars.

(3) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(4) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(5) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(6) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to file timely, complete, and correctly formatted reports or pay timely contributions was not due to the employer's fault.

(7) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(8) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030. [2007 c 146 § 3; 2006 c 47 § 3; 2004 c 97 § 1; 2003 2nd sp.s. c 4 § 22; 1987 c 111 § 2; 1979 ex.s. c 190 § 1.]

Application—2007 c 146 § 3: "Section 3 of this act applies for penalties assessed on reports and contributions due beginning October 1, 2007." [2007 c 146 § 23.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Severability—Effective date—Retroactive application—2006 c 47: See notes following RCW 50.29.062.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1987 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed (2008 Ed.)

condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 111 § 10.]

Severability—1987 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 111 § 11.]

Effective date—1987 c 111: "This act shall take effect July 1, 1987. Sections 2 and 8 of this act shall be effective for quarters beginning on and after July 1, 1987." [1987 c 111 § 12.]

50.12.230 Job skills training program—Department's duties. See RCW 28C.04.400 through 28C.04.420.

50.12.235 Washington conservation corps—Department's duties. See chapter 43.220 RCW.

50.12.240 On-the-job training—Employer qualifications established by rule. The commissioner may establish by rule qualifications for employers who agree to provide on-the-job training for new employees. [1985 c 299 § 2.]

50.12.245 Cooperation with workforce training and education coordinating board. The commissioner shall cooperate with the workforce training and education coordinating board in the conduct of the board's responsibilities under RCW 28C.18.060 and shall provide information and data in a format that is accessible to the board. [1991 c 238 § 80.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

50.12.250 Information clearinghouse to assist in employment of persons of disability. The employment security department shall establish an information clearinghouse for use by persons of disability and governmental and private employers. The services of the clearinghouse shall include:

(1) Provision of information on private and state services available to assist persons of disability in their training and employment needs;

(2) Provision of information on private, state, and federal incentive programs and services available to employers of persons of disability; and

(3) Publication of a comprehensive list of programs and services in subsections (1) and (2) of this section. [1987 c 369 § 2.]

Legislative finding—1987 c 369: "The legislature finds that improving the economic status of persons of disability, the state's largest social minority with over four hundred thousand people, will require active state involvement. Persons of disability suffer unemployment at almost twice the rate and experience poverty at more than twice the rate of the general population. Employers have experienced confusion about the variety of employment services available to them. Optimum service from, and access to, the state's training and placement programs for persons of disability requires coordination and a clear focus on the stated needs of persons of disability and their prospective employers. It is the purpose of this chapter to guarantee that representatives of the disability community, labor, and the private sector have an institutionalized means of meeting their respective needs in the training,

employment, and economic participation of persons of disability." [1987 c 369 § 1.]

50.12.252 Information clearinghouse—Consultation on establishment. In establishing the information clearinghouse, the employment security department shall consult with organizations of private sector employers and persons of disability. [1987 c 369 § 3.]

Legislative finding—1987 c 369: See note following RCW 50.12.250.

50.12.280 Displaced workers account—Compensation and retraining after thermal electric generation facility's cessation of operation. The displaced workers account is established. All moneys from RCW 82.32.393 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to provide for compensation and retraining of displaced workers of the thermal electric generation facility and of the coal mine that supplied coal to the facility. The benefits from the account are in addition to all other compensation and retraining benefits to which the displaced workers are entitled under existing state law. The employment security department shall administer the distribution of moneys from the account. [1997 c 368 § 13.]

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

50.12.290 Printed materials—Department's duties. When an employer initially files a master application under chapter 19.02 RCW for the purpose, in whole or in part, of registering to pay unemployment insurance taxes, the employment security department shall send to the employer any printed material the department recommends or requires the employer to post. Any time the printed material has substantive changes in the information, the department shall send a copy to each employer. [2007 c 287 § 1.]

50.12.300 Professional employer organizations—Reports and records. (1) A professional employer organization must register with the department and ensure that its client employers are registered with the department as provided in RCW 50.12.070.

(2) By September 1, 2007, the professional employer organization shall provide the department with:

(a) The names, addresses, unified business identifier numbers, and employment security account numbers of all its existing client employers who do business or have covered employees in Washington state. This requirement applies whether or not the client employer currently has covered employees performing services in Washington state;

(b) The names and social security numbers of corporate officers, owners, or limited liability company members of client employers; and

(c) The business location in Washington state where payroll records of its client employers will be made available for review or inspection upon request of the department.

(3) For client employers registering for the first time as required in RCW 50.12.070, the professional employer organization must:

(a) Provide the names, addresses, unified business identifier numbers, and employment security account numbers of

the client employers who do business or have covered employees in Washington state. This requirement applies whether or not the client employer currently has covered employees performing services in Washington state;

(b) Provide the names and social security numbers of corporate officers, owners, or limited liability company members of the client employers; and

(c) Provide the business location in Washington state where payroll records of its client employers will be made available for review or inspection at the time of registration or upon request of the department.

(4) The professional employer organization must notify the department within thirty days each time it adds or terminates a relationship with a client employer. Notification must take place on forms provided by the department. The notification must include the name, employment security account number, unified business identifier number, and address of the client employer, as well as the effective date the relationship began or terminated.

(5) The professional employer organization must provide a power of attorney, confidential information authorization, or other evidence, completed by each client employer as required by the department, authorizing it to act on behalf of the client employer for unemployment insurance purposes.

(6) The professional employer organization must file quarterly wage and contribution reports with the department. The professional employer organization may file either a single electronic report containing separate and distinct information for each client employer and using the employer account number and tax rate assigned to each client employer by the department, or separate paper reports for each client employer.

(7) The professional employer organization must maintain accurate payroll records for each client employer and make these records available for review or inspection upon request of the department at the location provided by the professional employer organization. [2007 c 146 § 9.]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.12.310 Professional employer organizations—Revocation of authority to act as coemployer. A professional employer organization's authority to act as a coemployer for purposes of this title may be revoked by the department when it determines that the professional employer organization has substantially failed to comply with the requirements of RCW 50.12.300. [2007 c 146 § 12.]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Chapter 50.13 RCW

RECORDS AND INFORMATION—
PRIVACY AND CONFIDENTIALITY

Sections

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50.13.010 Legislative intent and recognition. This chapter is intended to reconcile the free access to public records granted by the open government act and the discovery rights of judicial and administrative systems with the historical confidentiality of certain records of the department of employment security and the individual's right of privacy as acknowledged by the open government act.

The legislature recognizes that records and information held by the department of employment security could be misused. Therefore, this chapter defines a right of privacy and confidentiality as regards individual and employing unit records maintained by the department of employment security. The legislature further recognizes that there are situations where this right of privacy and confidentiality is outweighed by other considerations. Therefore, this chapter also defines certain exceptions to the right of privacy and confidentiality. [1977 ex.s. c 153 § 1.]

50.13.015 Information held private and confidential—Requests for disclosure. (1) If information provided to the department by another governmental agency is held private and confidential by state or federal laws, the department may not release such information.

(2) Information provided to the department by another governmental entity conditioned upon privacy and confidentiality is to be held private and confidential according to the agreement between the department and other governmental agency.

(3) The department may hold private and confidential information obtained for statistical analysis, research, or study purposes if the information was supplied voluntarily, conditioned upon maintaining confidentiality of the information.

(4) Persons requesting disclosure of information held by the department under subsection (1) or (2) of this section shall request such disclosure from the agency providing the

information to the department rather than from the department.

(5) This section supersedes any provisions of chapter 42.56 RCW to the contrary. [2005 c 274 § 319; 1989 c 92 § 3.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

50.13.020 Information or records deemed private and confidential—Exceptions. Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. Information or records may be released by the department of employment security when the release is:

(1) Required by the federal government in connection with, or as a condition of funding for, a program being administered by the department; or

(2) Requested by a county clerk for the purposes of RCW 9.94A.760.

The provisions of RCW 50.13.060 (1) (a), (b) and (c) will not apply to such release. [2004 c 121 § 5; 1981 c 35 § 2; 1977 ex.s. c 153 § 2.]

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

50.13.030 Rules. The commissioner shall have the authority to adopt, amend, or rescind rules interpreting and implementing the provisions of this chapter. In particular, these rules shall specify the procedure to be followed to obtain information or records to which the public has access under this chapter or chapter 42.56 RCW. [2005 c 274 § 320; 1977 ex.s. c 153 § 3.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

50.13.040 Access of individual or employing unit to records and information. (1) An individual shall have access to all records and information concerning that individual held by the employment security department, unless the information is exempt from disclosure under RCW 42.56.410.

(2) An employing unit shall have access to its own records and to any records and information relating to a benefit claim by an individual if the employing unit is either the individual's last employer or is the individual's base year employer.

(3) An employing unit shall have access to any records and information relating to any decision to allow or deny benefits if:

(a) The decision is based on employment or an offer of employment with the employing unit; or

(b) If the decision is based on material information provided by the employing unit.

(4) An employing unit shall have access to general summaries of benefit claims by individuals whose benefits are chargeable to the employing unit's experience rating or reim-

bursement account. [2005 c 274 § 321; 1993 c 483 § 6; 1977 ex.s. c 153 § 4.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.13.050 Access to records or information by interested party in proceeding before appeal tribunal or commissioner—Decisions not private and confidential, exception. (1) Any interested party, as defined by rule, in a proceeding before the appeal tribunal or commissioner shall have access to any information or records deemed private and confidential under this chapter if the information or records are material to the issues in that proceeding.

(2) No decisions by the commissioner or the appeals tribunal shall be deemed private and confidential under this chapter unless the decisions are based on information obtained in a closed hearing. [1977 ex.s. c 153 § 5.]

50.13.060 Access to records or information by governmental agencies. (1) Governmental agencies, including law enforcement agencies, prosecuting agencies, and the executive branch, whether state, local, or federal shall have access to information or records deemed private and confidential under this chapter if the information or records are needed by the agency for official purposes and:

(a) The agency submits an application in writing to the employment security department for the records or information containing a statement of the official purposes for which the information or records are needed and specific identification of the records or information sought from the department; and

(b) The director, commissioner, chief executive, or other official of the agency has verified the need for the specific information in writing either on the application or on a separate document; and

(c) The agency requesting access has served a copy of the application for records or information on the individual or employing unit whose records or information are sought and has provided the department with proof of service. Service shall be made in a manner which conforms to the civil rules for superior court. The requesting agency shall include with the copy of the application a statement to the effect that the individual or employing unit may contact the public records officer of the employment security department to state any objections to the release of the records or information. The employment security department shall not act upon the application of the requesting agency until at least five days after service on the concerned individual or employing unit. The employment security department shall consider any objections raised by the concerned individual or employing unit in deciding whether the requesting agency needs the information or records for official purposes.

(2) The requirements of subsections (1) and (9) of this section shall not apply to the state legislative branch. The state legislature shall have access to information or records deemed private and confidential under this chapter, if the legislature or a legislative committee finds that the information or records are necessary and for official purposes. If the employment security department does not make information

or records available as provided in this subsection, the legislature may exercise its authority granted by chapter 44.16 RCW.

(3) In cases of emergency the governmental agency requesting access shall not be required to formally comply with the provisions of subsection (1) of this section at the time of the request if the procedures required by subsection (1) of this section are complied with by the requesting agency following the receipt of any records or information deemed private and confidential under this chapter. An emergency is defined as a situation in which irreparable harm or damage could occur if records or information are not released immediately.

(4) The requirements of subsection (1)(c) of this section shall not apply to governmental agencies where the procedures would frustrate the investigation of possible violations of criminal laws or to the release of employing unit names, addresses, number of employees, and aggregate employer wage data for the purpose of state governmental agencies preparing small business economic impact statements under chapter 19.85 RCW or preparing cost-benefit analyses under RCW 34.05.328(1) (c) and (d). Information provided by the department and held to be private and confidential under state or federal laws must not be misused or released to unauthorized parties. A person who misuses such information or releases such information to unauthorized parties is subject to the sanctions in RCW 50.13.080.

(5) Governmental agencies shall have access to certain records or information, limited to such items as names, addresses, social security numbers, and general information about benefit entitlement or employer information possessed by the department, for comparison purposes with records or information possessed by the requesting agency to detect improper or fraudulent claims, or to determine potential tax liability or employer compliance with registration and licensing requirements. In those cases the governmental agency shall not be required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied.

(6) Governmental agencies may have access to certain records and information, limited to employer information possessed by the department for purposes authorized in chapter 50.38 RCW. Access to these records and information is limited to only those individuals conducting authorized statistical analysis, research, and evaluation studies. Only in cases consistent with the purposes of chapter 50.38 RCW are government agencies not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section must be satisfied. Information provided by the department and held to be private and confidential under state or federal laws shall not be misused or released to unauthorized parties subject to the sanctions in RCW 50.13.080.

(7) Disclosure to governmental agencies of information or records obtained by the employment security department from the federal government shall be governed by any applicable federal law or any agreement between the federal government and the employment security department where so required by federal law. When federal law does not apply to the records or information state law shall control.

(8) The department may provide information for purposes of statistical analysis and evaluation of the WorkFirst program or any successor state welfare program to the department of social and health services, the office of financial management, and other governmental entities with oversight or evaluation responsibilities for the program in accordance with RCW 43.20A.080. The confidential information provided by the department shall remain the property of the department and may be used by the authorized requesting agencies only for statistical analysis, research, and evaluation purposes as provided in RCW 74.08A.410 and 74.08A.420. The department of social and health services, the office of financial management, or other governmental entities with oversight or evaluation responsibilities for the program are not required to comply with subsection (1)(c) of this section, but the requirements of the remainder of subsection (1) of this section and applicable federal laws and regulations must be satisfied. The confidential information used for evaluation and analysis of welfare reform supplied to the authorized requesting entities with regard to the WorkFirst program or any successor state welfare program are exempt from public inspection and copying under chapter 42.56 RCW.

(9) The disclosure of any records or information by a governmental agency which has obtained the records or information under this section is prohibited unless the disclosure is (a) directly connected to the official purpose for which the records or information were obtained or (b) to another governmental agency which would be permitted to obtain the records or information under subsection (4) or (5) of this section.

(10) In conducting periodic salary or fringe benefit studies pursuant to law, the department of personnel shall have access to records of the employment security department as may be required for such studies. For such purposes, the requirements of subsection (1)(c) of this section need not apply.

(11)(a) To promote the reemployment of job seekers, the commissioner may enter into data-sharing contracts with partners of the one-stop career development system. The contracts shall provide for the transfer of data only to the extent that the transfer is necessary for the efficient provisions of workforce programs, including but not limited to public labor exchange, unemployment insurance, worker training and retraining, vocational rehabilitation, vocational education, adult education, transition from public assistance, and support services. The transfer of information under contracts with one-stop partners is exempt from subsection (1)(c) of this section.

(b) An individual who applies for services from the department and whose information will be shared under (a) of this subsection (11) must be notified that his or her private and confidential information in the department's records will be shared among the one-stop partners to facilitate the delivery of one-stop services to the individual. The notice must advise the individual that he or she may request that private and confidential information not be shared among the one-stop partners and the department must honor the request. In addition, the notice must:

(i) Advise the individual that if he or she requests that private and confidential information not be shared among

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one-stop partners, the request will in no way affect eligibility for services;

(ii) Describe the nature of the information to be shared, the general use of the information by one-stop partner representatives, and among whom the information will be shared;

(iii) Inform the individual that shared information will be used only for the purpose of delivering one-stop services and that further disclosure of the information is prohibited under contract and is not subject to disclosure under chapter 42.56 RCW; and

(iv) Be provided in English and an alternative language selected by the one-stop center or job service center as appropriate for the community where the center is located.

If the notice is provided in-person, the individual who does not want private and confidential information shared among the one-stop partners must immediately advise the one-stop partner representative of that decision. The notice must be provided to an individual who applies for services telephonically, electronically, or by mail, in a suitable format and within a reasonable time after applying for services, which shall be no later than ten working days from the department's receipt of the application for services. A one-stop representative must be available to answer specific questions regarding the nature, extent, and purpose for which the information may be shared.

(12) To facilitate improved operation and evaluation of state programs, the commissioner may enter into data-sharing contracts with other state agencies only to the extent that such transfer is necessary for the efficient operation or evaluation of outcomes for those programs. The transfer of information by contract under this subsection is exempt from subsection (1)(c) of this section.

(13) The misuse or unauthorized release of records or information by any person or organization to which access is permitted by this chapter subjects the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2008 c 120 § 6; 2005 c 274 § 322; 2003 c 165 § 3; 2000 c 134 § 2. Prior: 1997 c 409 § 605; 1997 c 58 § 1004; 1996 c 79 § 1; 1993 c 281 § 59; 1981 c 177 § 1; 1979 ex.s. c 177 § 1; 1977 ex.s. c 153 § 6.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Findings—2000 c 134: "The legislature finds that individuals in need of employment and related services would be better served by integrating employment and training services to form a comprehensive network of state and local programs, called a one-stop career development system. Successful integration of employment and training services demands prompt and efficient exchange of information among service providers. The legislature further finds that efficient operation of state programs and their evaluation demand at times information held by the employment security department. Current restrictions on information exchange hamper this coordination, resulting in increased administrative costs, reduced levels of service, and fewer positive outcomes than could otherwise be achieved." [2000 c 134 § 1.]

Conflict with federal requirements—2000 c 134: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2000 c 134 § 4.]

Severability—2000 c 134: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 134 § 5.]

Effective date—1997 c 409 § 605: "Section 605 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 1997]." [1997 c 409 § 608.]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Conflict with federal requirements—1996 c 79: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 79 § 3.]

Effective date—1996 c 79: "This act shall take effect July 1, 1996." [1996 c 79 § 4.]

Effective date—1993 c 281: See note following RCW 41.06.022.

50.13.070 Availability of records or information to parties to judicial or administrative proceedings—Discovery proceedings—Subpoenas. Information or records deemed private and confidential under this chapter shall be available to parties to judicial or formal administrative proceedings only upon a finding by the presiding officer that the need for the information or records in the proceeding outweighs any reasons for the privacy and confidentiality of the information or records. Information or records deemed private and confidential under this chapter shall not be available in discovery proceedings unless the court in which the action has been filed has made the finding specified above. A judicial or administrative subpoena directed to the employment security department must contain this finding. A subpoena for records or information held by the department may be directed to and served upon any employee of the department, but the department may specify by rule which employee shall produce the records or information in compliance with the subpoena. [1977 ex.s. c 153 § 7.]

50.13.080 Disclosure of records or information to private persons or organizations contracting to assist in operation and management of department—Penalties. (1) The employment security department shall have the right to disclose information or records deemed private and confidential under this chapter to any private person or organization when such disclosure is necessary to permit private contracting parties to assist in the operation and management of

the department in instances where certain departmental functions may be delegated to private parties to increase the department's efficiency or quality of service to the public. The private persons or organizations shall use the information or records solely for the purpose for which the information was disclosed and shall be bound by the same rules of privacy and confidentiality as employment security department employees.

(2) Nothing in this section shall be construed as limiting or restricting the effect of RCW 42.56.070(9).

(3) The misuse or unauthorized release of records or information deemed private and confidential under this chapter by any private person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [2005 c 274 § 323; 1996 c 79 § 2; 1977 ex.s. c 153 § 8.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Conflict with federal requirements—Effective date—1996 c 79: See notes following RCW 50.13.060.

50.13.090 Disclosure of records or information to contracting governmental or private organizations. Where the employment security department contracts to provide services to other governmental or private organizations, the department may disclose to those organizations information or records deemed private and confidential which have been acquired in the performance of the department's obligations under the contracts. [1977 ex.s. c 153 § 9.]

50.13.100 Disclosure of records or information where identifying details deleted or individual or employing unit consents. Nothing in this chapter shall prevent the disclosure of information or records deemed private and confidential under this chapter if all details identifying an individual or employing unit are deleted or the individual or employing unit consents to the disclosure. [1977 ex.s. c 153 § 10.]

50.13.900 Construction. Any ambiguities in this chapter shall be construed in a manner consistent with federal laws applying to the employment security department. If any provision of this chapter or the application thereof is held invalid by a final decision of any court or declared by the secretary of the department of labor of the United States to be inconsistent with federal laws upon which funding of the employment security department is contingent, the invalid or inconsistent provision shall be ineffective only to the extent necessary to insure compliance with the court decision or federal determination and the remainder of the chapter shall be given full effect. [1977 ex.s. c 153 § 11.]

50.13.905 Severability—1977 ex.s. c 153. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the applica-

tion of the provision to other persons or circumstances is not affected. [1977 ex.s. c 153 § 13.]

50.13.910 Legislative designation and placement.

Sections 1 through 11 of this act shall constitute a new chapter in Title 50 RCW and shall be designated as chapter 50.13 RCW. [1977 ex.s. c 153 § 14.]

Chapter 50.16 RCW

FUNDS

Sections

50.16.010	Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund.
50.16.015	Federal interest payment fund—Establishment.
50.16.020	Administration of funds—Accounts.
50.16.030	Withdrawals from federal unemployment trust fund.
50.16.040	Management of funds upon discontinuance of federal unemployment trust fund.
50.16.050	Unemployment compensation administration fund.
50.16.060	Replacement of federal funds.
50.16.070	Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful.
50.16.080	Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees.

50.16.010 Unemployment compensation fund—Administrative contingency fund—Federal interest payment fund. (1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) During the 2007-2009 biennium, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended as appropriated by the legislature for the (i) cost of the job skills program at the community and technical colleges, and (ii) reemployment services such as business and project development assistance, local economic development capacity building, and local economic development financial assistance at the department of community, trade, and economic development, and the remaining appropriation upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and that insufficient federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010. [2008 c 329 § 915; 2007 c 327 § 4; 2006 c 13 § 18. Prior: 2005 c 518 § 933; prior: 2003 2nd sp.s. c 4 § 23; 2003 1st sp.s. c 25 § 925; 2002 c 371 § 914; prior: 1993 c 483 § 7; 1993 c 226 § 10; 1993 c 226 § 9; 1991 sp.s. c 13 § 59; 1987 c 202 § 218; 1985 ex.s. c 5 § 6; 1983 1st ex.s. c 13 § 5; 1980 c 142 § 1; 1977 ex.s. c 292 § 24; 1973 c 73 § 4; 1969 ex.s. c 199 § 27; 1959 c 170 § 1; 1955 c 286 § 2; 1953 ex.s. c 8 § 5; 1945 c 35 § 60; Rem. Supp. 1945 § 9998-198; prior: 1943 c 127 § 6; 1941 c 253 §§ 7, 10; 1939 c 214 § 11; 1937 c 162 § 13.]

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

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

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

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

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

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1993 c 226 §§ 10, 12, and 14: "(1) Sections 10 and 12 of this act shall take effect June 30, 1999;

(2) Section 14 of this act shall take effect January 1, 1998." [1993 c 226 § 20.]

Conflict with federal requirements—1993 c 226: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1993 c 226 § 21.]

Severability—1993 c 226: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 226 § 22.]

Application—1993 c 226: "This act applies to tax rate years beginning with tax rate year 1994." [1993 c 226 § 23.]

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

Intent—1987 c 202: See note following RCW 2.04.190.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—1983 1st ex.s. c 13: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1983 1st ex.s. c 13 § 13.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.16.015 Federal interest payment fund—Establishment. A separate and identifiable fund to provide for the payment of interest on advances received from this state's account in the federal unemployment trust fund shall be established and administered under the direction of the commissioner. This fund shall be known as the federal interest payment fund and shall consist of contributions paid under RCW 50.16.070. All money in this fund shall be expended solely for the payment of interest on advances received from this state's account in the federal unemployment trust fund and for no other purposes whatsoever. [2006 c 13 § 19. Prior: 2003 2nd sp.s. c 4 § 24; 1983 1st ex.s. c 13 § 6.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.22.100.

50.16.020 Administration of funds—Accounts. The commissioner shall designate a treasurer and custodian of the unemployment compensation fund and of the administrative contingency fund, who shall administer such funds in accordance with the directions of the commissioner and shall issue his or her warrants upon them in accordance with such regulations as the commissioner shall prescribe. The treasurer and custodian shall maintain within the unemployment compensation fund three separate accounts as follows:

- (1) a clearing account,
- (2) an unemployment trust fund account, and
- (3) a benefit account.

All moneys payable to the unemployment compensation fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer, who shall immediately deposit them in the clearing account. Refunds payable pursuant to the provisions of this title from the unemployment compensation fund may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commissioner: PROVIDED, HOWEVER, That refunds of interest or penalties on delinquent contributions shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Moneys in the clearing and benefit accounts and in the administrative contingency fund shall not be commingled with other state funds, but shall be deposited by the treasurer, under the direction of the commissioner, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.

Such moneys shall be secured by said bank or public depository to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account.

The treasurer shall give a bond conditioned upon the faithful performance of his or her duties as a custodian of the funds in an amount fixed by the director of the department of general administration and in a form prescribed by law or approved by the attorney general. Premiums for said bond shall be paid from the administration fund. All sums recovered on official bonds for losses sustained by the unemployment compensation fund shall be deposited in such fund. All sums recovered on official bonds for losses sustained by the administrative contingency fund shall be deposited in such

fund. [1993 c 226 § 12; 1993 c 226 § 11; 1983 1st ex.s. c 23 § 10; 1975 c 40 § 12; 1953 ex.s. c 8 § 6; 1945 c 35 § 61; Rem. Supp. 1945 § 9998-199. Prior: 1943 c 126 §§ 6, 9; 1939 c 214 § 11; 1937 c 162 § 13.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Powers and duties of director of general administration as to official bonds: RCW 43.41.360.

50.16.030 Withdrawals from federal unemployment trust fund. (1)(a) Except as provided in (b) of this subsection, moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(b) Moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during fiscal year 2006 in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters ending on June 30, 2006, because the social cost factor contributions that employers are subject to under RCW 50.29.025(2)(b)(ii)(B) are less than the social cost factor contributions that these employers would have been subject to if RCW 50.29.025(2)(b)(ii)(A) had applied to these employers; and

(ii) Second, after the requisitioning required under (b)(i) of this subsection, from all other moneys credited to this state's account in the unemployment trust fund.

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for

which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030 (4), (5) and (6). However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return

of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund. [2006 c 13 § 7; 2005 c 133 § 6; 1999 c 36 § 1; 1983 1st ex.s. c 7 § 1; 1973 c 6 § 1; 1969 ex.s. c 201 § 1; 1959 c 170 § 2; 1945 c 35 § 62; Rem. Supp. 1945 § 9998-200. Prior: 1943 c 127 § 6; 1941 c 253 § 7.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—1999 c 36: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1999 c 36 § 2.]

50.16.040 Management of funds upon discontinuance of federal unemployment trust fund. The provisions of this title, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein for this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commissioner, in accordance with the provisions of this title: PROVIDED, That such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest bearing obligations of the United States of America: AND PROVIDED FURTHER, That such investment shall at all times be made so that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner. [1945 c 35 § 63; Rem. Supp. 1945 § 9998-201. Prior: 1941 c 253 § 7.]

50.16.050 Unemployment compensation administration fund. (1) There is hereby established a fund to be known as the unemployment compensation administration fund. Except as otherwise provided in this section, all moneys which are deposited or paid into this fund are hereby

made available to the commissioner. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this title, and for no other purpose whatsoever. All moneys received from the United States of America, or any agency thereof, for said purpose pursuant to section 302 of the social security act, as amended, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this title. All moneys received from the United States employment service, United States department of labor, for said purpose pursuant to the act of congress approved June 6, 1933, as amended or supplemented by any other act of congress, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the public employment office system of this state. The unemployment compensation administration fund shall consist of all moneys received from the United States of America or any department or agency thereof, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed by the treasurer of the unemployment compensation fund under rules and regulations of the commissioner and none of the provisions of RCW 43.01.050 shall be applicable to this fund. The treasurer last named shall be the treasurer of the unemployment compensation administration fund and shall give a bond conditioned upon the faithful performance of his duties in connection with that fund. All sums recovered on the official bond for losses sustained by the unemployment compensation administration fund shall be deposited in said fund.

(2) Notwithstanding any provision of this section:

(a) All money requisitioned and deposited in this fund pursuant to RCW 50.16.030(6) shall remain part of the unemployment compensation fund and shall be used only in accordance with the conditions specified in RCW 50.16.030 (4), (5) and (6).

(b) All money deposited in this fund pursuant to RCW 50.38.065 shall be used only after appropriation and only for the purposes of RCW 50.38.060. [1993 c 62 § 8; 1959 c 170 § 3; 1947 c 215 § 13; 1945 c 35 § 64; Rem. Supp. 1947 § 9998-202. Prior: 1941 c 253 § 7; 1939 c 214 § 11; 1937 c 162 § 13.]

Conflict with federal requirements—Effective date—1993 c 62: See RCW 50.38.901 and 50.38.902.

50.16.060 Replacement of federal funds. The state of Washington hereby pledges that it will replace within a reasonable time any moneys paid to this state under Title III of the social security act, and the Wagner-Peyser act, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of the Washington employment security act. [1959 c 170 § 4; 1945 c 35 § 67; Rem. Supp. 1945 § 9998-205.]

50.16.070 Federal interest payment fund—Employer contributions—When payable—Maximum rate—Deduction from remuneration unlawful. The federal interest payment fund shall consist of contributions payable by each employer (except employers as described in RCW 50.44.010

and 50.44.030 who have properly elected to make payments in lieu of contributions, employers who are required to make payments in lieu of contributions, and employers paying contributions under RCW 50.44.035) for any calendar quarter which begins on or after January 1, 1984, and for which the commissioner determines that the department will have an outstanding balance of accruing federal interest at the end of the calendar quarter. The amount of wages subject to tax shall be determined according to RCW 50.24.010. The tax rate applicable to wages paid during the calendar quarter shall be determined by the commissioner and shall not exceed fifteen one-hundredths of one percent. In determining whether to require contributions as authorized by this section, the commissioner shall consider the current balance in the federal interest payment fund and the projected amount of interest which will be due and payable as of the following September 30. Except as appropriated for the fiscal biennium ending June 30, 1991, any excess moneys in the federal interest payment fund shall be retained in the fund for future interest payments.

Contributions under this section shall become due and be paid by each employer in accordance with such rules as the commissioner may prescribe and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [1989 1st ex.s. c 19 § 811; 1988 c 289 § 710; 1983 1st ex.s. c 13 § 7.]

Severability—1989 1st ex.s. c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 19 § 817.]

Effective date—1989 1st ex.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 1st ex.s. c 19 § 818.]

Severability—1988 c 289: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 289 § 803.]

Conflict with federal requirements—1983 1st ex.s. c 13: See note following RCW 50.16.010.

50.16.080 Federal targeted jobs tax credit program—Administration—Processing fee—Deposit of fees. The cost of administering the federal targeted jobs tax credit program shall be fully borne by the employers requesting the credits. The commissioner shall establish the amount of the processing fee and procedures for collecting the fee. The commissioner shall establish the processing fee at a sufficient level to defray the costs of administering the federal targeted jobs tax credit program. The fee shall be established by the commissioner by rule. However, if federal funding is provided to finance such services, the commissioner shall revise or eliminate this fee based on the amount of federal funding received. Fees received for processing shall be deposited in a special account in the unemployment compensation administration fund. [1988 c 84 § 2.]

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Legislative finding—1988 c 84: "The legislature finds that:

(1) The employment security department through the targeted jobs tax credit program has the responsibility to issue federal tax credit certifications to Washington state employers. The tax credit certification allows the employer to claim a credit against federal income tax for wages paid during the first year to employees who qualify for the program.

(2) To the extent that funding is available, the department, through the federal targeted jobs tax credit program, provides service to employers in the form of technical assistance and training, program marketing, monitoring, and maintenance of records and processing of documents that may result in a certification which allows employers to claim a federal tax credit.

(3) The United States Congress through the Tax Reform Act of 1986 reauthorized the targeted jobs tax credit but did not include funds to cover the costs of processing employer requests for federal tax credit certifications.

(4) The state has a vital interest in the economic benefits employers realize from the targeted jobs tax credit because the economic competitiveness of Washington state is enhanced as tax credit savings are reinvested in the state's economy.

(5) The departments of corrections, social and health services, and veterans affairs, and the superintendent of public instruction, along with employment security and other state service providers, utilize the targeted jobs tax credit program as an incentive for employers to hire hard-to-place clients.

(6) Economically disadvantaged youth, Vietnam-era veterans, ex-felons, and vocational rehabilitation, supplemental security income, general assistance and AFDC recipients have an especially difficult time in obtaining employment." [1988 c 84 § 1.]

Conflict with federal requirements—1988 c 84: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 84 § 3.]

Severability—1988 c 84: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 84 § 4.]

Effective date—1988 c 84: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1988." [1988 c 84 § 6.] This act was signed by the governor March 16, 1988.

Chapter 50.20 RCW BENEFITS AND CLAIMS

Sections

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50.20.010 Benefit eligibility conditions. (1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(b) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted.

(i) With respect to claims that have an effective date before January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents.

(ii) With respect to claims that have an effective date on or after January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules;

(d) He or she has been unemployed for a waiting period of one week;

(e) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:

(i) The individual has completed such services; or

(ii) There is justifiable cause for the claimant's failure to participate in such services; and

(f) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits. [2006 c 13 § 10. Prior: 2003 2nd sp.s. c 4 § 3; 1995 c 381 § 1; 1981 c 35 § 3; 1973 c 73 § 6; 1970 ex.s. c 2 § 4; 1959 c 266 § 3; 1953 ex.s. c 8 § 7; 1951 c 265 § 9; 1951 c 215 § 11; 1949 c 214 § 9; 1945 c 35 § 68; Rem. Supp. 1949 § 9998-206; prior: 1943 c 127 § 2; 1941 c 253 §§ 1, 2; 1939 c 214 § 2; 1937 c 162 § 4.]

Retrospective application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1995 c 381: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 381 § 5.]

Effective date—1995 c 381: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 381 § 6.]

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Severability—1951 c 265: See note following RCW 50.98.070.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.011 Profiling system to identify individuals likely to exhaust benefits—Confidentiality of information—Penalty. (1) The commissioner shall establish and use a profiling system for new claimants for regular compensation under this title that identifies permanently separated workers who are likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment. The profiling system shall use a combination of individual characteristics and labor market information to assign each individual a unique probability of benefit exhaustion. Individuals identified as likely to exhaust

benefits shall be referred to reemployment services, such as job search assistance services, to the extent such services are available at public expense.

(2) The profiling system shall include collection and review of follow-up information relating to the services received by individuals under this section and the employment outcomes for the individuals following receipt of the services. The information shall be used in making profiling identifications.

(3) In carrying out reviews of individuals receiving services, the department may contract with public or private entities and may disclose information or records necessary to permit contracting entities to assist in the operation and management of department functions. Any information or records disclosed to public or private entities shall be used solely for the purposes for which the information was disclosed and the entity shall be bound by the same rules of privacy and confidentiality as department employees. The misuse or unauthorized disclosure of information or records deemed private and confidential under chapter 50.13 RCW by any person or organization to which access is permitted by this section shall subject the person or organization to a civil penalty of five thousand dollars and other applicable sanctions under state and federal law. Suit to enforce this section shall be brought by the attorney general and the amount of any penalties collected shall be paid into the employment security department administrative contingency fund. The attorney general may recover reasonable attorneys' fees for any action brought to enforce this section. [1995 c 381 § 2.]

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.012 Rules—1995 c 381. The commissioner may adopt rules as necessary to implement the 1995 c 381 §§ 1 and *3 amendments to RCW 50.20.010 and 50.20.043 and 50.20.011, including but not limited to definitions, eligibility standards, program review criteria and procedures, and provisions necessary to comply with applicable federal laws and regulations that are a condition to receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1995 c 381 § 4.]

***Reviser's note:** Section 3 of this act (amendment to RCW 50.20.043) was vetoed by the governor.

Conflict with federal requirements—Effective date—1995 c 381: See notes following RCW 50.20.010.

50.20.020 Waiting period credit limitation. No week shall be counted as a waiting period week,

- (1) if benefits have been paid with respect thereto, and
- (2) unless the individual was otherwise eligible for benefits with respect thereto, and
- (3) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits. [1949 c 214 § 10; 1945 c 35 § 69; Rem. Supp. 1949 § 9998-207.]

50.20.041 Health care professionals who have contracted hepatitis C—Training. (1) Credentialed health care professionals listed in RCW 18.130.040 shall be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043 if they are unem-

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ployed as a result of contracting hepatitis C in the course of employment and are unable to continue to work in their profession because of a significant risk that such work would pose to other persons and that risk cannot be eliminated.

(2) For purposes of subsection (1) of this section, a health care professional who was employed on a full-time basis in their profession shall be presumed to have contracted hepatitis C in the course of employment. This presumption may be rebutted by a preponderance of the evidence that demonstrates that the health care professional contracted hepatitis C as a result of activities or circumstances not related to employment. [2003 c 273 § 4.]

50.20.042 Unemployed aerospace workers—Training. Aerospace workers unemployed as the result of downsizing and restructuring of the aerospace industry will be deemed to be dislocated workers for the purpose of commissioner approval of training under RCW 50.20.043. [1993 c 226 § 7.]

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

50.20.043 Training provision. No otherwise eligible individual shall be denied benefits for any week because the individual is in training with the approval of the commissioner, nor shall such individual be denied benefits with respect to any week in which the individual is satisfactorily progressing in a training program with the approval of the commissioner by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

An individual who the commissioner determines to be a dislocated worker as defined by RCW 50.04.075 and who is satisfactorily progressing in a training program approved by the commissioner shall be considered to be in training with the approval of the commissioner. [2003 2nd sp.s. c 4 § 30; 1985 c 40 § 1; 1984 c 181 § 2; 1971 c 3 § 12.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1985 c 40: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 40 § 2.]

Severability—1985 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 40 § 3.]

Effective date—1985 c 40: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 40 § 4.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.20.044 Ineligibility for benefits for failure to attend job search workshop or training course. If an otherwise eligible individual fails without good cause, as deter-

mined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. [1984 c 205 § 8.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.20.050 Disqualification for leaving work voluntarily without good cause. (1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual shall not be considered to have left work voluntarily without good cause when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;
- (iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or
- (iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent,

including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the

reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii)(A) With respect to claims that have an effective date before July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (1) Is outside the existing labor market area; and (2) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (II) remained employed as long as was reasonable prior to the move;

(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs; or

(xi) The individual left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the individual begins active participation in the apprenticeship program. [2008 c 323 § 1; 2006 c 13 § 2. Prior: 2006 c 12 § 1; 2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211; prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—2008 c 323: "If any part of this act is found to be in conflict with federal requirements that are a prescribed (2008 Ed.)

condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2008 c 323 § 3.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Retroactive application—2006 c 12 § 1: "Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004." [2006 c 12 § 2.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.060 Disqualification from benefits due to misconduct. With respect to claims that have an effective date before January 4, 2004, an individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct. [2006 c 13 § 11. Prior: 2003 2nd sp.s. c 4 § 7; 2000 c 2 § 13; 1993 c 483 § 9; 1982 1st ex.s. c 18 § 16; 1977 ex.s. c 33 § 5; 1970 ex.s. c 2 § 22; 1953 ex.s. c 8 § 9; 1951 c 215 § 13; 1949 c 214 § 13; 1947 c 215 § 16; 1945 c 35 § 74; Rem. Supp. 1949 § 9998-212; prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.065 Cancellation of hourly wage credits due to felony or gross misdemeanor. With respect to claims that have an effective date before January 4, 2004:

(1) An individual who has been discharged from his or her work because of a felony or gross misdemeanor of which he or she has been convicted, or has admitted committing to a competent authority, and that is connected with his or her work shall have all hourly wage credits based on that employment canceled.

(2) The employer shall notify the department of such an admission or conviction, not later than six months following the admission or conviction.

(3) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(4) All benefits that are paid in error based on wage/hour credits that should have been removed from the claimant's base year are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2006 c 13 § 12. Prior: 2003 2nd sp.s. c 4 § 8; 1993 c 483 § 11.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.20.066 Disqualification from benefits due to misconduct—Cancellation of hourly wage credits due to gross misconduct. With respect to claims that have an effective date on or after January 4, 2004:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for ten calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to ten times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

(2) An individual who has been discharged from his or her work because of gross misconduct shall have all hourly wage credits based on that employment or six hundred eighty hours of wage credits, whichever is greater, canceled.

(3) The employer shall notify the department of a felony or gross misdemeanor of which an individual has been convicted, or has admitted committing to a competent authority, not later than six months following the admission or conviction.

(4) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(5) All benefits that are paid in error based on this section are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title. [2006 c 13 § 13. Prior: 2003 2nd sp.s. c 4 § 9.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.20.070 Disqualification for misrepresentation—Penalties. (1) With respect to determinations delivered or mailed before January 1, 2008, an individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks beginning with the first week for which he or she completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section. However, such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section.

(2) With respect to determinations delivered or mailed on or after January 1, 2008:

(a) An individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title;

(b) An individual disqualified for benefits under this subsection for the first time is also disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered;

(c) An individual disqualified for benefits under this subsection for the second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(d) An individual disqualified for benefits under this subsection a third time and any time thereafter is also disqualified for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(3) All penalties collected under this section must be expended for the proper administration of this title as authorized under RCW 50.16.010 and for no other purposes.

(4) All overpayments and penalties established by such determination of disqualification must be collected as otherwise provided by this title. [2007 c 146 § 7; 1973 1st ex.s. c 158 § 5; 1953 ex.s. c 8 § 10; 1951 c 265 § 10; 1949 c 214 § 14; 1947 c 215 § 17; 1945 c 35 § 75; Rem. Supp. 1949 § 9998-213. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.080 Disqualification for refusal to work. An individual is disqualified for benefits, if the commissioner finds that the individual has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered the individual, or to return to his or her customary self-employment (if any) when so directed by the commissioner. Such disqualification shall begin with the week of the refusal and thereafter for seven calendar weeks and continue until the individual has obtained bona fide work in employment covered by this title and earned wages in that employment of not less than seven times his or her suspended weekly benefit amount. [2000 c 2 § 14; 1993 c 483 § 10; 1959 c 321 § 1; 1953 ex.s. c 8 § 11; 1951 c 215 § 14; 1949 c 214 § 15; 1945 c 35 § 76; Rem. Supp. 1949 § 9998-214. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective date—1959 c 321: "This act shall take effect on July 5, 1959." [1959 c 321 § 4.]

50.20.085 Disqualification for receipt of industrial insurance disability benefits. An individual is disqualified from benefits with respect to any day or days for which he or she is receiving, has received, or will receive compensation under RCW 51.32.060 or 51.32.090. [1991 c 117 § 2; 1986 c 75 § 1.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

50.20.090 Strike or lockout disqualification—When inapplicable. (1) An individual shall be disqualified for benefits for any week with respect to which the commissioner finds that the individual's unemployment is:

(a) Due to a strike at the factory, establishment, or other premises at which the individual is or was last employed; or

(b) Due to a lockout by his or her employer who is a member of a multi-employer bargaining unit and who has locked out the employees at the factory, establishment, or other premises at which the individual is or was last employed after one member of the multi-employer bargaining unit has been struck by its employees as a result of the multi-employer bargaining process.

(2) Subsection (1) of this section shall not apply if it is shown to the satisfaction of the commissioner that:

(a) The individual is not participating in or financing or directly interested in the strike or lockout that caused the individual's unemployment; and

(b) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the strike or lockout, there were members employed at the premises at which the strike or lockout occurs, any of whom are participating in or financing or directly interested in the strike or lockout: PROVIDED, That if in any case separate

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branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subdivision, be deemed to be a separate factory, establishment, or other premises.

(3) Any disqualification imposed under this section shall end when the strike or lockout is terminated. [1988 c 83 § 1; 1987 c 2 § 1; 1953 ex.s. c 8 § 12; 1945 c 35 § 77; Rem. Supp. 1945 § 9998-215. Prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Labor dispute study—1988 c 83: "(1) The department of employment security shall study and analyze the impact of section 1 of this act on the number of claimants receiving unemployment insurance benefits and the total amount of benefits paid, and on the type, frequency, duration, and outcome of labor disputes. In performing the study the department shall specifically address the impact of section 1(1)(b) of this act on the above subjects.

(2) In performing its duties under this section the department shall periodically convene meetings with representatives of labor and management, including but not limited to representatives of the following: A general business association; an organization broadly representing organized labor; the construction industry; construction industry organized labor; the trade industry; trade industry organized labor; the manufacturing industry; manufacturing industry organized labor; the service industry; service industry organized labor; the transportation industry; transportation industry organized labor; the communication industry; and communication industry organized labor.

(3) For the purpose of studying and analyzing the impact of section 1(1)(b) of this act the department shall periodically convene, in addition to those meetings specified in subsection (2) of this section, meetings with representatives of labor and management from industries with multi-employer bargaining units, including but not limited to representatives from a general business association; an organization broadly representing organized labor; the retail trade industry; and retail trade industry organized labor.

(4) The department shall report its findings to the governor, the senate economic development and labor committee, and the house of representatives commerce and labor committee, or the appropriate successor committees, by the commencement of the 1990 regular session of the legislature." [1988 c 83 § 2.]

Effective date—1988 c 83: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this act [March 20, 1988]." [1988 c 83 § 3.]

Applicability—Effective date—1987 c 2: "(1) This act shall apply retroactively to all applicable employers and employees as of November 16, 1986.

(2) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [February 20, 1987]." [1987 c 2 § 4.]

Severability—1987 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 2 § 5.]

50.20.095 Disqualification for attending school or institution of higher education. (Expires July 1, 2012.)

Any individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, shall be disqualified from receiving benefits or waiting period credit for any week during the school term commencing with the first week of such scholastic instruction or the week of leaving employment to return to school, whichever is the earlier, and ending with the week immediately before the first full week in which the individual is no longer registered for twelve or more hours of scholastic instruction per week: PROVIDED, That registration for less than twelve hours will be for a period of sixty days or longer. The term "school" includes primary

schools, secondary schools, and "institutions of higher education" as that phrase is defined in RCW 50.44.037.

This disqualification shall not apply to any individual who:

(1) Is in approved training within the meaning of RCW 50.20.043;

(2) Is in an approved self-employment assistance program under RCW 50.20.250; or

(3) Demonstrates to the commissioner by a preponderance of the evidence his or her actual availability for work, and in arriving at this determination the commissioner shall consider the following factors:

(a) Prior work history;

(b) Scholastic history;

(c) Past and current labor market attachment; and

(d) Past and present efforts to seek work. [2007 c 248 § 2; 1980 c 74 § 4; 1977 ex.s. c 33 § 8.]

Report to legislature—Effective date—Implementation—Expiration date—2007 c 248: See notes following RCW 50.20.250.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

50.20.095 Disqualification for attending school or institution of higher education. (Effective July 1, 2012.)

Any individual registered at an established school in a course of study providing scholastic instruction of twelve or more hours per week, or the equivalent thereof, shall be disqualified from receiving benefits or waiting period credit for any week during the school term commencing with the first week of such scholastic instruction or the week of leaving employment to return to school, whichever is the earlier, and ending with the week immediately before the first full week in which the individual is no longer registered for twelve or more hours of scholastic instruction per week: PROVIDED, That registration for less than twelve hours will be for a period of sixty days or longer. The term "school" includes primary schools, secondary schools, and "institutions of higher education" as that phrase is defined in RCW 50.44.037.

This disqualification shall not apply to any individual who:

(1) Is in approved training within the meaning of RCW 50.20.043; or

(2) Demonstrates to the commissioner by a preponderance of the evidence his or her actual availability for work, and in arriving at this determination the commissioner shall consider the following factors:

(a) Prior work history;

(b) Scholastic history;

(c) Past and current labor market attachment; and

(d) Past and present efforts to seek work. [1980 c 74 § 4; 1977 ex.s. c 33 § 8.]

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

50.20.098 Services performed by alien. (1) Benefits shall not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence, was lawfully present for purposes of performing such services, or otherwise was per-

manently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of 8 U.S.C. Sec. 1182(d)(5): PROVIDED, That any modifications to 26 U.S.C. Sec. 3304(a)(14) as provided by PL 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by 26 U.S.C. Sec. 3301 shall be deemed applicable under this section.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence. [1993 c 58 § 2; 1989 c 92 § 1; 1977 ex.s. c 292 § 10.]

Conflict with federal requirements—Severability—Effective date—1993 c 58: See notes following RCW 50.04.165.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.099 Training benefits—Eligibility to work in the United States.

(1) To ensure that unemployment insurance benefits are paid in accordance with RCW 50.20.098, the employment security department shall verify that an individual is eligible to work in the United States before the individual receives training benefits under RCW 50.22.150.

(2) By July 1, 2002, the employment security department shall:

(a) Develop and implement an effective method for determining, where appropriate, eligibility to work in the United States for individuals applying for unemployment benefits under this title;

(b) Review verification systems developed by federal agencies for verifying a person's eligibility to receive unemployment benefits under this title and evaluate the effectiveness of these systems for use in this state; and

(c) Report its initial findings to the legislature by September 1, 2000, and its final report by July 1, 2002.

(3) Where federal law prohibits the conditioning of unemployment benefits on a verification of an individual's status as a qualified or authorized alien, the requirements of this section shall not apply. [2000 c 2 § 10.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.20.100 Suitable work factors. (1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform. In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individ-

ual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

(2) For individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual.

(3) For part-time workers as defined in RCW 50.20.119, suitable work includes suitable work under subsection (1) of this section that is for seventeen or fewer hours per week.

(4) For individuals who have qualified for unemployment compensation benefits under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, an evaluation of the suitability of the work must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking. [2006 c 13 § 14. Prior: 2004 c 110 § 2; 2003 2nd sp.s. c 4 § 13; 2002 c 8 § 2; 1989 c 380 § 80; 1977 ex.s. c 33 § 6; 1973 1st ex.s. c 158 § 6; 1945 c 35 § 78; Rem. Supp. 1945 § 9998-216.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942 and 15.58.943.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.20.110 Suitable work exceptions. Notwithstanding any other provisions of this title, no work shall be deemed to be suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; or

(2) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) if as a condition of being employed the individual would be required by the employing unit to join a company union or to resign from or refrain from joining any bona fide labor organization. [1945 c 35 § 79; Rem. Supp. 1945 § 9998-217.]

50.20.113 Unemployment of sport or athletic event participant during period between sport seasons. Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so partici-

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pate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the latter of the seasons (or similar periods). [1977 ex.s. c 292 § 6.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.20.115 Unemployment due to vacation. When an unemployed individual is qualified for receipt of unemployment compensation benefits by the specific provisions of RCW 50.20.010, 50.20.120 and 50.20.130, and such individual is not specifically disqualified from receiving such benefits by reason of the provisions of RCW 50.20.090, 50.20.050, 50.20.060, 50.20.070 or 50.20.080, he shall, for all purposes of the unemployment compensation act, be deemed to be involuntarily unemployed and entitled to unemployment compensation benefits: PROVIDED, That the cessation of operations by an employer for the purpose of granting vacations, whether by union contract or other reasons, shall in no manner be construed to be a voluntary quit nor a voluntary unemployment on the part of the employees. [1983 c 3 § 158; 1951 c 265 § 12.]

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.117 Jury service. No otherwise eligible individual shall be denied benefits for any week because he or she is serving as a prospective or impaneled juror in any court of this state. Compensation received for service as a juror shall not be considered wages subject to contributions under this title nor shall such compensation be considered in determining base-year wages, but it shall be considered remuneration for purposes of a deduction from benefits under RCW 50.20.130. [1979 ex.s. c 135 § 6.]

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

50.20.118 Unemployment while in approved training. (1) Notwithstanding any other provision of this chapter, an otherwise eligible individual shall not be denied benefits for any week because he or she is in training approved under section 236(a)(1) of the Trade Act of 1974, P.L. 93-618, nor may that individual be denied benefits for any such week by reason of leaving work which is not suitable employment to enter such training, or for failure to meet any requirement of federal or state law for any such week which relates to the individual's availability for work, active search for work, or refusal to accept work.

(2) For the purposes of this section, "suitable employment" means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as described for the purposes of the Trade Act of 1974, P.L. 93-618), if the wages for such work are not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974, P.L. 93-618. [1982 1st ex.s. c 18 § 7.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.20.119 Part-time workers. (1) With respect to claims that have an effective date on or after January 2, 2005, an otherwise eligible individual may not be denied benefits for any week because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of seventeen or fewer hours per week by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

(2) For purposes of this section, "part-time worker" means an individual who: (a) Earned wages in "employment" in at least forty weeks in the individual's base year; and (b) did not earn wages in "employment" in more than seventeen hours per week in any weeks in the individual's base year. [2006 c 13 § 15. Prior: 2003 2nd sp.s. c 4 § 12.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.20.120 Amount of benefits. (1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.

(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the three quarters of the individual's base year in which such total wages were highest.

(c)(i) With respect to claims with an effective date on or after January 2, 2005, except as provided in (c)(ii) of this subsection, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(ii) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) With respect to claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar. [2006 c 13 § 1; 2005 c 133 § 3; 2003 2nd sp.s. c 4 § 11; 2002 c 149 § 4; 1993 c 483 § 12; 1984 c 205 § 1; 1983 1st ex.s. c 23 § 11; 1981 c 35 § 5; 1980 c 74 § 3; 1977 ex.s. c 33 § 7; 1970 ex.s. c 2 § 5; 1959 c 321 § 2; 1955 c 209 § 1; 1951 c 265 § 11; 1949 c 214 § 16; 1945 c 35 § 80; Rem. Supp. 1949 § 9998-218. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Part headings not law—2006 c 13: "Part headings used in this act are not any part of the law." [2006 c 13 § 25.]

Severability—2006 c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 13 § 27.]

Conflict with federal requirements—2006 c 13: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2006 c 13 § 28.]

Findings—Intent—2005 c 133: "The legislature finds that the unemployment insurance system was created to set aside unemployment reserves to be used for the benefit of persons who are unemployed through no fault of their own and to maintain purchasing power and limit the social consequences of unemployment. The legislature further finds that the system is falling short of these goals by failing to recognize the importance of applying liberal construction for the purpose of reducing involuntary unemployment, and the suffering caused by it, to the minimum, and by failing to provide equitable benefits to unemployed workers. The legislature also recognizes the desirability of managing the system to take into account the goal of reducing costs to foster a competitive business climate. The legislature intends to adjust the balance between these goals by reinstating the requirement for liberal construction and making other adjustments in the system that will allow reasonable improvements in benefit equity, including reinstating a weekly benefit calculation based on the wages in the two quarters of the claimant's base year in which wages were the highest. The legislature finds that these adjustments are critical to the health and welfare of unemployed

workers, and to the purchasing power essential to the economic health and welfare of communities and the state, and should be implemented as soon as feasible." [2005 c 133 § 1.]

Conflict with federal requirements—2005 c 133: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2005 c 133 § 11.]

Effective date—2005 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 22, 2005]." [2005 c 133 § 12.]

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1984 c 205: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1984 c 205 § 11.]

Severability—1984 c 205: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 205 § 12.]

Effective dates—1984 c 205: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1984], except as follows:

- (1) Sections 6 and 13 of this act shall take effect on January 1, 1985;
- (2) Section 7 of this act shall be effective for compensable weeks of unemployment beginning on or after January 6, 1985; and
- (3) Section 9 of this act shall take effect on July 1, 1985." [1984 c 205 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Effective date—1959 c 321: See note following RCW 50.20.080.

Severability—1951 c 265: See note following RCW 50.98.070.

50.20.130 Deduction from weekly benefit amount. If an eligible individual is available for work for less than a full week, he shall be paid his weekly benefit amount reduced by one-seventh of such amount for each day that he is unavailable for work: PROVIDED, That if he is unavailable for work for three days or more of a week, he shall be considered unavailable for the entire week.

Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less seventy-five percent of that part of the remuneration (if any) payable to him with respect to such week which is in excess of five dollars. Such benefit, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 12; 1973 2nd ex.s. c 7 § 3; 1959 c 321 § 3; 1951 c 215 § 15; 1949 c 214 § 17; 1945 c 35 § 81; Rem. Supp. 1949 § 9998-219. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Application—1973 2nd ex.s. c 7: See note following RCW 50.04.310.

Effective date—1959 c 321: See note following RCW 50.20.080.

50.20.140 Filing applications and claims—Definitions. An application for initial determination, a claim for waiting period, or a claim for benefits shall be filed in accordance with such rules as the commissioner may prescribe. An application for an initial determination may be made by any individual whether unemployed or not. Each employer shall post and maintain printed statements of such rules in places readily accessible to individuals in his or her employment and shall make available to each such individual at the time he or she becomes unemployed, a printed statement of such rules and such notices, instructions, and other material as the commissioner may by rule prescribe. Such printed material shall be supplied by the commissioner to each employer without cost to the employer.

The term "application for initial determination" shall mean a request in writing, or by other means as determined by the commissioner, for an initial determination. The term "claim for waiting period" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for waiting period have been met. The term "claim for benefits" shall mean a certification, after the close of a given week, that the requirements stated herein for eligibility for receipt of benefits have been met.

A representative designated by the commissioner shall take the application for initial determination and for the claim for waiting period credits or for benefits. When an application for initial determination has been made, the employment security department shall promptly make an initial determination which shall be a statement of the applicant's base year wages, his or her weekly benefit amount, his or her maximum amount of benefits potentially payable, and his or her benefit year. Such determination shall fix the general conditions under which waiting period credit shall be granted and under which benefits shall be paid during any period of unemployment occurring within the benefit year fixed by such determination. [1998 c 161 § 2; 1951 c 215 § 4; 1945 c 35 § 82; Rem. Supp. 1945 § 9998-220. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Finding—Intent—1998 c 161: "The legislature finds that the shift by the employment security department from in-person written initial applications for unemployment insurance benefits to a call center approach creates opportunities for improved service but also raises serious concerns. Eliminating face-to-face contact may increase the potential for fraud and reduce the probability that claimants will utilize existing reemployment resources. Therefore, it is the intent of the legislature that if the written application process is to be eliminated, the employment security department must ensure

that unemployment insurance claimants remain actively involved in reemployment activities and that an independent evaluation be conducted of the call center approach to unemployment insurance." [1998 c 161 § 1.]

Evaluation of call center: "(1) The joint legislative audit and review committee, in consultation with members of the senate and house of representatives commerce and labor committees and the unemployment insurance advisory committee, shall conduct an evaluation of the new call center approach to unemployment insurance. The evaluation shall review the performance of the call center system, including, but not limited to, the: (a) Promptness of payments; (b) number and types of errors; (c) amount and types of fraud; and (d) level of overpayments and underpayments, compared with the current system.

(2) The joint legislative audit and review committee is directed to contract with a private entity consistent with the provisions of chapter 39.29 RCW. The committee shall consult with the unemployment insurance advisory committee in the design of the request for proposals from potential contractors and shall use the advisory committee to evaluate the responses. The joint legislative audit and review committee shall provide a report on its findings and recommendations to the appropriate standing committee of the senate and house of representatives by September 1, 2001." [1998 c 161 § 5.]

Funding—1998 c 161 § 5: "The employment security department is authorized to expend funds provided under RCW 50.24.014(1)(b) for the purposes of the evaluation provided for in section 5 of this act." [1998 c 161 § 6.]

50.20.150 Notice of application or claim. The applicant for initial determination, his most recent employing unit as stated by the applicant, and any other interested party which the commissioner by regulation prescribes, shall, if not previously notified within the same continuous period of unemployment, be given notice promptly in writing that an application for initial determination has been filed and such notice shall contain the reasons given by the applicant for his last separation from work. If, during his benefit year, the applicant becomes unemployed after having accepted subsequent work, and reports for the purpose of reestablishing his eligibility for benefits, a similar notice shall be given promptly to his then most recent employing unit as stated by him, or to any other interested party which the commissioner by regulation prescribes.

Each base year employer shall be promptly notified of the filing of any application for initial determination which may result in a charge to his account. [1970 ex.s. c 2 § 7; 1951 c 215 § 5; 1945 c 35 § 83; Rem. Supp. 1945 § 9998-221. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.20.160 Redetermination. (1) A determination of amount of benefits potentially payable issued pursuant to the provisions of RCW 50.20.120 and 50.20.140 shall not serve as a basis for appeal but shall be subject to request by the claimant for reconsideration and/or for redetermination by the commissioner at any time within one year from the date of delivery or mailing of such determination, or any redetermination thereof: PROVIDED, That in the absence of fraud or misrepresentation on the part of the claimant, any benefits paid prior to the date of any redetermination which reduces the amount of benefits payable shall not be subject to recovery under the provisions of RCW 50.20.190. A denial of a request to reconsider or a redetermination shall be furnished the claimant in writing and provide the basis for appeal under the provisions of RCW 50.32.020.

(2) A determination of denial of benefits issued under the provisions of RCW 50.20.180 shall become final, in absence

of timely appeal therefrom: PROVIDED, That the commissioner may reconsider and redetermine such determinations at any time within one year from delivery or mailing to correct an error in identity, omission of fact, or misapplication of law with respect to the facts.

(3) A determination of allowance of benefits shall become final, in absence of a timely appeal therefrom: PROVIDED, That the commissioner may redetermine such allowance at any time within two years following the benefit year in which such allowance was made in order to recover any benefits improperly paid and for which recovery is provided under the provisions of RCW 50.20.190: AND PROVIDED FURTHER, That in the absence of fraud, misrepresentation, or nondisclosure, this provision or the provisions of RCW 50.20.190 shall not be construed so as to permit redetermination or recovery of an allowance of benefits which having been made after consideration of the provisions of RCW 50.20.010(1)(c), or the provisions of RCW 50.20.050, 50.20.060, 50.20.080, or 50.20.090 has become final.

(4) A redetermination may be made at any time: (a) To conform to a final court decision applicable to either an initial determination or a determination of denial or allowance of benefits; (b) in the event of a back pay award or settlement affecting the allowance of benefits; or (c) in the case of fraud, misrepresentation, or willful nondisclosure. Written notice of any such redetermination shall be promptly given by mail or delivered to such interested parties as were notified of the initial determination or determination of denial or allowance of benefits and any new interested party or parties who, pursuant to such regulation as the commissioner may prescribe, would be an interested party. [2003 2nd sp.s. c 4 § 31; 1990 c 245 § 4; 1959 c 266 § 4; 1953 ex.s. c 8 § 13; 1951 c 215 § 6; 1945 c 35 § 84; Rem. Supp. 1945 § 9998-222. Prior: 1941 c 253 § 4.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

50.20.170 Payment of benefits. An individual who has received an initial determination finding that he is potentially entitled to receive waiting period credit or benefits shall, during the benefit year, be given waiting period credit or be paid benefits in accordance with such initial determination for any week with respect to which the conditions of eligibility for such credit or benefits, as prescribed by this title, are met, unless the individual is denied waiting period credit or benefits under the disqualification provisions of this title.

All benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. [1945 c 35 § 85; Rem. Supp. 1945 § 9998-223. Prior: 1943 c 127 § 1; 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.20.180 Denial of benefits. If waiting period credit or the payment of benefits shall be denied to any claimant for any week or weeks, the claimant and such other interested party as the commissioner by regulation prescribes shall be promptly issued written notice of the denial and the reasons therefor. In any case where the department is notified in accordance with such regulation as the commissioner pre-

scribes or has reason to believe that the claimant's right to waiting period credit or benefits is in issue because of his separation from work for any reason other than lack of work, the department shall promptly issue a determination of allowance or denial of waiting period credit or benefits and the reasons therefor to the claimant, his most recent employing unit as stated by the claimant, and such other interested party as the commissioner by regulation prescribes. Notice that waiting period credit or benefits are allowed or denied shall suffice for the particular weeks stated in the notice or until the condition upon which the allowance or denial was based has been changed. [1951 c 215 § 7; 1945 c 38 § 86; Rem. Supp. 1945 § 9998-224. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.20.190 Recovery of benefit payments. (1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and

final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities. [2007 c 327 § 1; 2006 c 13 § 21. Prior: 2005 c 518 § 934; 2003 2nd sp.s. c 4 § 26; 2002 c 371 § 915; 2001 c 146 § 7; 1995 c 90 § 1; 1993 c 483 § 13; 1991 c 117 § 3; 1990 c 245 § 5; 1989 c 92 § 2; 1981 c 35 § 6; 1975 1st ex.s. c 228 § 3; 1973 1st ex.s. c 158 § 7; 1953 ex.s. c 8 § 14; 1951 c 215 § 8; 1947 c 215 § 18; 1945 c 35 § 87; Rem. Supp. 1947 § 9998-225; prior: 1943 c 127 § 12; 1941 c 253 § 13; 1939 c 214 § 14; 1937 c 162 § 16.]

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

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

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Conflict with federal requirements—1995 c 90: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 90 § 2.]

Application—1995 c 90: "This act applies to job separations occurring after July 1, 1995." [1995 c 90 § 3.]

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Effective date—1995 c 90: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 90 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

Conflict with federal requirements—1990 c 245: See note following RCW 50.04.030.

Severability—1981 c 35: See note following RCW 50.22.030.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.20.191 Authority to compromise benefit overpayments. See RCW 50.24.020.

50.20.192 Collection of benefit overpayments, limitation of actions. See RCW 50.24.190.

50.20.193 Chargeoff of uncollectible benefit overpayments. See RCW 50.24.200.

50.20.195 Assessed interest—Use. All receipts from interest assessed against unemployment insurance claimants shall be deposited in the administrative contingency fund and shall be used for the purpose of RCW 50.20.190(6). [1993 c 483 § 14.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

50.20.200 Nonliability of state. Benefits shall be deemed to be due and payable under this title only to the extent provided in this title and to the extent that moneys are available therefor to the credit of the unemployment compensation fund, and neither the state nor the commissioner shall be liable for any amount in excess of such sums. [1945 c 35 § 88; Rem. Supp. 1945 § 9998-226.]

50.20.210 Notification of availability of basic health plan. The commissioner shall notify any person filing a claim under this chapter who resides in a local area served by the Washington basic health plan of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the commissioner of a closure of enrollment in the area. The commissioner shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate employment service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 16.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

50.20.220 Federal income tax deduction and withholding—Notice—Rules. (1) An individual filing a new

claim for unemployment insurance must, at the time of filing such claim, be advised that:

(a) Unemployment insurance is subject to federal income tax;

(b) Requirements exist pertaining to estimated tax payments;

(c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment insurance at the amount specified in the federal internal revenue code; and

(d) The individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation must remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The commissioner shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) The commissioner shall adopt rules to implement this section. Amounts shall be deducted and withheld in accordance with the priorities established in rules adopted by the commissioner. [1996 c 28 § 2.]

Findings—1996 c 28: "The legislature finds that:

(1) The unique federal and state partnership of the unemployment insurance program places a special responsibility on states, and selected Congressional legislation requires conforming legislation at the state level;

(2) The most recent conformity legislation requires states to offer unemployed workers the option of having the employment security department withhold federal income tax from unemployment insurance benefits;

(3) Unemployment benefits have been subject to income tax for several years, and voluntary withholding is a reasonable strategy some claimants will use to spread the payment of their federal income tax liability over several weeks or months rather than a single payment at income tax time; and

(4) Conformity with federal law supports the federal and state partnership and responds to the needs of this state's unemployed workers." [1996 c 28 § 1.]

Conflict with federal requirements—1996 c 28: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 28 § 3.]

Severability—1996 c 28: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 28 § 4.]

Effective date—Application—1996 c 28: "This act shall take effect December 31, 1996, and shall apply to payments made after December 31, 1996." [1996 c 28 § 5.]

50.20.230 Electronic labor exchange system. The employment security department will ensure that within a reasonably short period of time after the initiation of benefits, all unemployment insurance claimants, except those with employer attachment, union referral, in commissioner-approved training, or the subject of antiharassment orders, register for job search in an electronic labor exchange system that supports direct employer access for the purpose of selecting job applicants. [1998 c 161 § 3.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

50.20.240 Job search monitoring. (1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement a job search monitoring program. Effective January 4, 2004, the department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department may use interactive voice technology and other electronic means to ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed. With regard to claims with an effective date before January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activity at the local reemployment center. With regard to claims with an effective date on or after January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.

(c) In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) Effective January 4, 2004, an individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190. [2006 c 13 § 16. Prior: 2004 c 110 § 1; 2003 2nd sp.s. c 4 § 10; 2002 c 8 § 3; 1998 c 161 § 4.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

50.20.250 Finding—Self-employment assistance program—Rules. (Expires July 1, 2012.) (1) The legislature finds that the establishment of a self-employment assistance program would assist unemployed individuals and create new businesses and job opportunities in Washington state. The department shall inform individuals identified as likely to exhaust regular unemployment benefits of the opportunity to enroll in commissioner-approved self-employment assistance programs.

(2) An unemployed individual is eligible to participate in a self-employment assistance program if it has been determined that he or she:

(a) Is otherwise eligible for regular benefits as defined in RCW 50.22.010;

(b) Has been identified as likely to exhaust regular unemployment benefits under a profiling system established by the commissioner as defined in P.L. 103-152; and

(c) Is enrolled in a self-employment assistance program that is approved by the commissioner, and includes entrepreneurial training, business counseling, technical assistance, and requirements to engage in activities relating to the establishment of a business and becoming self-employed.

(3) Individuals participating in a self-employment assistance program approved by the commissioner are eligible to receive their regular unemployment benefits.

(a) The requirements of RCW 50.20.010 and 50.20.080 relating to availability for work, active search for work, and refusal to accept suitable work are not applicable to an individual in the self-employment assistance program for the first fifty-two weeks of the individual's participation in the program. However, enrollment in a self-employment assistance program does not entitle the enrollee to any benefit payments he or she would not be entitled to had he or she not enrolled in the program.

(b) An individual who meets the requirements of this section is considered to be "unemployed" under RCW 50.04.310 and 50.20.010.

(4) An individual who fails to participate in his or her approved self-employment assistance program as prescribed by the commissioner is disqualified from continuation in the program.

(5) An individual completing the program may not directly compete with his or her separating employer for a specific time period and in a specific geographic area. The time period may not, in any case, exceed one year. Both the time period and the geographic area must be reasonable, considering the following factors:

(a) Whether restraining the individual from performing services is necessary for the protection of the employer or the employer's goodwill;

(b) Whether the agreement harms the individual more than is reasonably necessary to secure the employer's business or goodwill; and

(c) Whether the loss of the employee's services and skills injures the public to a degree warranting nonenforcement of the agreement.

(6) The commissioner shall take all steps necessary in carrying out this section to assure collaborative involvement of interested parties in program development, and to ensure that the self-employment assistance programs meet all federal criteria for withdrawal from the unemployment fund. The commissioner may approve, as self-employment assistance programs, existing self-employment training programs available through community colleges, workforce investment boards, or other organizations and is not obligated by this section to expend any departmental funds for the operation of self-employment assistance programs, unless specific funding is provided to the department for that purpose through federal or state appropriations.

(7) The commissioner may adopt rules as necessary to implement this section. [2007 c 248 § 1.]

Report to legislature—2007 c 248: "By December 1, 2011, the employment security department shall report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee on the performance of the self-employment assistance program. The report shall include an analysis of the following:

- (1) Self-employment impacts;
- (2) Wage and salary outcomes;
- (3) Benefit payment outcomes; and
- (4) A cost-benefit analysis." [2007 c 248 § 3.]

Effective date—2007 c 248: "This act takes effect January 1, 2008." [2007 c 248 § 4.]

Implementation—2007 c 248: "The commissioner of employment security may take the necessary steps to ensure that this act is implemented on its effective date." [2007 c 248 § 5.]

Expiration date—2007 c 248: "This act expires July 1, 2012." [2007 c 248 § 6.]

Chapter 50.22 RCW

EXTENDED AND ADDITIONAL BENEFITS

(Formerly: Extended benefits)

Sections

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50.22.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Extended benefit period" means a period which:

(a) Begins with the third week after a week for which there is an "on" indicator; and

(b) Ends with the third week after the first week for which there is an "off" indicator: PROVIDED, That no extended benefit period shall last for a period of less than thirteen consecutive weeks, and further that no extended benefit period may begin by reason of an "on" indicator before the fourteenth week after the close of a prior extended benefit period which was in effect with respect to this state.

(2) There is an "on" indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks:

(a) The rate of insured unemployment, not seasonally adjusted, equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years and equaled or exceeded five percent; or

(b) For benefits for weeks of unemployment beginning after March 6, 1993:

(i) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds six and one-half percent; and

(ii) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (b)(i) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(3) "High unemployment period" means any period of unemployment beginning after March 6, 1993, during which an extended benefit period would be in effect if:

(a) The average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of the week equals or exceeds eight percent; and

(b) The average rate of total unemployment in the state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in (a) of this subsection, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(4) There is an "off" indicator for this state for a week only if, for the period consisting of such week and immediately preceding twelve weeks, none of the options specified in subsection (2) or (3) of this section result in an "on" indicator.

(5) "Regular benefits" means benefits payable to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits.

(6) "Extended benefits" means benefits payable for weeks of unemployment beginning in an extended benefit period to an individual under this title or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than regular or additional benefits.

(7) "Additional benefits" are benefits totally financed by the state and payable under this title to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period that is in effect in this state and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) "Additional benefit eligibility period" of an individual means the period consisting of the weeks in his or her benefit year which begin in an additional benefit period that is in effect and, if his or her benefit year ends within such additional benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his or her eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were payable to him or her under this title or any

other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week; or

(b) Has received, prior to such week, all of the regular benefits that were available to him or her under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his or her current benefit year that includes such week, after the cancellation of some or all of his or her wage credits or the total or partial reduction of his or her rights to regular benefits: PROVIDED, That, for the purposes of (a) and (b), an individual shall be deemed to have received in his or her current benefit year all of the regular benefits that were payable to him or her, or available to him or her, as the case may be, even though:

(i) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to his or her current benefit year, he or she may subsequently be determined to be entitled to more regular benefits; or

(ii) By reason of the seasonal provisions of another state law, he or she is not entitled to regular benefits with respect to such week of unemployment (although he or she may be entitled to regular benefits with respect to future weeks of unemployment in the next season, as the case may be, in his or her current benefit year), and he or she is otherwise an exhaustee within the meaning of this section with respect to his or her right to regular benefits under such state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(iii) Having established a benefit year, no regular benefits are payable to him or her during such year because his or her wage credits were canceled or his or her right to regular benefits was totally reduced as the result of the application of a disqualification; or

(c) His or her benefit year having ended prior to such week, he or she has insufficient wages or employment, or both, on the basis of which he or she could establish in any state a new benefit year that would include such week, or having established a new benefit year that includes such week, he or she is precluded from receiving regular benefits by reason of the provision in RCW 50.04.030 which meets the requirement of section 3304(a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(d)(i) Has no right for such week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(ii) Has not received and is not seeking for such week unemployment benefits under the unemployment compensation law of Canada, unless the appropriate agency finally determines that he or she is not entitled to unemployment benefits under such law for such week.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954. [1993 c 483 § 15; 1985 ex.s. c 5 § 10; 1983 c 1 § 1; 1982 1st

ex.s. c 18 § 2; 1981 c 35 § 7; 1977 ex.s. c 292 § 11; 1973 c 73 § 7; 1971 c 1 § 2.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Application—1977 ex.s. c 292 § 11: "The provisions of section 11 of this 1977 amendatory act shall apply to the week ending May 21, 1977, and all weeks thereafter." [1977 ex.s. c 292 § 25.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Emergency—Effective date—1971 c 1: "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on the Sunday following the day on which the governor signs this enactment [January 17, 1971]." [1971 c 1 § 11.]

Repealer—Effect as to benefits—1971 c 1: "Section 23, chapter 2, Laws of 1970 ex. sess. and RCW 50.20.127 are each hereby repealed. No benefits shall be paid pursuant to RCW 50.20.127 for weeks commencing on or after the effective date of this 1971 amendatory act." [1971 c 1 § 10.]

50.22.020 Application of statute and rules—Eligibility for extended benefits. When the result would not be inconsistent with the other provisions of this chapter, the provisions of this title and commissioner's regulations enacted pursuant thereto, which apply to claims for, or the payment of, regular benefits, shall apply to claims for, and the payment of, extended benefits: PROVIDED, That

(1) Payment of extended compensation under this chapter shall not be made to any individual for any week of unemployment in his or her eligibility period—

(a) During which he or she fails to accept any offer of suitable work (as defined in subsection (3) of this section) or fails to apply for any suitable work to which he or she was referred by the employment security department; or

(b) During which he or she fails to actively engage in seeking work.

(2) If any individual is ineligible for extended compensation for any week by reason of a failure described in subsections (1)(a) or (1)(b) of this section, the individual shall be ineligible to receive extended compensation for any week which begins during a period which—

(a) Begins with the week following the week in which such failure occurs; and

(b) Does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year.

(3) For purposes of this section, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities and which does not involve conditions described in RCW 50.20.110: PROVIDED, That if the individual furnishes evidence satisfactory to the employment security department that such individual's prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the

determination of whether any work is suitable work with respect to such individual shall be made in accordance with RCW 50.20.100.

(4) Extended compensation shall not be denied under subsection (1)(a) of this section to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work if:

(a) The gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

(i) The individual's weekly benefit amount (as determined under RCW 50.20.120) for his or her benefit year; plus

(ii) The amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954, 26 U.S.C. Sec. 501(c)(17)(D)), payable to such individual for such week;

(b) The position was not offered to such individual in writing and was not listed with the employment security department;

(c) Such failure would not result in a denial of compensation under the provisions of RCW 50.20.080 and 50.20.100 to the extent such provisions are not inconsistent with the provisions of subsections (3) and (5) of this section; or

(d) The position pays wages less than the higher of—

(i) The minimum wage provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) Any applicable state or local minimum wage.

(5) For purposes of this section, an individual shall be treated as actively engaged in seeking work during any week if:

(a) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(b) The individual provides tangible evidence to the employment security department that he or she has engaged in such an effort during such week.

(6) The employment security department shall refer applicants for benefits under this chapter to any suitable work to which subsections (4)(a) through (4)(d) of this section would not apply.

(7) No provisions of this title which terminates a disqualification for voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment shall apply for purposes of determining eligibility for extended compensation unless such termination is based upon employment subsequent to the date of such disqualification.

(8) The provisions of subsections (1) through (7) of this section shall apply with respect to weeks of unemployment beginning after March 31, 1981: PROVIDED HOWEVER, That the provisions of subsections (1) through (7) of this section shall not apply to those weeks of unemployment beginning after March 6, 1993, and before January 1, 1995. [1993 c 483 § 16; 1993 c 58 § 3; 1981 c 35 § 8; 1971 c 1 § 3.]

Reviser's note: This section was amended by 1993 c 58 § 3 and by 1993 c 483 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—Effective date—1993 c 58: See notes following RCW 50.04.165.

Construction—Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

50.22.030 Extended benefit eligibility conditions—Interstate claim. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds with respect to such week that:

(a) The individual is an "exhaustee" as defined in RCW 50.22.010;

(b) He or she has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(c) He or she has earned wages in the applicable base year of at least:

(i) Forty times his or her weekly benefit amount; or

(ii) One and one-half times his or her insured wages in the calendar quarter of the base period in which the insured wages are the highest, for weeks of unemployment on or after July 3, 1992.

(2) An individual filing an interstate claim in any state under the interstate benefit payment plan shall not be eligible to receive extended benefits for any week beyond the first two weeks claimed for which extended benefits are payable unless an extended benefit period embracing such week is also in effect in the agent state. [1993 c 483 § 17; 1982 1st ex.s. c 18 § 4; 1981 c 35 § 9; 1971 c 1 § 4.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Effective dates—1982 1st ex.s. c 18: "Sections 2, 9[10], 10[11], 11[12], 16[17], and 17[18] of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 2, 1982]. Section 4 of this act shall take effect on September 26, 1982." [1982 1st ex.s. c 18 § 23.] The bracketed section references in this section correct erroneous internal references which occurred during the engrossing process after a new section was added by amendment.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Construction—1981 c 35 §§ 3, 5, 8, and 9: "Sections 3, 5, and 8 of this 1981 amendatory act are being enacted to comply with the provisions of Pub. L. 96-499. Ambiguities in those sections should be interpreted in accordance with provisions of that federal law. Section 9 of this 1981 amendatory act is enacted pursuant to Pub. L. 96-364. Any ambiguities in that section should be construed in accordance with that federal law." [1981 c 35 § 15.]

Effective dates—1981 c 35 §§ 1, 2, 3, 5, 8, 9, and 12: "Sections 1, 2, 3, 5, 8, and 12 of this amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately [April 20, 1981]; section 9 of this amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect with weeks beginning on and after June 1, 1981." [1981 c 35 § 16.]

Severability—1981 c 35: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 35 § 17.]

50.22.040 Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year. However, for those individuals whose eligibility period for extended benefits

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commences with weeks beginning after October 1, 1983, the weekly benefit amount, as computed in RCW 50.20.120(2) and payable under this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar. [1983 1st ex.s. c 23 § 13; 1971 c 1 § 5.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.22.050 Total extended benefit amount—Reduction. (1) The total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Fifty percent of the total amount of regular benefits which were payable to him or her under this title in his or her applicable benefit year;

(b) Thirteen times his or her weekly benefit amount which was payable to him or her under this title for a week of total unemployment in the applicable benefit year; or

(c) Thirty-nine times his or her weekly benefit amount which was payable to him or her under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him or her under this title with respect to the benefit year.

(2) Notwithstanding any other provision of this chapter, if the benefit year of any eligible individual ends within an extended benefit period, the extended benefits which the individual would otherwise be entitled to receive with respect to weeks of unemployment beginning after the end of the benefit year and within the extended benefit period shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amount as a trade readjustment allowance within that benefit year, multiplied by the individual's weekly extended benefit amount.

(3) Effective for weeks beginning in a high unemployment period as defined in RCW 50.22.010(3) the total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(a) Eighty percent of the total amount of regular benefits that were payable to him or her under this title in his or her applicable benefit year;

(b) Twenty times his or her weekly benefit amount that was payable to him or her under this title for a week of total unemployment in the applicable benefit year; or

(c) Forty-six times his or her weekly benefit amount that was payable to him or her under this title for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid, or deemed paid, to him or her under this title with respect to the benefit year. [1993 c 483 § 18; 1982 1st ex.s. c 18 § 5; 1971 c 1 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.22.060 Public announcement when extended benefit period becomes effective or is terminated—Computations of rate of insured unemployment. (1) Whenever an extended benefit period is to become effective in this state (or in all states) as a result of an "on" indicator, or an extended

benefit period is to be terminated in this state as a result of an "off" indicator, the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of RCW 50.22.010(4) shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor. [1982 1st ex.s. c 18 § 3; 1971 c 1 § 7.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.22.105 Supplemental additional benefits—February 26, 1994, through December 31, 1995—Eligibility.

Supplemental additional benefits shall be available to individuals who, under this chapter, had a balance of extended benefits available after payments up to and including the week ending February 26, 1994.

(1) Total supplemental additional benefits payable shall be equal to the extended benefit balance remaining after extended benefit payments for up to and including the week ending February 26, 1994, and shall be paid at the same weekly benefit amount.

(2) The week ending March 5, 1994, is the first week for which supplemental additional benefits are payable.

(3) Supplemental additional benefits shall be paid under the same terms and conditions as extended benefits.

(4) Supplemental additional benefits are not payable for weeks more than one year beyond the end of the benefit year of the regular claim.

(5) Weeks of supplemental additional benefits may not be paid for weeks that begin after the start of a new extended benefit period, or any totally federally funded benefit program with eligibility criteria and benefits comparable to additional benefits.

(6) Weeks of supplemental additional benefits may not be paid for weeks of unemployment beginning after December 31, 1995.

(7) The department shall seek federal funding to reimburse the state for the supplemental additional benefits paid under this section. Any federal funds received by the state for reimbursement shall be deposited in the unemployment trust fund solely for the payment of benefits under this title. [1994 c 3 § 3.]

Conflict with federal requirements—Severability—Effective dates—1994 c 3: See notes following RCW 50.04.020.

50.22.130 Training benefits program—Intent. It is the intent of the legislature that a training benefits program be established to provide unemployment insurance benefits to unemployed individuals who participate in training programs necessary for their reemployment.

The legislature further intends that this program serve the following goals:

(1) Retraining should be available for those unemployed individuals whose skills are no longer in demand;

(2) To be eligible for retraining, an individual must have a long-term attachment to the labor force;

(3) Training must enhance the individual's marketable skills and earning power; and

(4) Retraining must be targeted to those industries or skills that are in high demand within the labor market.

Individuals unemployed as a result of structural changes in the economy and technological advances rendering their skills obsolete must receive the highest priority for participation in this program. It is the further intent of the legislature that individuals for whom suitable employment is available are not eligible for additional benefits while participating in training.

The legislature further intends that funding for this program be limited by a specified maximum amount each fiscal year. [2000 c 2 § 6.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.140 Employment security department authorized to pay training benefits—Expenditures.

(1) The employment security department is authorized to pay training benefits under RCW 50.22.150, but may not obligate expenditures beyond the limits specified in this section or as otherwise set by the legislature. For the fiscal year ending June 30, 2000, the commissioner may not obligate more than twenty million dollars for training benefits. For the two fiscal years ending June 30, 2002, the commissioner may not obligate more than sixty million dollars for training benefits. Any funds not obligated in one fiscal year may be carried forward to the next fiscal year. For each fiscal year beginning after June 30, 2002, the commissioner may not obligate more than twenty million dollars annually in addition to any funds carried forward from previous fiscal years. The department shall develop a process to ensure that expenditures do not exceed available funds and to prioritize access to funds when again available.

(2) After June 30, 2002, in addition to the amounts that may be obligated under subsection (1) of this section, the commissioner may obligate up to thirty-four million dollars for training benefits under RCW 50.22.150 for individuals in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411" whose claims are filed before January 5, 2003. The funds provided in this subsection must be fully obligated for training benefits for these individuals before the funds provided in subsection (1) of this section may be obligated for training benefits for these individuals. Any amount of the funds specified in this subsection that is not obligated as permitted may not be carried forward to any future period. [2002 c 149 § 1; 2000 2nd sp.s. c 1 § 916; 2000 c 2 § 7.]

Conflict with federal requirements—2002 c 149: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2002 c 149 § 15.]

Severability—2002 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 149 § 16.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

50.22.150 Training benefits—Eligibility—Payment—Local workforce development council to identify declining and high demand occupations and skill sets—

Rules. (1) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

(a) Is a dislocated worker as defined in RCW 50.04.075;

(b) Except as provided under subsection (2) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

(d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;

(e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and

(f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

(2) Until June 30, 2002, the following individuals who meet the requirements of subsection (1) of this section may, without regard to the tenure requirements under subsection (1)(b) of this section, receive training benefits as provided in this section:

(a) An exhaustee who has base year employment in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411";

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

(c) An exhaustee who has base year employment in the fishing industry assigned the standard industrial classification code "0912" or any equivalent codes in the North American industry classification system code.

(3) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;

(b) Has a definite recall date that is within six months of the date he or she is laid off; or

(c) Is unemployed due to a regular seasonal layoff which demonstrates a pattern of unemployment consistent with the provisions of *RCW 50.20.015. Regular seasonal layoff does not include layoff due to permanent structural downsizing or structural changes in the individual's labor market.

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

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "Sufficient tenure" means earning a plurality of wages in a particular occupation or using a particular skill set during the base year and at least two of the four twelve-month periods immediately preceding the base year.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection (10) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(5) Benefits shall be paid as follows:

(a)(i) Except as provided in (a)(iii) of this subsection, for exhaustees who are eligible under subsection (1) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(ii) For exhaustees who are eligible under subsection (2) of this section, for claims filed before June 30, 2002, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount

of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(iii) For exhausters eligible under subsection (1) of this section from industries listed under subsection (2)(a) of this section, for claims filed on or after June 30, 2002, but before January 5, 2003, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(6) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(7)(a) Except as provided in (b) of this subsection, individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned the standard industrial code "372" or the North American industry classification system code "336411" who received training benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (1)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

(8) An individual eligible to receive a trade readjustment allowance under chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance. An individual eligible to receive emergency unemployment compensation, so called, under any federal law, shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(9) All base year employers are interested parties to the approval of training and the granting of training benefits.

(10) By July 1, 2001, each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and occupations and skill sets that are in high demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000, "high demand" means demand for employment that exceeds the supply of qualified workers for occupations or skill sets in a labor market area. Local workforce development councils must use state and locally developed labor market information. Thereafter, each local workforce development council shall update this information annually or more frequently if needed.

(11) The commissioner shall adopt rules as necessary to implement this section. [2002 c 149 § 2; 2000 c 2 § 8.]

***Reviser's note:** RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Effective dates—2002 c 149 §§ 2 and 8: "(1) Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002].

(2) Section 8 of this act takes effect January 1, 2005." [2002 c 149 § 19.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: "(1) Sections 1, 2, 4, 5, and 15 of this act apply to rate years beginning on or after January 1, 2000.

(2)(a) Except as provided under (b) of this subsection, sections 8 and 12 through 14 of this act apply beginning with weeks of unemployment that begin on or after the Sunday following the day on which the governor signs chapter 2, Laws of 2000 [February 13, 2000].

(b) For individuals eligible under section 8(2)(a) of this act who are enrolled in a national reserve grant on February 7, 2000, section 8 of this act applies beginning with weeks of unemployment that begin after the termination of their needs-related payments under a national reserve grant." [2000 c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Chapter 50.24 RCW

CONTRIBUTIONS BY EMPLOYERS

Sections

50.24.010	Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration.
50.24.014	Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions.
50.24.015	Wages—Deemed paid when contractually due.
50.24.020	Authority to compromise.
50.24.030	Contributions erroneously paid to United States or another state.
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50.24.070	Order and notice of assessment.
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50.24.110	Notice and order to withhold and deliver.
50.24.115	Warrant—Authorized—Filing—Lien—Enforcement.
50.24.120	Collection by civil action.
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50.24.210	Contributions due and payable upon termination or disposal of business—Successor liability.
50.24.220	Client employer liability—Collection.
50.24.230	Corporate or limited liability company officers, members, and owners—Personal liability.

50.24.010 Payment of contributions—Amount of wages subject to tax—Wages paid by employers making payments in lieu of contributions not remuneration. Contributions shall accrue and become payable by each employer (except employers as described in RCW 50.44.010 who have properly elected to make payments in lieu of contributions and those employers who are required to make payments in lieu of contributions) for each calendar year in which the employer is subject to this title at the rate established pursuant to chapter 50.29 RCW.

In each rate year, the amount of wages subject to tax for each individual shall be one hundred fifteen percent of the amount of wages subject to tax for the previous year rounded to the next lower one hundred dollars, except that the amount of wages subject to tax in any rate year shall not exceed eighty percent of the "average annual wage for contributions purposes" for the second preceding calendar year rounded to the next lower one hundred dollars. However, the amount subject to tax shall be twenty-four thousand three hundred dollars for rate year 2000.

In making computations under this section and RCW 50.29.010, wages paid based on services for employers making payments in lieu of contributions shall not be considered remuneration. Moneys paid from the fund, based on services performed for employers who make payments in lieu of contributions, which have not been reimbursed to the fund as of any June 30 shall be deemed an asset of the unemployment compensation fund, to the extent that such moneys exceed the amount of payments in lieu of contributions which the commissioner has previously determined to be uncollectible: PROVIDED, FURTHER, That the amount attributable to employment with the state shall also include interest as provided for in RCW 50.44.020.

Contributions shall become due and be paid by each employer to the treasurer for the unemployment compensation fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in employment of the employer. Any deduction in violation of the provisions of this section shall be unlawful.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. [2000 c 2 § 2; 1984 c 205 § 2; 1977 ex.s. c 33 § 9; 1971 c 3 § 13; 1970 ex.s. c 2 § 8; 1949 c 214 § 18; 1945 c 35 § 89; Rem. Supp. 1949 § 9998-227. Prior: 1943 c 127 § 5; 1941 c 253 § 5; 1939 c 214 § 5; 1937 c 162 § 7.]

Reviser's note: Referendum Measure No. 53 was rejected by the voters at the November 2002 election. This section has been returned to the status existing before its amendment by 2002 c 149.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.24.014 Financing special unemployment assistance—Financing the employment security department's administrative costs—Accounts—Contributions. (1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 and the costs under RCW 50.22.150(10). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the account created in (a) of this subsection.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st. [2007 c 327 § 2; 2006 c 13 § 20. Prior: 2003 2nd sp.s. c 4 § 25; 2000 c 2 § 15; prior: 1998 c 346 § 901; 1998 c 161 § 7; 1994 c 187 § 3; 1993 c 483 § 20; 1987 c 171 § 4; 1985 ex.s. c 5 § 8.]

Severability—2007 c 327: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 327 § 5.]

Conflict with federal requirements—2007 c 327: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 327 § 6.]

Effective date—2007 c 327: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 327 § 7.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Construction—1998 c 346: "This act shall not be construed as affecting any right or cause of action asserted in *Washington State Legislature v. State of Washington* (Thurston county superior court cause no. 98-2-00105-1)." [1998 c 346 § 912.]

Severability—1998 c 346: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 346 § 914.]

Effective date—1998 c 346: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 346 § 915.]

Finding—Intent—1998 c 161: See note following RCW 50.20.140.

Conflict with federal requirements—1994 c 187: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1994 c 187 § 6.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.24.015 Wages—Deemed paid when contractually due. For the purposes of liability for, collection of, and

assessment of contributions, wages shall be deemed paid when such wages are contractually due but are unpaid because of the refusal or inability of the employer to make such payment. [1973 1st ex.s. c 158 § 19.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.020 Authority to compromise. The commissioner may compromise any claim for contributions, interest, or penalties, and any amount owed by an individual because of benefit overpayments, whether reduced to judgment or otherwise, existing or arising under this title in any case where collection of the full claim, in the case of contributions, interest, or penalties, would result in the insolvency of the employing unit or individual from whom such contributions, interest, or penalties are claimed, and any case where collection of the full amount of benefit overpayments made to an individual, whether reduced to judgment or otherwise, would be against equity and good conscience.

Whenever a compromise is made by the commissioner in the case of a claim for contributions, interest, or penalties, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of contributions, interest, and penalties imposed by law and claimed due, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement. Whenever a compromise is made by the commissioner in the case of a claim of a benefit overpayment, whether reduced to judgment or otherwise, there shall be placed on file in the office of the unemployment compensation division a statement of the amount of the benefit overpayment, attorneys' fees and costs, if any, a complete record of the compromise agreement and the amount actually paid in accordance with the terms of the compromise agreement.

If any such compromise is accepted by the commissioner, within such time as may be stated in the compromise or agreed to, such compromise shall be final and conclusive and except upon showing of fraud or malfeasance or misrepresentation of a material fact the case shall not be reopened as to the matters agreed upon. In any suit, action, or proceeding, such agreement or any determination, collection, payment, adjustment, refund, or credit made in accordance therewith shall not be annulled, modified, set aside, or disregarded. [1983 1st ex.s. c 23 § 14; 1955 c 286 § 5; 1945 c 35 § 90; Rem. Supp. 1945 § 9998-228.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1955 c 286: "The provisions of section 5 of this act shall not become effective until the 3rd day of July, 1955." [1955 c 286 § 17.]

50.24.030 Contributions erroneously paid to United States or another state. Payments of contributions erroneously paid to an unemployment compensation fund of another state or to the United States government which should have been paid to this state and which thereafter shall be refunded by such other state or the United States government and paid by the employer to this state, shall be deemed to have been paid to this state and to have filed contribution reports thereon at the date of payment to the United States

government or such other state. [1953 ex.s. c 8 § 15; 1949 c 214 § 19; 1945 c 35 § 91; Rem. Supp. 1949 § 9998-229.]

50.24.040 Interest on delinquent contributions. If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, the whole or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by him. The date as of which payment of contributions, if mailed, is deemed to have been received may be determined by such regulations as the commissioner may prescribe. Interest collected pursuant to this section shall be paid into the administrative contingency fund. Interest shall not accrue on contributions from any estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by any receiver, executor, administrator, trustee in bankruptcy, common law assignee or other liquidating officer shall become due and shall draw interest in the same manner as contributions due from other employers. Where adequate information has been furnished the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, interest may be waived. [1987 c 111 § 3; 1973 1st ex.s. c 158 § 8; 1953 ex.s. c 8 § 16; 1945 c 35 § 92; Rem. Supp. 1945 § 9998-230. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.24.050 Lien for contributions generally. The claim of the employment security department for any contributions, interest, or penalties not paid when due, shall be a lien prior to all other liens or claims and on a parity with prior tax liens against all property and rights to property, whether real or personal, belonging to the employer. In order to avail itself of the lien hereby created, the department shall file with any county auditor where property of the employer is located a statement and claim of lien specifying the amount of delinquent contributions, interest, and penalties claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all property and rights to property, whether real or personal, in the county, owned by the employer or acquired by him. The lien shall not be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof has been filed with the county auditor. This lien shall be separate and apart from, and in addition to, any other lien or claim created by, or provided for in, this title. When any such notice of lien has been so filed, the commissioner may release the same by filing a certificate of release when it shall appear that the amount of delinquent contributions, interest, and penalties have been paid, or when such assurance of payment shall be made as the commissioner may deem to be adequate. Fees for filing and releasing the lien provided herein may be charged to the employer and may be collected from the

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employer utilizing the remedies provided in this title for the collection of contributions. [1981 c 302 § 39; 1979 ex.s. c 190 § 2; 1973 1st ex.s. c 158 § 9; 1947 c 215 § 19; 1945 c 35 § 93; Rem. Supp. 1947 § 9998-231. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Severability—1981 c 302: See note following RCW 19.76.100.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Penalties for late reports or contributions: RCW 50.12.220.

50.24.060 Lien in event of insolvency or dissolution. In the event of any distribution of an employer's assets pursuant to an order of any court, including any receivership, probate, legal dissolution, or similar proceeding, or in case of any assignment for the benefit of creditors, composition, or similar proceeding, contributions, interest, or penalties then or thereafter due shall be a lien upon all the assets of such employer. Said lien will be prior to all other liens or claims except prior tax liens, other liens provided by this title, and claims for remuneration for services of not more than two hundred and fifty dollars to each claimant earned within six months of the commencement of the proceeding. The mere existence of a condition of insolvency or the institution of any judicial proceeding for legal dissolution or of any proceeding for distribution of assets shall cause such a lien to attach without action on behalf of the commissioner or the state. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions, interest, or penalties then or thereafter due shall be entitled to such priority as provided in that act, as amended. [1983 1st ex.s. c 23 § 15; 1945 c 35 § 94; Rem. Supp. 1945 § 9998-232. Prior: 1943 c 127 § 10; 1941 c 253 § 11; 1939 c 214 § 12; 1937 c 162 § 14.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.24.070 Order and notice of assessment. At any time after the commissioner shall find that any contributions, interest, or penalties have become delinquent, the commissioner may issue an order and notice of assessment specifying the amount due, which order and notice of assessment shall be served upon the delinquent employer in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the employer as shown by the records of the department. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax, or any interest or penalties thereon. [1987 c 111 § 4; 1979 ex.s. c 190 § 3; 1945 c 35 § 95; Rem. Supp. 1945 § 9998-233. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Commencement of actions: Chapter 4.28 RCW.

50.24.080 Jeopardy assessment. If the commissioner shall have reason to believe that an employer is insolvent or if any reason exists why the collection of any contributions accrued will be jeopardized by delaying collection, he may make an immediate assessment thereof and may proceed to enforce collection immediately, but interest and penalties

shall not begin to accrue upon any contributions until the date when such contributions would normally have become delinquent. [1979 ex.s. c 190 § 4; 1945 c 35 § 96; Rem. Supp. 1945 § 9998-234. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.090 Distraint, seizure, and sale. If the amount of contributions, interest, or penalties assessed by the commissioner by order and notice of assessment provided in this title is not paid within ten days after the service or mailing of the order and notice of assessment, the commissioner or his duly authorized representative may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of said delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1979 ex.s. c 190 § 5; 1945 c 35 § 97; Rem. Supp. 1945 § 9998-235. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

Executions: Chapter 6.17 RCW.

Personal exemptions, generally: Chapter 6.15 RCW.

50.24.100 Distraint procedure. The commissioner, upon making a distraint, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to him, and shall specify the time and place when said property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than ten nor more than twenty days from the date of posting of such notices. Said sale may be adjourned from time to time at the discretion of the commissioner, but not for a time to exceed in all sixty days. Said sale shall be conducted by the commissioner or his authorized representative who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the commissioner or his representative may declare such property to be purchased by the employment security department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the employment security department as herein prescribed may be sold by the commissioner or his representative at public or private sale, and the amount realized shall be placed in the unemployment compensation trust fund.

In all cases of sale, as aforesaid, the commissioner shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the employment security department, shall be first applied by the commissioner in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent contributions, interest, and penalties

the administration fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the commissioner shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the commissioner by any other taxing authority of the state or its political subdivisions. [1979 ex.s. c 190 § 6; 1949 c 214 § 20; 1945 c 35 § 98; Rem. Supp. 1949 § 9998-236. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.110 Notice and order to withhold and deliver. The commissioner is hereby authorized to issue to any person, firm, corporation, political subdivision, or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when the commissioner has reason to believe that there is in the possession of such person, firm, corporation, political subdivision, or department, property which is due, owing, or belonging to any person, firm, or corporation upon whom the department has served a benefit overpayment assessment or a notice and order of assessment for unemployment compensation contributions, interest, or penalties. The effect of a notice to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability is satisfied or becomes unenforceable because of a lapse of time.

The notice and order to withhold and deliver shall be served by the sheriff or the sheriff's deputy of the county wherein the service is made, by certified mail, return receipt requested, or by any duly authorized representative of the commissioner. Any person, firm, corporation, political subdivision, or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person, firm, corporation, political subdivision, or department, any property which may be subject to the claim of the employment security department of the state, such property shall be delivered forthwith to the commissioner or the commissioner's duly authorized representative upon demand to be held in trust by the commissioner for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the commissioner conditioned upon final determination of liability.

Should any person, firm, or corporation fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person, firm, or corporation for the full amount claimed by the commissioner in the notice to withhold and deliver, together with costs. [1990 c 245 § 6; 1987 c 111 § 5; 1979 ex.s. c 190 § 7; 1947 c 215 § 20; 1945 c 35 § 99; Rem. Supp. 1947 § 9998-237.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

50.24.115 Warrant—Authorized—Filing—Lien—Enforcement. Whenever any order and notice of assessment or jeopardy assessment shall have become final in accordance with the provisions of this title the commissioner may file with the clerk of any county within the state a warrant in the amount of the notice of assessment plus interest, penalties, and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of the tax, interest, penalties, and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant, and charged by the commissioner to the employer or employing unit. A copy of the warrant shall be mailed to the employer or employing unit by certified mail to his last known address within five days of filing with the clerk. [2001 c 146 § 8; 1983 1st ex.s. c 23 § 16; 1979 ex.s. c 190 § 8; 1975 1st ex.s. c 228 § 15.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.24.120 Collection by civil action. (1) If after due notice, any employer defaults in any payment of contributions, interest, or penalties, the amount due may be collected by civil action in the name of the state, and the employer adjudged in default shall pay the cost of such action. Any lien created by this title may be foreclosed by decree of the court in any such action. Civil actions brought under this title to collect contributions, interest, or penalties from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this title and cases arising under the industrial insurance laws of this state.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any action under this title. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state: PROVIDED, That the commissioner shall forthwith

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send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such action is pending.

(3) The courts of this state shall in the manner provided in subsections (1) and (2) of this section entertain actions to collect contributions, interest, or penalties for which liability has accrued under the employment security law of any other state or of the federal government. [1979 ex.s. c 190 § 9; 1959 c 266 § 5; 1953 ex.s. c 8 § 17; 1945 c 35 § 100; Rem. Supp. 1945 § 9998-238. Prior: 1943 c 127 § 10.]

Civil procedure: Title 4 RCW.

Industrial insurance: Title 51 RCW.

50.24.125 Collection by civil action—Collection of delinquent payments in lieu of contributions from political subdivisions or instrumentalities thereof. Delinquent payments in lieu of contributions due the unemployment compensation fund and interest and penalties may be recovered from any of the political subdivisions of this state or any instrumentality of a political subdivision of this state by civil action. The governor is authorized to deduct the amount of delinquent payments in lieu of contributions and interest and penalties from any moneys payable by the state to said political subdivisions or instrumentalities and pay such moneys to the commissioner for deposit in the appropriate account. [1979 ex.s. c 190 § 10; 1971 c 3 § 15.]

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

50.24.130 Contractor's and principal's liability for contributions—Exceptions. No employing unit which contracts with or has under it any contractor or subcontractor who is an employer under the provisions of this title shall make any payment or advance to, or secure any credit for, such contractor or subcontractor or on account of any contract or contracts to which said employing unit is a party unless such contractor or subcontractor has paid contributions, due or to become due for wages paid or to be paid by such contractor or subcontractor for personal services performed pursuant to such contract or subcontract, or has furnished a good and sufficient bond acceptable to the commissioner for payment of contributions, interest, and penalties. Failure to comply with the provisions of this section shall render said employing unit directly liable for such contributions, interest, and penalties and the commissioner shall have all of the remedies of collection against said employing unit under the provisions of this title as though the services in question were performed directly for said employing unit.

For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall not be responsible for any contributions for the work of any subcontractor if:

(1) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) There is no other person, firm or corporation doing the same work at the same time on the same project except two or more persons, firms or corporations may contract and do the same work at the same time on the same project if each person, firm or corporation has employees;

(3) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(4) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business; and

(5) The subcontractor has contracted to perform:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW. [1982 1st ex.s. c 18 § 15; 1979 ex.s. c 190 § 11; 1973 1st ex.s. c 158 § 10; 1949 c 214 § 21; 1945 c 35 § 101; Rem. Supp. 1949 § 9998-239.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Music or entertainment services purchasers, liability for unpaid contributions: RCW 50.04.148.

50.24.140 Collection remedies cumulative. Remedies given to the state under this title for the collection of contributions, interest, or penalties shall be cumulative and no action taken by the commissioner or his duly authorized representative, the attorney general, or any other officer shall be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other. [1979 ex.s. c 190 § 12; 1945 c 35 § 102; Rem. Supp. 1945 § 9998-240. Prior: 1943 c 127 § 10.]

50.24.150 Contribution adjustments and refunds. No later than three years after the date on which any contributions, interest, or penalties have been paid, an employer who has paid such contributions, interest, or penalties may file with the commissioner a petition in writing for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof when such adjustment cannot be made. If the commissioner upon an ex parte consideration shall determine that such contributions, interest, penalties, or portion thereof were erroneously collected, he shall allow such employer to make an adjustment thereof without interest in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund said amount without interest from the unemployment compensation fund: PROVIDED, HOWEVER, That after June 20, 1953, that refunds of interest on delinquent contributions or penalties shall be paid from the administrative contingency fund upon warrants issued by the treasurer under the direction of the commissioner. For like cause and within the same period, adjustment or refund may be made on the commissioner's own initiative. If the commissioner finds that upon ex parte consideration he cannot readily determine that

such adjustment or refund should be allowed, he shall deny such application and notify the employer in writing. [1979 ex.s. c 190 § 13; 1953 ex.s. c 8 § 19; 1945 c 35 § 103; Rem. Supp. 1945 § 9998-241. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.160 Election of coverage. Except as provided in RCW 50.04.165, any employing unit for which services that do not constitute employment as defined in this title are performed may file with the commissioner a written election that all such services performed by any distinct class or group of individuals or by all individuals in its employment in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this title for at least two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this title on and after the date stated in the approval. Services covered under this section shall cease to be deemed employment as of January 1st of any calendar year subsequent to the two-calendar year period, only if the employing unit files with the commissioner before January 15th of that year a written application for termination of coverage. [2007 c 146 § 6; 1977 ex.s. c 292 § 12; 1972 ex.s. c 35 § 1; 1971 c 3 § 14; 1959 c 266 § 6; 1951 c 265 § 8; 1951 c 215 § 9; 1945 c 35 § 104; Rem. Supp. 1945 § 9998-242.]

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Severability—1951 c 265: See note following RCW 50.98.070.

Corporate officers, election of coverage: RCW 50.04.165.

50.24.170 Joint accounts. (1) The commissioner shall prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(2) Joint accounts may not be established for professional employer organizations, as defined in RCW 50.04.298, or third-party payers, as defined in RCW 50.04.248, and their clients. [2007 c 146 § 17; 1945 c 35 § 105; Rem. Supp. 1945 § 9998-243. Prior: 1941 c 253 § 5.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.24.180 Injunction proceedings. Any employer who shall be delinquent in the payment of contributions, interest, or penalties may be enjoined upon the suit of the state of Washington from continuing in business in this state or employing persons herein until the delinquent contributions, interest, and penalties shall have been paid, or until the employer shall have furnished a good and sufficient bond in a sum equal to double the amount of contributions, interest,

and penalties already delinquent, plus such further sum as the court shall deem adequate to protect the department in the collection of contributions, interest, and penalties which will become due from such employer during the next ensuing calendar year, said bond to be conditioned upon payment of all contributions, interest, and penalties due and owing within thirty days after the expiration of the next ensuing calendar year or at such earlier date as the court may fix.

Action pursuant to the provisions of this section may be instituted in the superior court of any county of the state wherein the employer resides, has its principal place of business, or where it has anyone performing services for it, whether or not such services constitute employment. [1979 ex.s. c 190 § 14; 1945 c 35 § 106; Rem. Supp. 1945 § 998-244. Prior: 1943 c 127 § 10; 1941 c 253 § 11.]

50.24.190 Limitation of actions. The commissioner shall commence action for the collection of contributions, interest, penalties, and benefit overpayments imposed by this title by assessment or suit within three years after a return is filed or notice of benefit overpayment is served. No proceedings for the collection of such amounts shall be begun after the expiration of such period.

In case of a false or fraudulent return with intent to evade contributions, interest, or penalties, or in the event of a failure to file a return, the contributions, interest, and penalties may be assessed or a proceeding in court for the collection thereof may be begun at any time. [1979 ex.s. c 190 § 15; 1955 c 286 § 7. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; 1943 c 127 § 10, part; Rem. Supp. 1947 § 9998-245, part.]

50.24.200 Chargeoff of uncollectible accounts. The commissioner may charge off as uncollectible and no longer an asset of the unemployment compensation fund or the administrative contingency fund, as the case may be, any delinquent contributions, interest, penalties, credits, or benefit overpayments if the commissioner is satisfied that there are no cost-effective means of collecting the contributions, interest, penalties, credits, or benefit overpayments. [1989 c 78 § 1; 1979 ex.s. c 190 § 16; 1955 c 286 § 8. Prior: 1947 c 215 § 21, part; 1945 c 35 § 107, part; Rem. Supp. 1947 § 9998-245, part.]

50.24.210 Contributions due and payable upon termination or disposal of business—Successor liability. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any contributions payable under this title shall become immediately due and payable, and the employer shall, within ten days, make a return and pay the contributions due; and any person who becomes a successor to such business shall become liable for the full amount of the contributions and withhold from the purchase price a sum sufficient to pay any contributions due from the employer until such time as the employer produces a receipt from the employment security department showing payment in full of any contributions due or a certificate that no contribution is due and, if such contribution is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of

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the full amount of contributions, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any contributions due from the person from whom that person has acquired a business or stock of goods if that person gives written notice to the employment security department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1991 c 117 § 4.]

Conflict with federal requirements—Severability—Effective dates—1991 c 117: See notes following RCW 50.04.030.

50.24.220 Client employer liability—Collection. (1) The client employer of a professional employer organization is liable for the payment of any taxes, interest, or penalties due.

(2) The professional employer organization may collect and pay taxes due to the department for unemployment insurance coverage from its client employers in accordance with its professional employer agreement. If such payments have been made to the professional employer organization by the client employer, the department shall first attempt to collect the contributions due from the professional employer organization.

(3) To collect any contributions, penalties, or interest due to the department from the professional employer organization, the department must follow the procedures contained in chapter 50.24 RCW. If the amount of contributions, interest, or penalties assessed by the commissioner pursuant to chapter 50.24 RCW is not paid by the professional employer organization within ten days, then the commissioner may follow the collection procedures in chapter 50.24 RCW. After the ten-day period, if the professional employer organization has not paid the total amount owing, the commissioner may also pursue the client employer to collect what is owed using the procedures contained in chapter 50.24 RCW. [2007 c 146 § 11.]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

50.24.230 Corporate or limited liability company officers, members, and owners—Personal liability. (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, or owner who, having control or supervision of payment of unemployment tax contributions under RCW 50.24.010 or 50.24.014: (a) Willfully evades any contributions imposed under this title; (b) willfully destroys, mutilates, or falsifies any book, document, or record; or (c) willfully fails to truthfully account for, or makes under oath, any false statement relating to the financial condition of the corporation or limited liability company business, is personally liable for any

unpaid contributions and interest and penalties on those contributions. For purposes of this section, "willfully" means an intentional, conscious, and voluntary course of action.

(2) Persons liable under subsection (1) of this section are liable only for contributions that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation or limited liability company, plus interest and penalties on those contributions.

(3) Persons liable under subsection (1) of this section are exempt from liability if all of the assets of the corporation or limited liability company have been applied to its debts through bankruptcy or receivership.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under chapter 50.32 RCW.

(5) This section applies only when the employment security department determines that there is no reasonable means of collecting the contributions owed directly from the corporation or limited liability company.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities under this title or impair other tax collection remedies afforded by law.

(7) Collection authority and procedures described in this chapter apply to collections under this section. [2007 c 146 § 18.]

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Chapter 50.29 RCW

EMPLOYER EXPERIENCE RATING

Sections

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50.29.090	Contribution rates for client employers.

50.29.010 Definitions. As used in this chapter:

- (1) "Computation date" means July 1st of any year;
- (2) "Cut-off date" means September 30th next following the computation date;
- (3) "Qualification date" means April 1st of the second year preceding the computation date;
- (4) "Rate year" means the calendar year immediately following the computation date;
- (5) "Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his or her employment;

(6) "Qualified employer" means any employer who (a) reported some employment in the twelve-month period beginning with the qualification date, (b) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the computation date, and (c) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties may be disregarded for the purposes of this section if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date. Late reports, contributions, penalties, or interest from employment defined under RCW 50.04.160 may be disregarded for the purposes of this section if showing is made to the satisfaction of the commissioner that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable. [2002 c 149 § 11; 1987 c 213 § 2; 1986 c 111 § 1; 1984 c 205 § 3; 1983 1st ex.s. c 23 § 17; 1973 1st ex.s. c 158 § 11; 1971 c 3 § 16; 1970 ex.s. c 2 § 10.]

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Construction—1987 c 213: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act, or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted thereunder." [1987 c 213 § 4.]

Conflict with federal requirements—1986 c 111: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1986 c 111 § 2.]

Severability—1986 c 111: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 111 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Construction—Compliance with federal act—1971 c 3: See RCW 50.44.080.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Wages defined for contribution purposes: RCW 50.04.320.

50.29.020 Experience rating accounts—Benefits not charged—Claims with an effective date before January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date before January 4, 2004.

(2) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and

those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(1)(b)(iv) shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) In the case of individuals identified under *RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in *RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons

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directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2004 c 110 § 3; 2003 2nd sp.s. c 4 § 20. Prior: 2002 c 149 § 6; 2002 c 8 § 4; 2000 c 2 § 3; 1995 c 57 § 3; 1993 c 483 § 19; 1991 c 129 § 1; 1988 c 27 § 1; prior: 1987 c 213 § 3; 1987 c 2 § 2; prior: 1985 c 299 § 1; 1985 c 270 § 2; 1985 c 42 § 1; 1984 c 205 § 7; 1975 1st ex.s. c 228 § 6; 1970 ex.s. c 2 § 11.]

*Reviser's note: RCW 50.20.015 was repealed by 2003 2nd sp.s. c 4 § 35.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Severability—2002 c 149: See notes following RCW 50.22.140.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Application—1995 c 57: "This act applies only to benefit charges attributable to new claims effective after July 1, 1995." [1995 c 57 § 4.]

Effective date—1995 c 57: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995]." [1995 c 57 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Conflict with federal requirements—1988 c 27: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state." [1988 c 27 § 2.]

Construction—1987 c 213: See note following RCW 50.29.010.

Applicability—Effective date—Severability—1987 c 2: See notes following RCW 50.20.090.

Conflict with federal requirements—1985 c 42: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 42 § 2.]

Severability—1985 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 42 § 3.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.021 Experience rating accounts—Benefits not charged—Claims with an effective date on or after January 4, 2004. (1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050(2)(b)(iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, work-site, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted. [2008 c 323 § 2; 2007 c 146 § 2; 2006 c 13 § 6; 2005 c 133 § 4; 2003 2nd sp.s. c 4 § 21.]

Conflict with federal requirements—2008 c 323: See note following RCW 50.20.050.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.025 Contribution rate. (1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection,

within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls		Schedules of Contributions Rates for Effective Tax Schedule							
From	To	Rate Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding

ing the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate year 2008 and thereafter:

(I) Rate class 1 - 78 percent;

(II) Rate class 2 - 82 percent;

(III) Rate class 3 - 86 percent;

- (IV) Rate class 4 - 90 percent;
- (V) Rate class 5 - 94 percent;
- (VI) Rate class 6 - 98 percent;
- (VII) Rate class 7 - 102 percent;
- (VIII) Rate class 8 - 106 percent;
- (IX) Rate class 9 - 110 percent;
- (X) Rate class 10 - 114 percent;
- (XI) Rate class 11 - 118 percent; and
- (XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) For rate years 2005, 2006, and 2007:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40; and

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not

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more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) Beginning with contributions assessed for rate year 2008:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(C) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code. [2007 c 51 § 1; 2006 c 13 § 4; 2005 c 133 § 5; 2003 2nd sp.s. c 4 § 14; 2003 c 4 § 1; 2000 c 2 § 4; 1995 c 4 § 2; (1995 c 4 § 1 expired January 1, 1998). Prior: 1993 c 483 § 21; 1993 c 226 § 14; 1993 c 226 § 13; 1990 c 245 § 7; 1989 c 380 § 79; 1987 c 171 § 3; 1985 ex.s. c 5 § 7; 1984 c 205 § 5.]

Conflict with federal requirements—2007 c 51: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2007 c 51 § 2.]

Severability—2007 c 51: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected." [2007 c 51 § 3.]

Application—2007 c 51: "This act applies for rate years beginning on or after January 1, 2008." [2007 c 51 § 4.]

Application—2006 c 13 §§ 4 and 5: "Sections 4 and 5 of this act apply to rate years beginning on or after January 1, 2007." [2006 c 13 § 26.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133: See notes following RCW 50.20.120.

Additional employees authorized—2005 c 133: See note following RCW 50.01.010.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2003 c 4 § 1: "Section 1 of this act applies to rate years beginning on or after January 1, 2003." [2003 c 4 § 2.]

Effective date—2003 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2003]." [2003 c 4 § 3.]

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates—1995 c 4: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 16, 1995].

(2) Section 2 of this act shall take effect January 1, 1998." [1995 c 4 § 4.]

Expiration date—1995 c 4 § 1: "Section 1 of this act shall expire January 1, 1998." [1995 c 4 § 5.]

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Elevation of employer contribution rates—Report by commissioner—1993 c 226: "Prior to any increase in the employer tax schedule as provided in section 13, chapter 226, Laws of 1993, the commissioner shall provide a report to the appropriate committees of the legislature specifying to what extent the workforce training expenditures in chapter 226, Laws of 1993 elevated employer contribution rates for the effective tax schedule." [1993 c 226 § 16.]

Effective dates—1993 c 226 §§ 10, 12, and 14: See note following RCW 50.16.010.

Conflict with federal requirements—Severability—Application—1993 c 226: See notes following RCW 50.16.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.026 Modification of contribution rate. (1) Beginning with contributions assessed for rate year 1996, a qualified employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005, determined under RCW 50.29.025 may be modified as follows:

(a) Subject to the limitations of this subsection, an employer may make a voluntary contribution of an amount equal to part or all of the benefits charged to the employer's account during the two years most recently ended on June 30th that were used for the purpose of computing the employer's contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005. On receiving timely payment of a voluntary contribution, plus a surcharge of ten percent of the amount of the voluntary contribution, the commissioner shall cancel the benefits equal to the amount of the voluntary contribution, excluding the surcharge, and compute a new benefit ratio for the employer. The employer shall then be assigned the contribution rate applicable for rate years beginning before January 1, 2005, or array calculation factor rate applicable for rate years beginning on or after January 1, 2005, applicable to the rate class within which the recomputed benefit ratio is included. The minimum amount of a voluntary contribution, excluding the surcharge, must be an amount that will result in a recomputed benefit ratio that is in a rate class at least four rate classes lower than the rate class that included the employer's original benefit ratio.

(b) Payment of a voluntary contribution is considered timely if received by the department during the period beginning on the date of mailing to the employer the notice of contribution rate applicable for rate years beginning before January 1, 2005, or notice of array calculation factor rate applicable for rate years beginning on or after January 1, 2005, required under this title for the rate year for which the employer is seeking a modification of his or her rate and ending on February 15th of that rate year or, for voluntary contributions for rate year 2000, ending on March 31, 2000.

(c) A benefit ratio may not be recomputed nor a rate be reduced under this section as a result of a voluntary contribution received after the payment period prescribed in (b) of this subsection.

(2) This section does not apply to any employer who has not had an increase of at least twelve rate classes from the previous tax rate year. [2003 2nd sp.s. c 4 § 17; 2000 c 2 § 5; 1995 c 322 § 1.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Conflict with federal requirements—1995 c 322: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1995 c 322 § 2.]

50.29.027 Benefit ratio computed for 1985 and thereafter. For the rate year 1985 and each rate year thereafter, a benefit ratio shall be computed for each qualified employer by dividing the total amount of benefits charged to the account of the employer during the forty-eight consecutive

months immediately preceding the computation date by the taxable payrolls of the employer for the same forty-eight month period as reported to the department by the cut-off dates. The division shall be carried to the sixth decimal place with the remaining fraction, if any, disregarded. [1984 c 205 § 4.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.030 "Wages" defined for purpose of prorating benefit charges. For the purpose of prorating benefit charges "wages" shall mean "wages" as defined for purpose of payment of benefits in RCW 50.04.320. [1970 ex.s. c 2 § 12.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Government or retirement pension plan payments as remuneration or wages—Recovery of excess over benefits allowable, limitations: RCW 50.04.323.

50.29.041 Contribution rate—Solvency surcharge. Beginning with contributions assessed for rate year 2005, the contribution rate of each employer subject to contributions under RCW 50.24.010 shall include a solvency surcharge determined as follows:

(1) This section shall apply to employers' contributions for a rate year immediately following a cut-off date only if, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide fewer than seven months of unemployment benefits.

(2) The solvency surcharge shall be the lowest rate necessary, as determined by the commissioner, but not more than two-tenths of one percent, to provide revenue during the applicable rate year that will fund unemployment benefits for the number of months that is the difference between nine months and the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits.

(3) The basis for determining the number of months of unemployment benefits shall be the same basis used in RCW 50.29.025(2)(b)(i)(B). [2006 c 13 § 5; 2003 2nd sp.s. c 4 § 16.]

Application—2006 c 13 §§ 4 and 5: See note following RCW 50.29.025.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

50.29.062 Contribution rates for predecessor and successor employers. Except as provided in RCW 50.29.063, predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer of a business, the following applies:

(a) The successor's contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs; and

(b) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on a combination of the following:

(i) The successor's experience with payrolls and benefits; and

(ii) Any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor.

(2) If the successor is not an employer at the time of the transfer, the following applies:

(a) For transfers before January 1, 2005:

(i) Except as provided in (ii) of this subsection (2)(a), the successor shall pay contributions at the lowest rate determined under either of the following:

(A) The contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1st following the transfer, the successor's contribution rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer; or

(B) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found in the North American industry classification system issued by the federal office of management and budget to the fourth digit provided in the North American industry classification system.

(ii) If the successor simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the rate of the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

(b) For transfers on or after January 1, 2005:

(i) Except as provided in (ii) and (iii) of this subsection (2)(b), the successor shall pay contributions:

(A) At the contribution rate assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor.

(B) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on an array calculation factor rate that is a combination of the following: The successor's experience with payrolls and benefits; and any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor if qualified under RCW 50.29.010(6) by including the transferred experience. If not qualified under RCW 50.29.010(6), the contribution rate shall equal the sum of the rates determined by the commis-

sioner under RCW *50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate, including the transferred experience.

(ii) If there is a substantial continuity of ownership, control, or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. Beginning January 1st following the transfer, the successor's array calculation factor rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer.

(iii) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the sum of the rates determined by the commissioner under RCW 50.29.025(2) (a) and (b), and 50.29.041, applicable at the time of the acquisition, to the predecessor employer who, among the parties to the acquisition, had the largest total payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under RCW *50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041, if applicable.

(3) With respect to predecessor employers:

(a) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

(b) In all cases, beginning January 1st following the transfer, the predecessor's contribution rate or the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience of the transferred business or transferred portion of business as that experience has transferred to the successor: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

(4) For purposes of this section, "transfer of a business" means the same as RCW 50.29.063(4)(c). [2006 c 47 § 2; 2003 2nd sp.s. c 4 § 18; 1996 c 238 § 1; 1995 c 56 § 1; 1989 c 380 § 81; 1984 c 205 § 6.]

***Reviser's note:** RCW 50.29.025 was amended by 2007 c 51 § 1, incorporating the substance of subsection (2)(c)(ii) and (d)(ii) into subsection (2)(d)(i).

Conflict with federal requirements—2006 c 47: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2006 c 47 § 5.]

Severability—2006 c 47: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected." [2006 c 47 § 6.]

Effective date—2006 c 47: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2006]." [2006 c 47 § 7.]

Retroactive application—2006 c 47: "This act is remedial in nature and shall be applied retroactively to January 1, 2006." [2006 c 47 § 8.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—1996 c 238: "This act applies to unemployment contribution rates effective on and after January 1, 1996." [1996 c 238 § 2.]

Conflict with federal requirements—1996 c 238: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1996 c 238 § 3.]

Effective date—1989 c 380 §§ 78-81: See note following RCW 50.04.150.

Conflict with federal requirements—1989 c 380: See note following RCW 50.04.150.

Severability—1989 c 380: See RCW 15.58.942.

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.063 Predecessor or successor employers—Transfer to obtain reduced array calculation factor rate—Evasion of successor provisions—Penalties. (1) If it is found that a significant purpose of the transfer of a business was to obtain a reduced array calculation factor rate, then the following applies:

(a) If the successor was an employer at the time of the transfer, then the experience rating accounts of the employers involved shall be combined into a single account and the employers assigned the higher of the predecessor or successor array calculation factor rate to take effect as of the date of the transfer.

(b) If the successor was not an employer at the time of the transfer, then the experience rating account of the acquired business must not be transferred and, instead, the sum of the rate determined by the commissioner under *RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041 if applicable, shall be assigned.

(2) If any part of a delinquency for which an assessment is made under this title is due to an intent to knowingly evade the successorship provisions of RCW 50.29.062 and this section, then with respect to the employer, and to any business found to be knowingly promoting the evasion of such provisions:

(a) The commissioner shall, for the rate year in which the commissioner makes the determination under this subsection and for each of the three consecutive rate years following that rate year, assign to the employer or business the total rate, which is the sum of the recalculated array calculation factor rate and a civil penalty assessment rate, calculated as follows:

(i) Recalculate the array calculation factor rate as the array calculation factor rate that should have applied to the employer or business under RCW 50.29.025 and 50.29.062; and

(ii) Calculate a civil penalty assessment rate in an amount that, when added to the array calculation factor rate determined under (a)(i) of this subsection for the applicable rate year, results in a total rate equal to the maximum array calculation factor rate under RCW 50.29.025 plus two percent, which total rate is not limited by any maximum array calculation factor rate established in RCW 50.29.025(2)(b)(ii);

(b) The employer or business may be prosecuted under the penalties prescribed in RCW 50.36.020; and

(c) The employer or business must pay for the employment security department's reasonable expenses of auditing the employer's or business's books and collecting the civil penalty assessment.

(3) If the person knowingly evading the successorship provisions, or knowingly attempting to evade these provisions, or knowingly promoting the evasion of these provisions, is not an employer, the person is subject to a civil penalty assessment of five thousand dollars per occurrence. In addition, the person is subject to the penalties prescribed in RCW 50.36.020 as if the person were an employer. The person must also pay for the employment security department's reasonable expenses of auditing his or her books and collecting the civil penalty assessment.

(4) For purposes of this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved and includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

(b) "Person" means and includes an individual, a trust, estate, partnership, association, company, or corporation.

(c) "Transfer of a business" includes the transfer or acquisition of substantially all or a portion of the operating assets, which may include the employer's workforce.

(5) Any decision to assess a penalty under this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of a penalty in the manner provided in RCW 50.32.030.

(7) The commissioner shall engage in prevention, detection, and collection activities related to evasion of the successorship provisions of RCW 50.29.062 and this section, and establish procedures to enforce this section. [2007 c 327 § 3; 2006 c 47 § 1.]

***Reviser's note:** RCW 50.29.025 was amended by 2007 c 51 § 1, incorporating the substance of subsection (2)(c)(ii) and (d)(ii) into subsection (2)(d)(i).

Severability—Conflict with federal requirements—Effective date—2007 c 327: See notes following RCW 50.24.014.

Conflict with federal requirements—Severability—Effective date—Retroactive application—2006 c 47: See notes following RCW 50.29.062.

50.29.064 Rules to implement 2006 c 47. The commissioner of the employment security department may adopt rules necessary to implement chapter 47, Laws of 2006. [2006 c 47 § 4.]

Conflict with federal requirements—Severability—Effective date—Retroactive application—2006 c 47: See notes following RCW 50.29.062.

(2008 Ed.)

50.29.065 Notice of benefits paid and charged to employer's account. Within thirty days after the end of every calendar quarter, the commissioner shall notify each employer of the benefits received during that quarter by each claimant for whom he or she is the base year employer and the amount of those benefits charged to his or her experience rating account. [1984 c 205 § 10.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

50.29.070 Notice of employer benefit charges and rate of contribution—Review and appeal. (1) Within a reasonable time after the computation date each employer shall be notified of the employer's rate of contribution as determined for the succeeding rate year and factors used in the calculation. Beginning with rate year 2005, the notice must include the amount of the contribution rate that is attributable to each component of the rate under RCW 50.29.025(2).

(2) Any employer dissatisfied with the benefit charges made to the employer's account for the twelve-month period immediately preceding the computation date or with his or her determined rate may file a request for review and redetermination with the commissioner within thirty days of the mailing of the notice to the employer, showing the reason for such request. Should such request for review and redetermination be denied, the employer may, within thirty days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this section. [2003 2nd sp.s. c 4 § 19; 1990 c 245 § 8; 1983 1st ex.s. c 23 § 19; 1973 1st ex.s. c 158 § 14; 1970 ex.s. c 2 § 16.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

Appeal on denial of refund: RCW 50.32.030, 50.32.050.

Appeal to the courts: RCW 50.32.120.

Review by commissioner: RCW 50.32.070.

50.29.080 Redetermination and correction of employer's contribution rate. The commissioner may redetermine any contribution rate if, within three years of the rate computation date he finds that the rate as originally computed was erroneous.

In the event that the redetermined rate is lower than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll for the rate year involved shall be established as a credit against his tax liability; however, if the redetermined rate is higher than that originally computed the difference between the amount paid and the amount which should have been paid on the employer's taxable payroll shall

be assessed against the employer as contributions owing for the rate year involved.

The redetermination of an employer's contribution rate shall not affect the contribution rates which have been established for any other employer nor shall such redetermination affect any other computation made pursuant to this title.

The employer shall have the same rights to request review and redetermination as he had from his original rate determination. [1970 ex.s. c 2 § 17.]

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

50.29.090 Contribution rates for client employers.

For purposes of this title, each client employer of a professional employer organization is assigned its individual contribution rate based on its own experience. [2007 c 146 § 10.]

Report on implementation and impact—2007 c 146 §§ 8-12: See note following RCW 50.04.298.

Effective date—2007 c 146 §§ 5, 6, and 10-12: See note following RCW 50.04.310.

Conflict with federal requirements—Severability—2007 c 146: See notes following RCW 50.04.080.

Chapter 50.32 RCW

REVIEW, HEARINGS, AND APPEALS

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50.32.010 Appeal tribunals. The commissioner shall establish one or more impartial appeal tribunals, each of which shall consist of an administrative law judge appointed under chapter 34.12 RCW who shall decide the issues submitted to the tribunal. No administrative law judge may hear or decide any disputed claim in any case in which he is an interested party. Wherever the term "appeal tribunal" or "the appeal tribunal" is used in this title the same refers to an appeal tribunal established under the provisions of this section. Notice of any appeal or petition for hearing taken to an appeal tribunal in any proceeding under this title may be filed with such agency as the commissioner may by regulation prescribe. [1981 c 67 § 30; 1945 c 35 § 117; Rem. Supp. 1945 § 9998-255. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

50.32.020 Filing of benefit appeals. The applicant or claimant, his or her most recent employing unit or any interested party which the commissioner by regulation prescribes, may file an appeal from any determination or redetermination with the appeal tribunal within thirty days after the date of notification or mailing, whichever is earlier, of such determination or redetermination to his or her last known address: PROVIDED, That in the event an appeal with respect to any determination is pending as of the date when a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination. Any appeal from a determination of denial of benefits which is effective for an indefinite period shall be deemed to be an appeal as to all weeks subsequent to the effective date of the denial for which benefits have already been denied. If no appeal is taken from any determination, or redetermination, within the time allowed by the provisions of this section for appeal therefrom, said determination, or redetermination, as the case may be, shall be conclusively deemed to be correct except as hereinbefore provided in respect to reconsideration by the commissioner of any determination. [1987 c 61 § 1; 1951 c 215 § 10; 1945 c 35 § 118; Rem. Supp. 1945 § 9998-256. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

50.32.025 Mailed appeal or petition. The appeal or petition from a determination, redetermination, order and notice of assessment, appeals decision, or commissioner's decision which is (1) transmitted through the United States mail, shall be deemed filed and received by the addressee on the date shown by the United States postal service cancellation mark stamped by the United States postal service employees upon the envelope or other appropriate wrapper containing it or, (2) mailed but not received by the addressee, or where received and the United States postal service cancellation mark is illegible, erroneous or omitted, shall be deemed filed and received on the date it was mailed, if the sender establishes by competent evidence that the appeal or petition was deposited in the United States mail on or before the date due for filing: PROVIDED, That in the case of a metered cancellation mark by the sender and a United States postal service cancellation mark on the same envelope or other wrapper, the latter shall control: PROVIDED, FURTHER, That in any of the above circumstances, the appeal or petition must be properly addressed and have sufficient postage affixed thereto. [1975 1st ex.s. c 228 § 4; 1969 ex.s. c 200 § 1.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.030 Appeal from order and notice of assessment. When an order and notice of assessment has been served upon or mailed to a delinquent employer, as heretofore provided, such employer may within thirty days thereafter file a petition in writing with the appeal tribunal, stating that such assessment is unjust or incorrect and requesting a hearing thereon. Such petition shall set forth the reasons why the assessment is objected to and the amount of contributions, if any, which said employer admits to be due the employment security department. If no such petition be filed with the appeal tribunal within thirty days, the assessment shall be

conclusively deemed to be just and correct: PROVIDED, That in such cases, and in cases where payment of contributions, interest, or penalties has been made pursuant to a jeopardy assessment, the commissioner may properly entertain a subsequent application for refund. The filing of a petition on a disputed assessment with the appeal tribunal shall stay the distraint and sale proceeding provided for in this title until a final decision thereon shall have been made, but the filing of such petition shall not affect the right of the commissioner to perfect a lien, as provided by this title, upon the property of the employer. The filing of a petition on a disputed assessment shall stay the accrual of interest and penalties on the disputed contributions until a final decision shall have been made thereon.

Within thirty days after notice of denial of refund or adjustment has been mailed or delivered (whichever is the earlier) to an employer, the employer may file a petition in writing with the appeal tribunal for a hearing thereon: PROVIDED, That this right shall not apply in those cases in which assessments have been appealed from and have become final. The petitioner shall set forth the reasons why such hearing should be granted and the amount which the petitioner believes should be adjusted or refunded. If no such petition be filed within said thirty days, the determination of the commissioner as stated in said notice shall be final. [1987 c 111 § 6; 1987 c 61 § 2; 1983 1st ex.s. c 23 § 20; 1959 c 266 § 7; 1949 c 214 § 23; 1945 c 35 § 119; Rem. Supp. 1949 § 9998-257.]

Reviser's note: This section was amended by 1987 c 61 § 2 and by 1987 c 111 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

50.32.040 Benefit appeal procedure. In any proceeding before an appeal tribunal involving a dispute of an individual's initial determination, all matters covered by such initial determination shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal.

In any proceeding before an appeal tribunal involving a dispute of an individual's claim for waiting period credit or claim for benefits, all matters and provisions of this title relating to the individual's right to receive such credit or benefits for the period in question, including but not limited to the question and nature of the claimant's availability for work within the meaning of RCW 50.20.010(1)(c) and 50.20.080, shall be deemed to be in issue irrespective of the particular ground or grounds set forth in the notice of appeal in single claimant cases. The claimant's availability for work shall be determined apart from all other matters.

In any proceeding before an appeal tribunal involving an individual's right to benefits, all parties shall be afforded an opportunity for hearing after not less than seven days' notice in accordance with RCW 34.05.434.

In any proceeding involving an appeal relating to benefit determinations or benefit claims, the appeal tribunal, after affording the parties reasonable opportunity for fair hearing,

shall render its decision affirming, modifying, or setting aside the determination or decisions of the unemployment compensation division. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor, which shall be deemed to be the final decision on the initial determination or the claim for waiting period credit or the claim for benefits unless, within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [2003 2nd sp.s. c 4 § 32; 1989 c 175 § 117; 1987 c 61 § 3; 1981 c 35 § 10; 1973 c 73 § 8; 1945 c 35 § 120; Rem. Supp. 1945 § 9998-258. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

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

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.32.050 Contributions appeal procedure. In any proceeding before an appeal tribunal involving an appeal from a disputed order and notice of assessment (for contributions, interest, or penalties due) a disputed denial of refund or adjustment (of contributions, interest, or penalties paid) or a disputed experience rating credit, the appeal tribunal, after affording the parties a reasonable opportunity for hearing, shall affirm, modify or set aside the notice of assessment, denial of refund or experience rating credit. The parties shall be duly notified of such appeal tribunal's decision together with its reasons therefor which shall be deemed to be the final decision on the order and notice of assessment, denial of refund or experience rating credit, as the case may be, unless within thirty days after the date of notification or mailing, whichever is the earlier, of such decision, further appeal is perfected pursuant to the provisions of this title relating to review by the commissioner. [1987 c 61 § 4; 1983 1st ex.s. c 23 § 21; 1949 c 214 § 24; 1945 c 35 § 121; Rem. Supp. 1949 § 9998-259.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Review by commissioner: RCW 50.32.070.

50.32.060 Conduct of appeal hearings. The manner in which any dispute shall be presented to the appeal tribunal, and the conduct of hearings and appeals, shall be in accordance with regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all appeal tribunal proceedings. All testimony at any appeal tribunal hearing shall be recorded, but need not be transcribed unless further appeal is taken. [1945 c 35 § 122; Rem. Supp. 1945 § 9998-260.]

50.32.070 Petition for review by commissioner. Within thirty days from the date of notification or mailing, whichever is the earlier, of any decision of an appeal tribunal, the commissioner on his or her own order may, or upon petition of any interested party shall, take jurisdiction of the pro-

ceedings for the purpose of review thereof. Appeal from any decision of an appeal tribunal may be perfected so as to prevent finality of such decision if, within thirty days from the date of mailing the appeal tribunal decision, or notification thereof, whichever is the earlier, a petition in writing for review by the commissioner is received by the commissioner or by such representative of the commissioner as the commissioner by regulation shall prescribe. The commissioner may also prevent finality of any decision of an appeal tribunal and take jurisdiction of the proceedings for his or her review thereof by entering an order so providing on his or her own motion and mailing a copy thereof to the interested parties within the same period allowed herein for receipt of a petition for review. The time limit provided herein for the commissioner's assumption of jurisdiction on his or her own motion for review shall be deemed to be jurisdictional. [1987 c 61 § 5; 1975 1st ex.s. c 228 § 5; 1947 c 215 § 31; 1945 c 35 § 123; Rem. Supp. 1947 § 9998-261.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.075 Waiver of time for appeal or petition. For good cause shown the appeal tribunal or the commissioner may waive the time limitations for administrative appeals or petitions set forth in the provisions of this title. [1975 1st ex.s. c 228 § 16.]

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

50.32.080 Commissioner's review procedure. After having acquired jurisdiction for review, the commissioner shall review the proceedings in question. Prior to rendering his decision, the commissioner may order the taking of additional evidence by an appeal tribunal to be made a part of the record in the case. Upon the basis of evidence submitted to the appeal tribunal and such additional evidence as the commissioner may order to be taken, the commissioner shall render his decision in writing affirming, modifying, or setting aside the decision of the appeal tribunal. Alternatively, the commissioner may order further proceedings to be held before the appeal tribunal, upon completion of which the appeal tribunal shall issue a decision in writing affirming, modifying, or setting aside its previous decision. The new decision may be appealed under RCW 50.32.070. The commissioner shall mail his decision to the interested parties at their last known addresses. [1982 1st ex.s. c 18 § 8; 1945 c 35 § 124; Rem. Supp. 1945 § 9998-262.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.090 Finality of commissioner's decision. Any decision of the commissioner involving a review of an appeal tribunal decision, in the absence of a petition therefrom as provided in chapter 34.05 RCW, becomes final thirty days after service. The commissioner shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by the attorney general. [1989 c 175 § 118; 1973 1st ex.s. c 158 § 15; 1945 c 35 § 125; Rem. Supp. 1945 § 9998-263.]

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

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Procedure for judicial review: RCW 50.32.120.

50.32.095 Commissioner's decisions as precedents—Publication. The commissioner may designate certain commissioner's decisions as precedents. The commissioner's decisions designated as precedents shall be published and made available to the public by the department. [1982 1st ex.s. c 18 § 9.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.32.097 Applicability of finding, determination, etc., to other action. Any finding, determination, conclusion, declaration, or final order made by the commissioner, or his or her representative or delegate, or by an appeal tribunal, administrative law judge, reviewing officer, or other agent of the department for the purposes of Title 50 RCW, shall not be conclusive, nor binding, nor admissible as evidence in any separate action outside the scope of Title 50 RCW between an individual and the individual's present or prior employer before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts or was reviewed pursuant to RCW 50.32.120. [1988 c 28 § 1.]

50.32.100 Costs. In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: PROVIDED, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe. [1945 c 35 § 126; Rem. Supp. 1945 § 9998-264.]

Costs and attorneys' fees: Chapter 4.84 RCW.

50.32.110 Fees for administrative hearings. No individual shall be charged fees of any kind in any proceeding involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding. [1945 c 35 § 127; Rem. Supp. 1945 § 9998-265.]

50.32.120 Procedure for judicial review. Judicial review of a decision of the commissioner involving the review of an appeals tribunal decision may be had only in

accordance with the procedural requirements of RCW 34.05.570. [1973 1st ex.s. c 158 § 16; 1971 c 81 § 119; 1945 c 35 § 128; Rem. Supp. 1945 § 9998-266. Prior: 1943 c 127 § 4; 1941 c 253 § 4; 1939 c 214 § 4; 1937 c 162 § 6.]

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

Appeals: Chapter 4.88 RCW.

50.32.130 Undertakings on seeking judicial review.

No bond of any kind shall be required of any individual seeking judicial review from a commissioner's decision affecting such individual's application for initial determination or claim for waiting period credit or for benefits.

No commissioner's decision shall be stayed by a petition for judicial review unless the petitioning employer shall first deposit an undertaking in an amount theretofore deemed by the commissioner to be due, if any, from the petitioning employer, together with interest thereon, if any, with the commissioner or in the registry of the court: PROVIDED, HOWEVER, That this section shall not be deemed to authorize a stay in the payment of benefits to an individual when such individual has been held entitled thereto by a decision of the commissioner which decision either affirms, reverses, or modifies a decision of an appeals tribunal. [1973 1st ex.s. c 158 § 17; 1971 c 81 § 120; 1945 c 35 § 129; Rem. Supp. 1945 § 9998-267. Prior: 1943 c 127 § 4; 1941 c 253 § 4.]

Rules of court: Cf. Title 8 RAP, RAP 18.22.

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.140 Interstate petitions to Thurston county.

RCW 34.05.514 to the contrary notwithstanding, petitions to the superior court from decisions of the commissioner dealing with the applications or claims relating to benefit payments which were filed outside of this state with an authorized representative of the commissioner shall be filed with the superior court of Thurston county which shall have the original venue of such appeals. [1989 c 175 § 119; 1973 1st ex.s. c 158 § 18; 1945 c 35 § 130; Rem. Supp. 1945 § 9998-268.]

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

Effective date—1973 1st ex.s. c 158: See note following RCW 50.08.020.

50.32.150 Jurisdiction of court. In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

If the court shall determine that the commissioner has acted within his power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the commissioner with an order directing him to proceed in accordance with the findings of the court.

Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for in said order and notice of assessment, and said judgment shall have and be given the same effect as if entered pursuant to civil action instituted in

said court. [1945 c 35 § 131; Rem. Supp. 1945 § 9998-269. Prior: 1941 c 253 § 4.]

Judgments

entry of: Chapter 4.64 RCW.

generally: Chapter 4.56 RCW.

50.32.160 Attorneys' fees. It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply. [1988 c 202 § 48; 1971 c 81 § 121; 1945 c 35 § 132; Rem. Supp. 1945 § 9998-270. Prior: 1941 c 253 § 4.]

Severability—1988 c 202: See note following RCW 2.24.050.

Attorneys' fees: Chapter 4.84 RCW.

Costs: RCW 50.32.100.

Costs on appeal: Chapter 4.84 RCW.

50.32.170 Decision final by agreement. No appeal from the decision of an appeal tribunal, or of the commissioner, or of any court in any proceedings provided by this title may be taken subsequent to the filing with the appeal tribunal, commissioner, or court which rendered the decision, within the time allowed for appeal, of an agreement in writing approved by all interested parties to the proceedings, providing that no appeal will be taken from such decision. The provisions of this section shall be jurisdictional. [1945 c 35 § 133; Rem. Supp. 1945 § 9998-271.]

50.32.180 Remedies of title exclusive. The remedies provided in this title for determining the justness or correctness of assessments, refunds, adjustments, or claims shall be exclusive and no court shall entertain any action to enjoin an assessment or require a refund or adjustment except in accordance with the provisions of this title. Matters which may be determined by the procedures set out in this title shall not be the subject of any declaratory judgment. [1945 c 35 § 134; Rem. Supp. 1945 § 9998-272.]

50.32.190 Costs, charges, and expenses. Whenever any appeal is taken from any decision of the commissioner to any court, all expenses and costs incurred therein by said commissioner, including court reporter costs and attorneys' fees and all costs taxed against such commissioner, shall be paid out of the unemployment compensation administration fund.

Neither the commissioner nor the state shall be charged any fee for any service rendered in connection with litigation

under the unemployment compensation act by the clerk of any court. [1945 c 35 § 135; Rem. Supp. 1945 § 9998-273.]

Chapter 50.36 RCW PENALTIES

Sections

50.36.010	Violations generally.
50.36.020	Violations by employers.
50.36.030	Concealing cause of discharge.

50.36.010 Violations generally. (1) It shall be unlawful for any person to knowingly give any false information or withhold any material information required under the provisions of this title.

(2) Any person who violates any of the provisions of this title which violation is declared to be unlawful, and for which no contrary provision is made, is guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days.

(3) Any person who in connection with any compromise or offer of compromise willfully conceals from any officer or employee of the state any property belonging to an employing unit which is liable for contributions, interest, or penalties, or receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement relating to the financial condition of the employing unit which is liable for contributions, is guilty of a gross misdemeanor and shall upon conviction thereof be fined not more than five thousand dollars or be imprisoned for not more than one year, or both.

(4) The penalty prescribed in this section shall not be deemed exclusive, but any act which shall constitute a crime under any law of this state may be the basis of prosecution under such law notwithstanding that it may also be the basis for prosecution under this section. [2003 c 53 § 279; 1953 ex.s. c 8 § 22; 1945 c 35 § 180; Rem. Supp. 1945 § 9998-319. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

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

50.36.020 Violations by employers. (1) Any person required under this title to collect, account for and pay over any contributions imposed by this title, who willfully fails to collect or truthfully account for and pay over such contributions, and any person who willfully attempts in any manner to evade or defeat any contributions imposed by this title or the payment thereof, is guilty of a gross misdemeanor and shall, in addition to other penalties provided by law, upon conviction thereof, be fined not more than five thousand dollars, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(2) The term "person" as used in this section includes an officer or individual in the employment of a corporation, or a member or individual in the employment of a partnership, who as such officer, individual or member is under a duty to perform the act in respect of which the violation occurs. A corporation may likewise be prosecuted under this section and may be subjected to fine and payment of costs of prosecution as prescribed herein for a person. [2003 c 53 § 280;

1953 ex.s. c 8 § 23; 1945 c 35 § 181; Rem. Supp. 1945 § 9998-320. Prior: 1943 c 127 § 12; 1941 c 253 § 13.]

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

Crimes and punishment: Titles 9, 9A RCW.

50.36.030 Concealing cause of discharge. Employing units or agents thereof supplying information to the employment security department pertaining to the cause of a benefit claimant's separation from work, which cause stated to the department is contrary to that given the benefit claimant by such employing unit or agent thereof at the time of his separation from the employing unit's employ, shall be guilty of a misdemeanor and shall be punished by a fine of not less than twenty dollars nor more than two hundred and fifty dollars or by imprisonment in the county jail for not more than ninety days. [1951 c 265 § 13.]

Severability—1951 c 265: See note following RCW 50.98.070.

Chapter 50.38 RCW LABOR MARKET INFORMATION AND ECONOMIC ANALYSIS

(Formerly: Occupational information service—Forecast)

Sections

50.38.010	Intent.
50.38.015	Definitions.
50.38.020	Occupational information responsibility—Forecast, criteria.
50.38.030	Occupational forecast—Agency consultation.
50.38.040	Annual report.
50.38.050	Department—Duties.
50.38.060	Department—Powers.
50.38.065	Moneys for nonfunded labor market information costs—Disposition.
50.38.900	Effective date—1982 c 43.
50.38.901	Conflict with federal requirements—1993 c 62.
50.38.902	Effective date—1993 c 62.

50.38.010 Intent. It is the intent of this chapter to establish the duties and authority of the employment security department relating to labor market information and economic analysis. State and federal law mandate the use of labor market information in the planning, coordinating, management, implementation, and evaluation of certain programs. Often this labor market information is also needed in studies for the legislature and state programs, like those dealing with growth management, community diversification, export assistance, prison industries, energy, agriculture, social services, and environment. Employment, training, education, job creation, and other programs are often mandated without adequate federal or state funding for the needed labor market information. Clarification of the department's duties and authority will assist users of state and local labor market information products and services to have realistic expectations and provide the department authority to recover actual costs for labor market information products and services developed in response to individual requests. [1993 c 62 § 1; 1982 c 43 § 1.]

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

(1) "Labor market information" means the body of information generated from measurement and evaluation of the socioeconomic factors and variables influencing the employment process in the state and specific labor market areas. These socioeconomic factors and variables affect labor demand and supply relationships and include:

(a) Labor force information, which includes but is not limited to employment, unemployment, labor force participation, labor turnover and mobility, average hours and earnings, and changes and characteristics of the population and labor force within specific labor market areas and the state;

(b) Occupational information, which includes but is not limited to occupational supply and demand estimates and projections, characteristics of occupations, wage levels, job duties, training and education requirements, conditions of employment, unionization, retirement practices, and training opportunities;

(c) Economic information, which includes but is not limited to number of business starts and stops by industry and labor market area, information on employment growth and decline by industry and labor market area, employer establishment data, and number of labor-management disputes by industry and labor market area; and

(d) Program information, which includes but is not limited to program participant or student information gathered in cooperation with other state and local agencies along with related labor market information to evaluate the effectiveness, efficiency, and impact of state and local employment, training, education, and job creation efforts in support of planning, management, implementation, and evaluation.

(2) "Labor market area" means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such areas shall be identified in accordance with criteria used by the bureau of labor statistics of the department of labor in defining such areas or similar criteria established by the governor. The area generally takes the name of its community. The boundaries depend primarily on economic and geographic factors. Washington state is divided into labor market areas, which usually include a county or a group of contiguous counties.

(3) "Labor market analysis" means the measurement and evaluation of economic forces as they relate to the employment process in the local labor market area. Variables affecting labor market relationships include, but are not limited to, such factors as labor force changes and characteristics, population changes and characteristics, industrial structure and development, technological developments, shifts in consumer demand, volume and extent of unionization and trade disputes, recruitment practices, wage levels, conditions of employment, and training opportunities.

(4) "Public records" has the same meaning as set forth in RCW 42.17.020.

(5) "Department" means the employment security department. [1993 c 62 § 2.]

50.38.020 Occupational information responsibility—Forecast, criteria. The Washington state employment security department shall be the responsible state entity for the development, administration, and dissemination of Washing-

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ton state occupational information, including the state occupational forecast. The generation of the forecast is subject to the following criteria:

(1) The occupational forecast shall be consistent with the state economic forecast;

(2) Standardized occupational classification codes shall be adopted, to be cross-referenced with other generally accepted occupational codes. [1982 c 43 § 2.]

50.38.030 Occupational forecast—Agency consultation. The employment security department shall consult with the following agencies prior to the issuance of the state occupational forecast:

(1) Office of financial management;

(2) Department of community, trade, and economic development;

(3) Department of labor and industries;

(4) State board for community and technical colleges;

(5) Superintendent of public instruction;

(6) Department of social and health services;

(7) Workforce training and education coordinating board; and

(8) Other state and local agencies as deemed appropriate by the commissioner of the employment security department.

These agencies shall cooperate with the employment security department, submitting information relevant to the generation of occupational forecasts. [1995 c 399 § 142; 1993 c 62 § 3; 1985 c 466 § 66; 1985 c 6 § 18; 1982 c 43 § 3.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

50.38.040 Annual report. The department shall submit an annual report to the legislature and the governor that includes, but is not limited to:

(1) Identification and analysis of industries in the United States, Washington state, and local labor markets with high levels of seasonal, cyclical, and structural unemployment;

(2) The industries and local labor markets with plant closures and mass lay-offs and the number of affected workers;

(3) An analysis of the major causes of plant closures and mass lay-offs;

(4) The number of dislocated workers and persons who have exhausted their unemployment benefits, classified by industry, occupation, and local labor markets;

(5) The experience of the unemployed in their efforts to become reemployed. This should include research conducted on the continuous wage and benefit history;

(6) Five-year industry and occupational employment projections; and

(7) Annual and hourly average wage rates by industry and occupation. [1993 c 62 § 4.]

50.38.050 Department—Duties. The department shall have the following duties:

(1) Oversight and management of a statewide comprehensive labor market and occupational supply and demand information system, including development of a five-year employment forecast for state and labor market areas;

(2) Produce local labor market information packages for the state's counties, including special studies and job impact

analyses in support of state and local employment, training, education, and job creation programs, especially activities that prevent job loss, reduce unemployment, and create jobs;

(3) Coordinate with the office of financial management and the office of the forecast council to improve employment estimates by enhancing data on corporate officers, improving business establishment listings, expanding sample for employment estimates, and developing business entry/exit analysis relevant to the generation of occupational and economic forecasts; and

(4) In cooperation with the office of financial management, produce long-term industry and occupational employment forecasts. These forecasts shall be consistent with the official economic and revenue forecast council biennial economic and revenue forecasts. [1993 c 62 § 5.]

50.38.060 Department—Powers. To implement this chapter, the department has authority to:

(1) Establish mechanisms to recover actual costs incurred in producing and providing otherwise nonfunded labor market information.

(a) If the commissioner, in his or her discretion, determines that providing labor market information is in the public interest, the requested information may be provided at reduced costs.

(b) The department shall provide access to labor market information products that constitute public records available for public inspection and copying under chapter 42.56 RCW, at fees not exceeding those allowed under RCW 42.56.120 and consistent with the department's fee schedule;

(2) Receive federal set aside funds from several federal programs that are authorized to fund state and local labor market information and are required to use such information in support of their programs;

(3) Enter into agreements with other public agencies for statistical analysis, research, or evaluation studies of local, state, and federally funded employment, training, education, and job creation programs to increase the efficiency or quality of service provided to the public consistent with chapter 50.13 RCW;

(4) Coordinate with other state agencies to study ways to standardize federal and state multi-agency administrative records, such as unemployment insurance information and other information to produce employment, training, education, and economic analysis needed to improve labor market information products and services; and

(5) Produce agricultural labor market information and economic analysis needed to facilitate the efficient and effective matching of the local supply and demand of agricultural labor critical to an effective agricultural labor exchange in Washington state. Information collected for an agricultural labor market information effort will be coordinated with other federal, state, and local statistical agencies to minimize reporting burden through cooperative data collection efforts for statistical analysis, research, or studies. [2005 c 274 § 324; 1993 c 62 § 6.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

50.38.065 Moneys for nonfunded labor market information costs—Disposition. Moneys received under RCW

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50.38.060(1) to cover the actual costs of nonfunded labor market information shall be deposited in the unemployment compensation administration fund and expenditures shall be authorized only by appropriation. [1993 c 62 § 7.]

50.38.900 Effective date—1982 c 43. This act shall take effect July 1, 1982. [1982 c 43 § 5.]

50.38.901 Conflict with federal requirements—1993 c 62. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1993 c 62 § 10.]

50.38.902 Effective date—1993 c 62. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 62 § 13.]

Chapter 50.40 RCW

MISCELLANEOUS PROVISIONS

Sections

50.40.010	Waiver of rights void.
50.40.020	Exemption of benefits.
50.40.040	No vested rights.
50.40.050	Child support obligations.
50.40.065	"Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules.
50.40.066	Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account.

50.40.010 Waiver of rights void. (1) Any agreement by an individual to waive, release, or commute his or her rights to benefits or any other rights under this title shall be void.

(2) Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, shall be void.

(3) No employer shall directly or indirectly make or require or accept any deduction from remuneration for services to finance the employer's contributions required from him or her, or require or accept any waiver of any right hereunder by any individual in his or her employ.

(4) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 281; 1945 c 35 § 182; Rem. Supp. 1945 § 9998-321. Prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15.]

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

50.40.020 Exemption of benefits. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this title shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debts, except as provided in RCW 50.40.050. Benefits received by any individual, so long as they are not commingled with other funds of the recipient, shall be exempt from any remedy whatsoever for collection of all debts except debts incurred for necessities furnished such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. [1982 1st ex.s. c 18 § 10. Prior: 1982 c 201 § 7; 1945 c 35 § 183; Rem. Supp. 1945 § 9998-322; prior: 1943 c 127 § 11; 1941 c 253 § 12; 1939 c 214 § 13; 1937 c 162 § 15. Formerly codified in RCW 50.40.020, part and 50.40.030, part.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.40.040 No vested rights. The legislature reserves the right to amend or repeal all or any part of this title at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this title or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this title at any time. [1945 c 35 § 187; no RRS. Prior: 1941 c 253 § 1; 1939 c 214 § 1; 1937 c 162 § 3.]

50.40.050 Child support obligations. (1) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations as defined under subsection (7) of this section. If the individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the state or local child support enforcement agency enforcing those obligations that the individual has been determined to be eligible for unemployment compensation.

(2) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes child support obligations as defined under subsection (7) of this section:

(a) The amount specified by the individual to the commissioner to be deducted and withheld under this subsection, if neither (b) nor (c) of this subsection is applicable;

(b) The amount (if any) determined pursuant to an agreement submitted to the commissioner under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless (c) of this subsection is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

(3) Any amount deducted and withheld under subsection (2) of this section shall be paid by the commissioner to the appropriate state or local child support enforcement agency.

(4) Any amount deducted and withheld under subsection (2) of this section shall be treated for all purposes as if it were

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paid to the individual as unemployment compensation and paid by that individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

(5) For the purposes of this section, "unemployment compensation" means any compensation payable under this chapter including amounts payable by the commissioner under an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(7) "Child support obligations" as used in this section means only those obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under part D of Title IV of the Social Security Act.

(8) "State or local child support enforcement agency" as used in this section means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subsection (7) of this section. [1982 1st ex.s. c 18 § 11. Prior: 1982 c 201 § 3.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

50.40.065 "Vendors in good standing"—Determination by governor's committee on disability issues and employment—Advisory subcommittee—Rules. (Expires December 31, 2009.) (1) No less frequently than once each year, the governor's committee on disability issues and employment shall determine whether entities seeking to qualify as vendors in good standing, pursuant to this section and RCW 43.19.531, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages.

(2) In making the determination provided for in subsection (1) of this section, the governor's committee on disability issues and employment shall appoint and, except in the case of malfeasance or misfeasance, shall rely upon the conclusions of an advisory subcommittee consisting of: (a) Three members chosen from among those current or former clients of a community rehabilitation program who have nominated themselves, at least one of whom must be a person with a developmental disability; (b) one member chosen from among those guardians, parents, or other relatives of a current client or employee of a community rehabilitation program who have nominated themselves; (c) one member chosen from among those who have been nominated by a community rehabilitation program; (d) one member chosen from among those owners of a business owned and operated by persons with disabilities who have nominated themselves; (e) one member who is designated by the developmental disabilities council; (f) one member who is a member of and selected by the governor's committee on disability issues and employment; (g) one member who is designated by the secretary of

the department of social and health services; and (h) one member who is designated by the director of the department of services for the blind.

(3) The advisory subcommittee appointed by the governor's committee on disability issues and employment shall conclude that entities seeking to qualify, pursuant to this section and RCW 43.19.531, as vendors in good standing, have achieved, or continue to work towards, the goal of enhancing opportunities for persons of disabilities to maximize their employment and career advancement, and increase the number employed and their wages if, and only if, the entity provides reasonably conclusive evidence that, during the twelve-month period immediately preceding the entity's application, at least one-half of the following measurement categories applicable to the entity have been either achieved, pursuant to rules established under subsection (4) of this section, or have been improved as compared to the entity's condition with respect to that measurement category one year ago:

(a) The number of people with disabilities in the entity's total workforce who are working in integrated settings;

(b) The percentage of the people with disabilities in the entity's total workforce who are working in integrated settings;

(c) The number of people with disabilities in the entity's total workforce who are working in individual supported employment settings;

(d) The percentage of the people with disabilities in the entity's total workforce who are working in individual supported employment settings;

(e) The number of people with disabilities in the entity's total workforce who, during the last twelve months, have transitioned to less restrictive employment settings either within the entity or with other community employers;

(f) The number of people with disabilities in the entity's total workforce who are earning at least the state minimum wage;

(g) The percentage of the people with disabilities in the entity's total workforce who are earning at least the state minimum wage;

(h) The number of people with disabilities serving in supervisory capacities within the entity;

(i) The percentage of supervisory positions within the entity that are occupied by people with disabilities;

(j) The number of people with disabilities serving in an ownership capacity or on the governing board of the entity;

(k) The ratio of the total amount paid by the entity in wages, salaries, and related employment benefits to people with disabilities, as compared to the amount paid by the entity in wages, salaries, and related employment benefits paid by the entity to persons without disabilities during the previous year; and

(l) The percentage of people with disabilities in the entity's total workforce for whom the entity has developed a reasonable, achievable, and written career plan.

(4) The commissioner shall consult with the advisory subcommittee established in subsection (2) of this section to develop and adopt rules establishing the measurement at which it is deemed that the measurement categories identified in subsection (3)(b), (d), (e), (g), (h), (j), (k), and (l) of this section have been achieved.

(5) This section expires December 31, 2009. [2005 c 204 § 6; 2003 c 136 § 7.]

50.40.066 Rules to implement RCW 50.40.065—Fees authorized—Vendors in good standing account. (Expires December 31, 2009.) (1) The commissioner is authorized to adopt rules to implement RCW 50.40.065, including but not limited to authority to establish (a) a nonrefundable application fee of not more than five hundred dollars to be paid by each entity seeking to establish or renew qualification as a vendor in good standing, pursuant to RCW 43.19.531 and 50.40.065; (b) a fee of not more than two percent of the face amount of any contract awarded under chapter 136, Laws of 2003; or (c) both fees identified in (a) and (b) of this subsection.

(2) The fee or fees established pursuant to subsection (1) of this section must set a level of revenue sufficient to recover costs incurred by the department of general administration in fulfilling the duties identified in RCW 43.19.531 and the governor's committee on disability issues and employment in fulfilling the duties identified in RCW 50.40.065.

(3) The vendors in good standing account is created in the custody of the state treasurer. All receipts from the fee or fees established pursuant to subsection (1) of this section must be deposited into the account. Expenditures from the account may be used only for the purpose described in subsection (2) of this section. Expenditures from the account may be authorized only upon the approval of both the director of the department of general administration and the commissioner, or their respective designees. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) This section expires December 31, 2009, and any unencumbered funds remaining in the vendors in good standing account on that date shall revert to the general fund. [2005 c 204 § 7; 2003 c 136 § 8.]

Chapter 50.44 RCW

SPECIAL COVERAGE PROVISIONS

Sections	
50.44.010	Religious, charitable, educational, or other nonprofit organizations—Exemption—Payments.
50.44.020	Instrumentalities of this state, other states, political subdivisions.
50.44.030	Political subdivisions, instrumentalities of this state and other state.
50.44.035	Local government tax.
50.44.037	"Institution of higher education" defined.
50.44.040	Services excluded under "employment" for certain purposes.
50.44.045	Religious organizations—Exemption—Notification to employee.
50.44.050	Benefits payable, terms and conditions—"Academic year" defined.
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Coverage of corporate officers: RCW 50.04.165.

50.44.010 Religious, charitable, educational, or other nonprofit organizations—Exemption—Payments. Services performed subsequent to December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization which is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act shall be deemed services performed in employment unless such service is exempted under RCW 50.44.040.

Such organization shall make payments to the unemployment compensation fund based on such services in accordance with the provisions of RCW 50.44.060. [1971 c 3 § 18.]

50.44.020 Instrumentalities of this state, other states, political subdivisions. Commencing with benefit years beginning on or after January 28, 1971, services performed subsequent to September 30, 1969 in the employ of this state or any of its wholly owned instrumentalities or jointly owned instrumentalities of this state and another state or this state and one or more of its political subdivisions shall be deemed services in employment unless such services are excluded from the term employment by RCW 50.44.040.

The state shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (2) and (3) of RCW 50.44.060: PROVIDED, HOWEVER, That for weeks of unemployment beginning after January 1, 1979, the state shall pay in addition to the full amount of regular and additional benefits so attributable the full amount of extended benefits so attributable: PROVIDED, FURTHER, That no payment will be required from the state until the expiration of the twelve-month period following the end of the biennium in which the benefits attributable to such employment were paid. The amount of this payment shall include an amount equal to the amount of interest that would have been realized for the benefit of the unemployment compensation trust fund had such payments been received within thirty days after the day of the quarterly billing provided for in RCW 50.44.060(2)(a). [1977 ex.s. c 292 § 13; 1971 c 3 § 19.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.030 Political subdivisions, instrumentalities of this state and other state. (1) All services performed for any political subdivision or instrumentality of one or more political subdivisions of this state and any other state after December 31, 1977, will be deemed to be services in employment to the extent coverage is not exempted under RCW 50.44.040.

(2) All such units of government shall file, before December 15, 1977, a written registration with the commissioner of the employment security department. Such registration shall specify the manner in which the unit of government will finance the payment of benefits. The elections available to counties, cities and towns are the local government tax, provided for in RCW 50.44.035, or payment in lieu of contributions, as described in RCW 50.44.060. The elections available to other units of government are the contributions plan in chapters 50.24 and 50.29 RCW, or payments in lieu of contri-

butions, described in RCW 50.44.060. Under any election the governmental unit will be charged the full amount of regular, additional, and extended benefits attributable to its account.

(3) A unit of government may switch from its current method of financing the payment of benefits by electing any other method which it would be authorized to select pursuant to the terms of subsection (2) of this section. Notification of such election must be filed with the commissioner no less than thirty days prior to the taxable year for which the new method of financing the payment of benefits is to be effective. An election under this section shall remain in effect for no less than two taxable years.

(4) Any political subdivision or instrumentality of more than one political subdivision of this state is hereby authorized to enter into agreements with other political subdivisions or instrumentalities of more than one political subdivision of this state to form pool accounts for the purpose of making payments in lieu of contributions. These accounts shall be formed and administered in accordance with applicable regulations. The formation of such accounts shall not relieve the governmental unit of the responsibility for making required payments in the event that the pool account does not make the payments. [1981 c 35 § 11; 1977 ex.s. c 292 § 14; 1972 ex.s. c 35 § 2; 1971 c 3 § 20.]

Severability—1981 c 35: See note following RCW 50.22.030.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.035 Local government tax. (1) Any county, city, or town not electing to make payments in lieu of contributions shall pay a "local government tax." Taxes paid under this section shall be paid into an administratively identifiable account in the unemployment compensation fund. This account shall be self-sustaining. For calendar years 1978 and 1979 all such employers shall pay local government tax at the rate of one and one-quarter percent of all remuneration paid by the governmental unit for services in its employment. For each year after 1979 each such employer's rate of tax shall be determined in accordance with this section: PROVIDED, HOWEVER, That whenever it appears to the commissioner that the anticipated benefit payments from the account would jeopardize reasonable reserves in this identifiable account the commissioner may at the commencement of any calendar quarter, impose an emergency excess tax of not more than one percent of remuneration paid by the participating governmental units which "excess tax" shall be paid in addition to the applicable rate computed pursuant to this section until the calendar year following the next September 1st.

(2) A reserve account shall be established for each such employer.

(a) The "reserve account" of each such employer shall be credited with tax amounts paid and shall be charged with benefit amounts charged in accordance with the formula set forth in RCW 50.44.060 as now or hereafter amended except that such employer's account shall be charged for the full amount of extended benefits so attributable for weeks of unemployment commencing after January 1, 1979. Such credits and charges shall be cumulative from January 1, 1978.

(b) After the cutoff date, the "reserve ratio" of each such employer shall be computed by dividing its reserve account balance as of the computation date by the total remuneration

paid during the preceding calendar year for services in its employment. This division shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(3) A "benefit cost ratio" for each such employer shall be computed by dividing its total benefit charges during the thirty-six months ending on June 30th by its total remuneration during the three preceding calendar years: PROVIDED, That after August 31st in 1979 each employer's total benefit charges for the twelve months ending on June 30th shall be divided by its total remuneration paid in the last three quarters of calendar year 1978; and after August 31st in 1980 each employer's total benefit charges for the twenty-four months ending June 30th shall be divided by its total remuneration paid in the last three calendar quarters of 1978 and the four calendar quarters of 1979. Such computations shall be carried to four decimal places, with the remaining fraction, if any, disregarded.

(4) For each such employer its benefit cost ratio shall be subtracted from its reserve ratio. One-third of the resulting amount shall be subtracted from its benefit cost ratio. The resulting figure, expressed as a percentage and rounded to the nearest tenth of one percent, shall become its local government tax rate for the following rate year. For the rate year 1980 no tax rate shall be less than 0.6 percent nor more than 2.2 percent. For 1981 no tax rate shall be less than 0.4 percent nor more than 2.6 percent. For years after 1981 no tax rate shall be less than 0.2 percent or more than 3.0 percent. No individual rate shall be increased any more than 1.0 percent from one rate year to the next.

(5) Any county, city, or town electing participation under this section at any time after December 15, 1977, shall be assigned a tax rate of one and one-quarter percent of total remuneration for the first eight quarters of the participation.

(6) "Local government tax" shall be deemed to be "contributions" to the extent that such usage is consistent with the purposes of this title. Such construction shall include but not be limited to those portions of this title and the rules enacted pursuant thereto dealing with assessments, interest, penalties, liens, collection procedures and remedies, administrative and judicial review, and the imposition of administrative, civil, and criminal sanctions. [1998 c 245 § 100; 1983 1st ex.s. c 23 § 22; 1977 ex.s. c 292 § 15.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.037 "Institution of higher education" defined.

For the purposes of this chapter, the term "institution of higher education" means an educational institution in this state which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized within this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing subsections, all colleges and universities in this state are "institutions of higher education". [1977 ex.s. c 292 § 16.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.040 Services excluded under "employment" for certain purposes. The term "employment" as used in RCW 50.44.010, 50.44.020, and 50.44.030 shall not include service performed:

(1) In the employ of (a) a church or convention or association of churches, or (b) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; however, the employer shall notify its employees as required by RCW 50.44.045; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In a facility conducted for the purpose of carrying out a program of (a) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or (b) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(4) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work-relief or work-training; or

(5) For a custodial or penal institution by an inmate of the custodial or penal institution; or

(6) In the employ of a hospital, if such service is performed by a patient of such hospital; or

(7) In the employ of a school, college, or university, if such service is performed (a) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (b) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; or

(8) By an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employee, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers; or

(9) In the employ of a nongovernmental preschool which is devoted exclusively to the area of child development training of preschool age children through an established curriculum of formal classroom or laboratory instruction which did not employ four or more individuals on each of some twenty days during the calendar year or the preceding calendar year, each day being in a different calendar week; or

(10) In the employ of the state or any of its instrumentalities or political subdivisions of this state in any of its instrumentalities by an individual in the exercise of duties:

(a) As an elected official;

(b) As a member of the national guard or air national guard; or

(c) In a policymaking position the performance of the duties of which ordinarily do not require more than eight hours per week. [2007 c 386 § 1; 1977 ex.s. c 292 § 17; 1975 1st ex.s. c 67 § 1; 1975 c 4 § 1; 1973 c 73 § 9; 1971 c 3 § 21.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective dates—1973 c 73: See note following RCW 50.04.030.

Exemption from unemployment compensation coverage conservation corps members: RCW 43.220.170.

Washington service corps enrollees: RCW 50.65.120.

50.44.045 Religious organizations—Exemption—Notification to employee. A church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches shall inform each individual performing services exempt from "employment" under RCW 50.44.040(1) that the individual may not be eligible to receive unemployment benefits based on such services. The employer shall provide a written notice of this exclusion to the individual at the time of hire. The employer shall display a poster giving notice of this exclusion in a conspicuous place. The employer's compliance with these notice requirements shall not affect an individual's eligibility for benefits. The employment security department shall make posters available to employers without charge. [2007 c 386 § 2.]

50.44.050 Benefits payable, terms and conditions—"Academic year" defined. Except as otherwise provided in subsections (1) through (4) of this section, benefits based on services in employment covered by or pursuant to this chapter shall be payable on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this title.

(1) Benefits based on any and all service in an instructional, research, or principal administrative capacity for any and all educational institutions shall not be paid to an individual for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year (or, when an agreement provides instead for a similar period between two regular but not successive terms within an academic year, during such period) if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for

any educational institution in the second of such academic years or terms. Any employee of a common school district who is presumed to be reemployed pursuant to RCW 28A.405.210 shall be deemed to have a contract for the ensuing term.

(2) Benefits shall not be paid based on any and all services in any other capacity for any and all educational institutions for any week of unemployment which commences during the period between two successive academic years or between two successive academic terms within an academic year, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms: PROVIDED, That if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, the individual is entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(3) Benefits shall not be paid based on any services described in subsections (1) and (2) of this section for any week of unemployment which commences during an established and customary vacation period or holiday recess if such individual performs such services for any educational institution in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services for any educational institution in the period immediately following such vacation period or holiday recess.

(4) Benefits shall not be paid (as specified in subsections (1), (2), or (3) of this section) based on any services described in subsections (1) or (2) of this section to any individual who performed such services in any educational institution while in the employ of an educational service district which is established pursuant to chapter 28A.310 RCW and exists to provide services to local school districts.

(5) As used in this section, "academic year" means: Fall, winter, spring, and summer quarters or comparable semesters unless, based upon objective criteria including enrollment and staffing, the quarter or comparable semester is not in fact a part of the academic year for the particular institution. [2001 c 100 § 2; 1998 c 233 § 2; 1995 c 296 § 2; 1990 c 33 § 587; 1984 c 140 § 2; 1983 1st ex.s. c 23 § 23; 1981 c 35 § 12; 1980 c 74 § 2; 1977 ex.s. c 292 § 18; 1975 1st ex.s. c 228 § 17; 1973 c 73 § 10; 1971 c 3 § 22.]

Intent—Findings—2001 c 100: "It is the intent of the legislature to clarify requirements related to the use of base year hours and wages for certain employees at educational institutions, for the purpose of determining eligibility for unemployment insurance benefits.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which poses a significant economic risk to the state's private employers, the state's general fund, and to the administration of the state's unemployment insurance system. It is the intent of the legislature to change Washington's unemployment law only to the extent necessary to ensure it conforms with federal law governing the use of base year hours and wages earned at educational institutions.

The legislature finds that the United States department of labor will rely on state law and its application as interpreted in state court decisions, especially *Pechman v. Employment Security*, to determine if Washington state law conforms to federal guidelines in this area. Therefore, it is the intent of the legislature to clearly communicate to the courts that the purpose for the

section 2, chapter 100, Laws of 2001 amendment to RCW 50.44.050 is to interpret state law in a manner that conforms to federal guidelines.

The legislature finds that federal law requires that school hours and wages in the base year must be restricted from use to establish eligibility for an unemployment compensation claim for employees of educational institutions during specified times. Further, federal law specifies that when required to restrict base year school hours and wages, it must be any and all hours and wages from any and all educational institutions, not just the hours and wages from institutions where there is a reasonable assurance of returning to work following a customary nonwork period. Therefore, it is the intent of the legislature to restrict hours worked and wages earned as required by federal law.

Customary nonwork periods for educational institutions include:

- (1) The period between two successive academic years;
- (2) The period between two successive academic terms within an academic year;
- (3) A similar period between two regular but not successive terms within an academic year; or
- (4) An established and customary vacation period or holiday recess.

Restricted use of base year hours and wages from educational institutions shall occur only in the circumstances described in RCW 50.44.050 (as amended by chapter 100, Laws of 2001) and in RCW 50.44.053, and as further defined in rules promulgated by the employment security department." [2001 c 100 § 1.]

Conflict with federal requirements—2001 c 100: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 100 § 3.]

Effective date—2001 c 100: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 100 § 4.]

Intent—Findings—1998 c 233: "It is the intent of the legislature to clarify requirements related to unemployment compensation for employees at educational institutions.

The legislature finds that, unless clarified, Washington's unemployment compensation law may be out of conformity with the federal unemployment tax act, which finding poses a significant economic risk to the state's private employers and to the administration of the state's unemployment insurance system. It is the intent of the legislature, by the 1998, chapter 233 amendments to RCW 50.44.050 and 50.44.053, to bring Washington's unemployment compensation law into conformity with federal law in these areas of concern.

The legislature finds that some instructional staff at the state's educational institutions receive an appointment of employment for an indefinite period while others may face circumstances that do not provide a reasonable expectation of employment during an ensuing academic year or term.

Therefore, it is the intent of the legislature that the employment security department continue to make determinations of educational employees' eligibility for unemployment compensation for the period between academic years or terms based on a finding of reasonable assurance that the employee will have employment for the ensuing academic year or term and that the determination in each employee's case is made on an individual basis, consistent with federal guidelines. This determination must take into consideration contingencies that may exist in fact in an individual case. The 1998, chapter 233 amendment to RCW 50.44.053 is not intended to change the practice used by the employment security department when determining reasonable assurance. If, during fact-finding, there is a disagreement about whether an individual has reasonable assurance, the educational institution must provide documentation that reasonable assurance exists for that individual." [1998 c 233 § 1.]

Conflict with federal requirements—1998 c 233: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting

of federal unemployment tax credits to employers in this state." [1998 c 233 § 5.]

Effective date—1998 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1998]." [1998 c 233 § 6.]

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

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

Effective date—Applicability—1984 c 140: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 7, 1984]. This act shall apply to weeks of unemployment beginning on or after April 1, 1984." [1984 c 140 § 3.]

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—Severability—1981 c 35: See notes following RCW 50.22.030.

Severability—Effective dates—1980 c 74: See notes following RCW 50.04.323.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

Effective date—1975 1st ex.s. c 228: See note following RCW 50.04.355.

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.053 "Reasonable assurance" defined—Presumption, employees of educational institutions. (1) The term "reasonable assurance," as used in RCW 50.44.050, means a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term. A person shall not be deemed to be performing services "in the same capacity" unless those services are rendered under the same terms or conditions of employment in the ensuing year as in the first academic year or term.

(2) An individual who is tenured or holds tenure track status is considered to have reasonable assurance, unless advised otherwise by the college. For the purposes of this section, tenure track status means a probationary faculty employee having an opportunity to be reviewed for tenure.

(3) In the case of community and technical colleges assigned the standard industrial classification code 8222 or the North American industry classification system code 611210 for services performed in a principal administrative, research, or instructional capacity, a person is presumed not to have reasonable assurance under an offer that is conditioned on enrollment, funding, or program changes. It is the college's burden to provide sufficient documentation to overcome this presumption. Reasonable assurance must be determined on a case-by-case basis by the total weight of evidence rather than the existence of any one factor. Primary weight must be given to the contingent nature of an offer of employment based on enrollment, funding, and program changes. [2001 c 99 § 2; 1998 c 233 § 3; 1995 c 296 § 3; 1985 ex.s. c 5 § 9.]

Conflict with federal requirements—2001 c 99: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a

necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2001 c 99 § 4.]

Severability—2001 c 99: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 99 § 5.]

Applicability—2001 c 99: "This act applies to weeks that begin after March 31, 2001." [2001 c 99 § 6.]

Effective date—2001 c 99: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 99 § 7.]

Intent—Findings—Conflict with federal requirements—Effective date—1998 c 233: See notes following RCW 50.44.050.

Severability—Conflict with federal requirements—Effective date—1995 c 296: See notes following RCW 50.04.320.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.44.055 Finding—Intent—Reasonable assurance, application to employees of educational institutions. The legislature finds the interests of the state and its citizens are best served by a strong community and technical college system. As described by their establishing legislation, these two-year institutions are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher education. Paramount to that system's success is the attraction and retention of qualified instructors. In order to attract and retain instructors, those who are subject to uncertainties of employment must be provided assurance their economic needs are addressed. Over time, a change in hiring patterns has occurred, and for the last decade a substantial portion of community and technical college faculty are hired on a contingent, as needed, basis. That contingent nature distinguishes them from the more stable, majority employment found in the common school system and in the other institutions of higher education. Contingent assurances of future employment are often speculative and do not rise to the level of other forms of assurance. As such, assurances conditioned on forecast enrollment, funding, or program decisions are typically not reasonable assurances of employment.

It is the intent of the legislature that reasonable assurance continue to apply to all employees of educational institutions as required by federal provisions and RCW 50.44.080. [2001 c 99 § 1.]

Conflict with federal requirements—Severability—Applicability—Effective date—2001 c 99: See notes following RCW 50.44.053.

50.44.060 Nonprofit organization employees—Financing of benefits—Election of payments in lieu of contributions. Benefits paid to employees of "nonprofit organizations" shall be financed in accordance with the provisions of this section. For the purpose of this section and RCW 50.44.070, the term "nonprofit organization" is limited to those organizations described in RCW 50.44.010, and joint accounts composed exclusively of such organizations.

(1) Any nonprofit organization which is, or becomes subject to this title on or after January 1, 1972 shall pay contributions under the provisions of RCW 50.24.010 and chapter 50.29 RCW, unless it elects, in accordance with this subsection, to pay to the commissioner for the unemployment

compensation fund an amount equal to the full amount of regular and additional benefits and one-half of the amount of extended benefits paid to individuals for weeks of unemployment that are based upon wages paid or payable during the effective period of such election to the extent that such payments are attributable to service in the employ of such nonprofit organization.

(a) Any nonprofit organization which becomes subject to this title after January 1, 1972 may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

(b) Any nonprofit organization which makes an election in accordance with paragraph (a) of this subsection will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this title for a period subsequent to January 1, 1972 may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(e) The commissioner, in accordance with such regulations as the commissioner may prescribe, shall notify each nonprofit organization of any determination which the commissioner may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Any nonprofit organization subject to such determination and dissatisfied with such determination may file a request for review and redetermination with the commissioner within thirty days of the mailing of the determination to the organization. Should such request for review and redetermination be denied, the organization may, within ten days of the mailing of such notice of denial, file with the appeal tribunal a petition for hearing which shall be heard in the same manner as a petition for denial of refund. The appellate procedure prescribed by this title for further appeal shall apply to all denials of review and redetermination under this paragraph.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this section including either paragraph (a) or (b) of this subsection.

(a) At the end of each calendar quarter, the commissioner shall bill each nonprofit organization or group of such organizations which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular and additional benefits plus one-half of the amount of extended benefits paid during such quarter that is attributable to service in the employ of such organization.

(b)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this paragraph. Such method of payment shall become effective upon approval by the commissioner.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the commissioner, the commissioner shall bill each nonprofit organization for an amount representing one of the following:

(A) The percentage of its total payroll for the immediately preceding calendar year as the commissioner shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year.

(B) For any organization which did not pay wages throughout the four calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the commissioner shall determine.

(iii) At the end of each taxable year, the commissioner may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the commissioner shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular and additional benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with paragraph (c). If the total payments exceed the amount so determined for the taxable year, all of the excess payments will be retained in the fund as part of the payments which may be required for the next taxable year, or a part of the excess may, at the discretion of the commissioner, be refunded from the fund or retained in the fund as part of the payments which may be required for the next taxable year.

(c) Payment of any bill rendered under paragraph (a) or (b) shall be made not later than thirty days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, and if not paid within such thirty days, the reimbursement payments itemized in the bill shall be deemed to be delinquent and the whole or part thereof remaining unpaid shall bear interest and penalties from and after the end of such thirty days at the rate and in the manner set forth in RCW 50.12.220 and 50.24.040.

(d) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization. Any deduction in violation of the provisions of this paragraph shall be unlawful.

(3) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the total amount of regular and additional benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable

for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of paragraphs (a) and (b) of this subsection.

(a) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers. [1990 c 245 § 9; 1983 1st ex.s. c 23 § 24; 1977 ex.s. c 292 § 19; 1971 c 3 § 23.]

Conflict with federal requirements—Effective dates—1990 c 245: See notes following RCW 50.04.030.

Conflict with federal requirements—Effective dates—Construction—1983 1st ex.s. c 23: See notes following RCW 50.04.073.

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.44.070 Election to make payments in lieu of contributions—Bond or deposit. In the discretion of the commissioner, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election, to execute and file with the commissioner a surety bond approved by the commissioner or it may elect instead to deposit with the commissioner money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this section.

(1) The amount of the bond or deposit required by this subsection shall be an amount deemed by the commissioner to be sufficient to cover any reimbursement payments which may be required from the employer attributable to employment during any year for which the election is in effect but in no event shall such amount be in excess of the amount which said employer would pay for such year if he were subject to the contribution provisions of this title. The determination made pursuant to this subsection shall be based on payroll information, employment experience, and such other factors as the commissioner deems pertinent.

(2) Any bond deposited under this section shall be in force for a period of not less than two taxable years and shall be renewed with the approval of the commissioner, at such times as the commissioner may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The commissioner shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date notice of the required

adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in this title, shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money or securities in accordance with this section shall be retained by the commissioner in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The commissioner may deduct from the money deposited under this section by a non-profit organization or sell the securities it has so deposited to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in this act. The commissioner shall require the organization within thirty days following any deduction from a money deposit or sale of deposited securities under the provisions of this subsection to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The commissioner may, at any time review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary he shall require the organization to make an additional deposit within thirty days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(4) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the commissioner may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which termination becomes effective: PROVIDED, That the commissioner may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty days. [1973 c 73 § 11; 1971 c 3 § 24.]

Effective dates—1973 c 73: See note following RCW 50.04.030.

50.44.080 Construction—Compliance with federal unemployment tax act, department of labor guidelines. In view of the importance of compliance of this chapter with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Department of labor guidelines implementing chapter 99, Laws of 2001 should be referred to when interpreting the provisions of this chapter.

Language in this chapter concerning the extension of coverage to employers entitled to make payments in lieu of contributions should, in a manner consistent with the foregoing paragraph, be construed so as to have a minimum financial impact on the employers subject to the experience rating provisions of this title. [2001 c 99 § 3; 1971 c 3 § 25.]

Conflict with federal requirements—Severability—Applicability—Effective date—2001 c 99: See notes following RCW 50.44.053.

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50.44.090 Construction—Mandatory coverage of employees of political subdivision under 1977 ex.s. c 292.

(1) The provisions of chapter 292, Laws of 1977 ex. sess. mandating coverage of employees of political subdivisions have been enacted to comply with the provisions of Public Law 94-566. Therefore, as provided in subsection (2), this mandatory feature shall be contingent on the existence of valid and constitutional federal law requiring the Secretary of Labor to refuse to certify as approved the employment security laws of this state if such laws did not continue such mandatory coverage.

(2) In the event the mandatory coverage feature for political subdivisions ceases to be necessary for compliance with valid and constitutional federal law, then the mandatory feature of chapter 292, Laws of 1977 ex. sess. shall cease to be effective as of the end of the next quarter following the quarter in which the mandatory feature contained in chapter 292, Laws of 1977 ex. sess. is not necessary for such compliance.

(3) In the event mandatory coverage ceases to be effective pursuant to subsection (2), then the sections, or subsections as the case may be, of chapter 292, Laws of 1977 ex. sess. shall to the extent that they apply to coverage of employees of political subdivisions be deemed nullified and the language of the sections being amended shall be deemed reinstated as the laws of this state.

(4) Benefits paid based on the services covered during the effective life of the mandatory coverage feature shall be financed as follows:

(a) If the political subdivision was financing payment of benefits on a reimbursable basis, benefits attributable to employment with the political subdivision shall be assessed to and paid by the political subdivision;

(b) If the political subdivision is a county, city, or town which elected financing pursuant to RCW 50.44.035, such political subdivision will pay "the local government tax" for all earnings by employees through the end of the calendar quarter in which the mandatory coverage is no longer effective pursuant to subsection (2);

(c) If the political subdivision was financing benefits by the contribution method it will pay contributions on wages earned by its employees through the end of the calendar quarter in which mandatory coverage is no longer effective pursuant to subsection (2). [1977 ex.s. c 292 § 23.]

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

**Chapter 50.50 RCW
INDIAN TRIBES**

Sections

50.50.010	Employment.
50.50.020	Benefits—Generally.
50.50.030	Contributions—Election of payments in lieu of contributions.
50.50.040	Option to make payments in lieu of contributions—Revocation—Reinstatement—Notices.
50.50.050	Notices—Contents.
50.50.060	Extended benefits—Financing by Indian tribe.
50.50.070	Indian tribes subject to same terms and conditions as other employers.
50.50.900	Conflict with federal requirements—2001 1st sp.s. c 11.
50.50.901	Severability—2001 1st sp.s. c 11.
50.50.902	Effective date—2001 1st sp.s. c 11.
50.50.903	Retroactive application—2001 1st sp.s. c 11.

50.50.010 Employment. The term "employment" includes service performed in the employ of an Indian tribe, as defined in section 3306(u) of the federal unemployment tax act, provided such service is excluded from "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(7), the federal unemployment tax act, and is not otherwise excluded from "employment" under this title. For purposes of this section, the exclusions from employment in RCW 50.44.040, except *RCW 50.44.040(12) addressing nongovernmental preschools, are applicable to services performed in the employ of an Indian tribe. [2001 1st sp.s. c 11 § 3.]

*Reviser's note: RCW 50.44.040 was amended by 2007 c 386 § 1, changing subsection (12) to subsection (9).

50.50.020 Benefits—Generally. Benefits based on service in employment defined in this chapter are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service under this title. [2001 1st sp.s. c 11 § 4.]

50.50.030 Contributions—Election of payments in lieu of contributions. (1) Indian tribes or tribal units, including subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to this title shall pay contributions under the same terms and conditions as all other subject employers, unless they elect to pay into the unemployment compensation fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(2) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in RCW 50.44.030 pertaining to other units of government subject to this title. Indian tribes shall determine if reimbursement for benefits paid are to be elected by the tribe as a whole, by individual tribal units, or by combinations of tribal units.

(3) Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(4) At the discretion of the commissioner and on the same basis as other employers with the same election option, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions is required, within thirty days after the effective date of its election, to: (a) Execute and file with the commissioner a surety bond approved by the commissioner; or (b) deposit with the commissioner money or securities in an amount determined by the commissioner. [2001 1st sp.s. c 11 § 5.]

50.50.040 Option to make payments in lieu of contributions—Revocation—Reinstatement—Notices. (1)(a) The commissioner shall revoke the option for an Indian tribe or tribal unit to make payments in lieu of contributions as described in RCW 50.50.030 if the Indian tribe or tribal unit: (i) Did not make payments, including assessments of interest and penalties, required under this chapter within ninety days of receipt of statement; or (ii) entered into an approved agency deferred payment contract, and was not in compliance

with the contract on the cutoff date, as authorized in chapter 50.29 RCW. The revocation shall begin on January 1 of the first calendar year after the Indian tribe or tribal unit meets these conditions, and shall continue until the option is reinstated as described in (b) of this subsection.

(b) The commissioner shall reinstate the option if, as of the cutoff date, an Indian tribe or tribal unit whose option was revoked as described in (a) of this subsection: (i) Paid contributions owed in the current calendar year when due; and (ii) made required payments, including assessments of interest and penalties, for any preceding calendar years. The reinstatement shall begin on January 1 of the first calendar year after the Indian tribe or tribal unit satisfies these conditions.

(2)(a) Services performed for an Indian tribe or tribal unit are not services in "employment" for purposes of RCW 50.04.265 and 50.50.010 if:

(i) The Indian tribe or tribal unit elected to make payments in lieu of contributions, had the option revoked, and has not met the conditions for reinstatement of the option; and

(ii) The Indian tribe or tribal unit either: (A) Did not make required payments, including assessments of interest and penalties, within one hundred eighty days of receipt of statement; or (B) entered into an approved agency deferred payment contract, and was not in compliance with the contract on the last day of the current calendar quarter.

This revocation of coverage shall begin on the first day of the first calendar quarter after the Indian tribe or tribal unit meets these conditions, and shall continue until coverage is reinstated as described in (c) of this subsection.

(b) Services performed for an Indian tribe or tribal unit are not services in "employment" for purposes of RCW 50.04.265 and 50.50.010 if:

(i) The Indian tribe or tribal unit is a contribution-paying employer; and

(ii) The Indian tribe or tribal unit either: (A) Did not make required payments, including assessments of interest and penalties, within one hundred eighty days of receipt of statement; or (B) entered into an approved agency deferred payment contract, and was not in compliance with the contract on the last day of the current calendar quarter.

This revocation of coverage shall begin on the first day of the first calendar quarter after the Indian tribe or tribal unit meets these conditions, and shall continue until coverage is reinstated as described in (c) of this subsection.

(c) The commissioner may reinstate coverage if the Indian tribe or tribal unit has made required payments, including assessments of interest and penalties. This reinstatement of coverage may begin on the first day of the first calendar quarter after these payments are made.

(3)(a) The commissioner shall immediately notify the United States internal revenue service and the United States department of labor if an Indian tribe or tribal unit does not make required payments, including assessments of interest and penalties, within ninety days of receipt of statement.

(b) The commissioner shall immediately notify the United States internal revenue service and the United States department of labor of any revocation or reinstatement of the option to make payments in lieu of contributions under subsection (1) of this section or any revocation or reinstatement

of coverage under subsection (2) of this section. [2001 1st sp.s. c 11 § 6.]

50.50.050 Notices—Contents. Notices of payment and reporting delinquency to Indian tribes or their tribal units must include information that failure to make full payment within the prescribed time frames: (1) Causes the Indian tribe to be liable for taxes under the federal unemployment tax act; (2) causes the Indian tribe to lose the option to make payments in lieu of contributions; and (3) causes the Indian tribe to be excepted from the definition of "employing unit," as provided in RCW 50.04.090, and services in the employ of the Indian tribe, as provided in RCW 50.04.265 and 50.50.010, to be excepted from "employment." [2001 1st sp.s. c 11 § 7.]

50.50.060 Extended benefits—Financing by Indian tribe. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government must be financed in their entirety by such Indian tribe. [2001 1st sp.s. c 11 § 8.]

50.50.070 Indian tribes subject to same terms and conditions as other employers. Unless specifically addressed in this chapter, Indian tribes or their tribal units are subject to the same terms and conditions as are other employers subject to contributions under RCW 50.29.020 or other units of government under RCW 50.44.030 that make payments in lieu of contributions. [2001 1st sp.s. c 11 § 9.]

50.50.900 Conflict with federal requirements—2001 1st sp.s. c 11. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [2001 1st sp.s. c 11 § 10.]

50.50.901 Severability—2001 1st sp.s. c 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2001 1st sp.s. c 11 § 11.]

50.50.902 Effective date—2001 1st sp.s. c 11. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 11, 2001]. [2001 1st sp.s. c 11 § 12.]

50.50.903 Retroactive application—2001 1st sp.s. c 11. This act applies retroactively to services performed on or after December 21, 2000. Indian tribes or tribal units may elect to make payments in lieu of contributions effective

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December 21, 2000, or a subsequent date. [2001 1st sp.s. c 11 § 13.]

Chapter 50.60 RCW

SHARED WORK COMPENSATION PLANS—BENEFITS

Sections

50.60.010	Legislative intent.
50.60.020	Definitions.
50.60.030	Compensation plan—Criteria for approval.
50.60.040	Compensation plan—Approval or rejection—Resubmission.
50.60.050	Approved plan—Misrepresentation—Penalties.
50.60.060	Approved plan—Effective date—Expiration.
50.60.070	Approved plan—Revocation—Review of plans.
50.60.080	Approved plan—Modification.
50.60.090	Shared work benefits—Eligibility.
50.60.100	Benefits—Weekly amount—Maximum entitlement— Claims—Conditions.
50.60.110	Benefits—Charge to employers' experience rating accounts.
50.60.120	Benefits—Exhaustee.
50.60.900	Title and rules to apply to shared work benefits—Conflict with federal requirements.
50.60.901	Rules.
50.60.902	Effective date—1983 c 207.

50.60.010 Legislative intent. In order to provide an economic climate conducive to the retention of skilled workers in industries adversely affected by general economic downturns and to supplement depressed buying power of employees affected by such downturns, the legislature finds that the public interest would be served by the enactment of laws providing greater flexibility in the payment of unemployment compensation benefits in situations where qualified employers elect to retain employees at reduced hours rather than instituting layoffs. [1983 c 207 § 1.]

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

(1) "Affected unit" means a specified plant, department, shift, or other definable unit consisting of one or more employees, to which an approved shared work compensation plan applies.

(2) "Fringe benefits" include health insurance, retirement benefits under benefit pension plans as defined in section 3(35) of the employee retirement income security act of 1974, paid vacation and holidays, and sick leave, which are incidents of employment in addition to cash remuneration.

(3) "Shared work benefits" means the benefits payable to employees in an affected unit under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(4) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than temporary layoffs.

(5) "Shared work employer" means an employer, one or more of whose employees are covered by a shared work compensation plan.

(6) "Usual weekly hours of work" means the normal number of hours of work for full-time employees in the affected unit when that unit is operating on a full-time basis, not to exceed forty hours and not including overtime.

(7) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(8) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan. [1983 c 207 § 2.]

50.60.030 Compensation plan—Criteria for approval. An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

(1) The plan identifies the affected units to which it applies;

(2) An employee in an affected unit are identified by name, social security number, and by any other information required by the commissioner;

(3) The usual weekly hours of work for an employee in an affected unit are reduced by not less than ten percent and not more than fifty percent;

(4) Fringe benefits will continue to be provided on the same basis as before the reduction in work hours. In no event shall the level of health benefits be reduced due to a reduction in hours;

(5) The plan certifies that the aggregate reduction in work hours is in lieu of temporary layoffs which would have affected at least ten percent of the employees in the affected units to which the plan applies and which would have resulted in an equivalent reduction in work hours;

(6) The plan applies to at least ten percent of the employees in the affected unit;

(7) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any employee in the affected unit;

(8) The plan will not subsidize seasonal employers during the off season nor subsidize employers who have traditionally used part-time employees; and

(9) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan.

In addition to subsections (1) through (9) of this section, the commissioner shall take into account any other factors which may be pertinent. [1985 c 43 § 1; 1983 c 207 § 3.]

Conflict with federal requirements—1985 c 43: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1985 c 43 § 2.]

Severability—1985 c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected." [1985 c 43 § 3.]

50.60.040 Compensation plan—Approval or rejection—Resubmission. The commissioner shall approve or reject a shared work compensation plan in writing within fifteen days of its receipt. The reasons for the rejection shall be final and nonappealable, but the rejection shall not prevent an employer from submitting another plan for approval not earlier than fifteen days after the date of a previous written rejection. [1983 c 207 § 4.]

50.60.050 Approved plan—Misrepresentation—Penalties. If an approved plan or any representation for implementation of the plan is intentionally and substantially misleading or false, any individual who participated in any such misrepresentation shall be subject to criminal prosecution as well as personal liability for any amount of benefits deemed by the commissioner to have been improperly paid from the fund as a result thereof. This provision for personal liability is in addition to any remedy against individual claimants for collection of overpayment of benefits if such claimants participated in or were otherwise at fault in the overpayment. [1983 c 207 § 5.]

50.60.060 Approved plan—Effective date—Expiration. A shared work compensation plan shall be effective on the date specified in the plan or on the first day of the second calendar week after the date of the commissioner's approval, whichever is later. The plan shall expire at the end of the twelfth full calendar month after its effective date, or on the date specified in the plan if that date is earlier, unless the plan is revoked before that date by the commissioner. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's order of revocation. [1983 c 207 § 6.]

50.60.070 Approved plan—Revocation—Review of plans. The commissioner may revoke approval of a shared work compensation plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based.

Such action may be initiated at any time by the commissioner on his or her own motion, on the motion of any of the affected unit employees, or on the motion of the appropriate collective bargaining agents. The commissioner shall review each plan at least once within the twelve month period the plan is in effect to assure that it continues to meet the requirements of this chapter. [1983 c 207 § 7.]

50.60.080 Approved plan—Modification. An approved shared work compensation plan in effect may be modified with the approval of the commissioner. If the hours of work are increased or decreased beyond the level in the original plan, or any other condition is changed, the employer

shall promptly notify the commissioner. If the changes meet the requirements for approval of a plan, the commissioner shall approve the modifications. This approval shall not change the expiration date of the original plan. If the modifications do not meet the requirements for approval, the commissioner shall revoke the plan as specified in RCW 50.60.060. [1983 c 207 § 8.]

50.60.090 Shared work benefits—Eligibility. An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as a member of an affected unit under an approved shared work compensation plan which was in effect for that week;

(2) The individual was able to work and was available for additional hours of work and for full-time work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an employee in an affected unit for less than his or her normal weekly hours of work as specified under the approved shared work compensation plan in effect for that week. [1983 c 207 § 9.]

50.60.100 Benefits—Weekly amount—Maximum entitlement—Claims—Conditions. (1) The shared work weekly benefit amount shall be the product of the regular weekly unemployment compensation benefit amount multiplied by the percentage of reduction in the individual's usual weekly hours of work;

(2) No individual is eligible in any benefit year for more than the maximum entitlement established for benefits under this title, including benefits under this chapter, nor may an individual be paid shared work benefits for more than a total of twenty-six weeks in any twelve-month period under a shared work compensation plan;

(3) The shared work benefits paid an individual shall be deducted from the total benefit amount established for that individual's benefit year;

(4) Claims for shared work benefits shall be filed in the same manner as claims for other benefits under this title or as prescribed by the commissioner by rule;

(5) Provisions otherwise applicable to unemployment compensation claimants under this title apply to shared work claimants to the extent that they are not inconsistent with this chapter;

(6)(a) If an individual works in the same week for an employer other than the shared work employer and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under this chapter or title;

(b) If an individual works in the same week for both the shared work employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week shall be the weekly unemployment com-

ensation benefit amount reduced by the same percentage that the combined hours are of the usual weekly hours of work. A week for which benefits are paid under this subsection shall count as a week of shared work benefits;

(7) An individual who does not work during a week for the shared work employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount. Such a week shall not be counted as a week for which shared work benefits were received;

(8) An individual who does not work for the shared work employer during a week but works for another employer, and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of this title. Such a week shall not be counted as a week for which shared work benefits were received. [1983 c 207 § 10.]

50.60.110 Benefits—Charge to employers' experience rating accounts. Shared work benefits shall be charged to employers' experience rating accounts in the same manner as other benefits under this title are charged. Employers liable for payments in lieu of contributions shall have shared work benefits attributed to their accounts in the same manner as other benefits under this title are attributed. [1983 c 207 § 11.]

50.60.120 Benefits—Exhaustee. An individual who has received all of the shared work benefits, or all of the combined unemployment compensation and shared work benefits, available in a benefit year shall be considered an exhaustee for purposes of the extended benefits program under chapter 50.22 RCW, and, if otherwise eligible under that chapter, shall be eligible to receive extended benefits. [1983 c 207 § 12.]

50.60.900 Title and rules to apply to shared work benefits—Conflict with federal requirements. Unless inconsistent with or otherwise provided by this section, this title and rules adopted under this title apply to shared work benefits. To the extent permitted by federal law, those rules may make such distinctions and requirements as may be necessary with respect to unemployed individuals to carry out the purposes of this chapter, including rules defining usual hours, days, work week, wages, and the duration of plans adopted under this chapter. To the extent that any portion of this chapter may be inconsistent with the requirements of federal law relating to the payment of unemployment insurance benefits, the conflicting provisions or interpretations of this chapter shall be deemed inoperative, but only to the extent of the conflict. If the commissioner determines that such a conflict exists, a statement to that effect shall be filed with the governor's office for transmission to both houses of the legislature. [1983 c 207 § 13.]

50.60.901 Rules. The department shall adopt such rules as are necessary to carry out the purposes of chapter 207, Laws of 1983. [1998 c 245 § 101; 1983 c 207 § 14.]

50.60.902 Effective date—1983 c 207. This act is necessary for the immediate preservation of the public peace,

health, and safety, the support of the state government and its existing public institutions, and shall take effect with the weeks beginning after July 31, 1983. [1983 c 207 § 16.]

Chapter 50.62 RCW

SPECIAL EMPLOYMENT ASSISTANCE

Sections

50.62.010	Legislative findings.
50.62.020	Definitions.
50.62.030	Job service program or activity.
50.62.040	Annual report—Wage and benefit history.

50.62.010 Legislative findings. The legislature finds and declares that:

(1) The number of persons unemployed in the state is significantly above the national average.

(2) Persons who are unemployed represent a skilled resource to the economy and the quality of life for all persons in the state.

(3) There are jobs available in the state that can be filled by unemployed persons.

(4) A public labor exchange can appreciably expedite the employment of unemployed job seekers and filling employer vacancies thereby contributing to the overall health of the state and national economies.

(5) The Washington state job service of the employment security department has provided a proven service of assisting persons to find employment for the past fifty years.

(6) Expediting the reemployment of unemployment insurance claimants will reduce payment of claims drawn from the state unemployment insurance trust fund.

(7) Increased emphasis on assisting in the reemployment of claimants and monitoring claimants' work search efforts will positively impact employer tax rates resulting from the recently enacted experience rating legislation, chapter 205, Laws of 1984.

(8) Special employment service efforts are necessary to adequately serve agricultural employers who have unique needs in the type of workers, recruitment efforts, and the urgency of obtaining sufficient workers.

(9) Study and research of issues related to employment and unemployment provides economic information vital to the decision-making process.

(10) Older workers and the long-term unemployed experience greater difficulty finding new employment at wages comparable to their prelayoff earnings relative to all unemployment insurance claimants who return to work.

(11) After a layoff, older unemployed workers and the long-term unemployed workers fail to find unemployment insurance-covered employment at a much higher rate than other groups of unemployment insurance claimants.

The legislature finds it necessary and in the public interest to have a program of job service to assist persons drawing unemployment insurance claims to find employment, to provide employment assistance to the agricultural industry, and to conduct research into issues related to employment and unemployment. [1987 c 284 § 1; 1987 c 171 § 1; 1985 ex.s. c 5 § 1.]

Reviser's note: This section was amended by 1987 c 171 § 1 and by 1987 c 284 § 1, each without reference to the other. Both amendments are

incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Conflict with federal requirements—1987 c 171: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1987 c 171 § 7.]

Severability—1987 c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 171 § 8.]

Conflict with federal requirements—1985 ex.s. c 5: "If any part of this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act." [1985 ex.s. c 5 § 16.]

Severability—1985 ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 ex.s. c 5 § 17.]

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

(1) "Job service" means the employment assistance program of the employment security department;

(2) "Employment assistance" means services to unemployed persons focused on and measured by the obtaining of employment;

(3) "Labor exchange" means those activities which match labor supply and labor demand, including recruitment, screening, and referral of qualified workers to employers;

(4) "Special account of the administrative contingency fund" means that fund under RCW 50.24.014 established within the administrative contingency fund of the employment security department which provides revenue for the purposes of this chapter.

(5) "Continuous wage and benefit history" means an information and research system utilizing a longitudinal database containing information on both employment and unemployment.

(6) "Long-term unemployed" means demographic groups of unemployment insurance claimants identified by the employment security department pursuant to RCW 50.62.040(1)(e) which have the highest percentages of persons who have drawn at least fifteen weeks of unemployment insurance benefits or have the highest percentage of persons who have exhausted their unemployment insurance benefits.

(7) "Older unemployed workers" means unemployment insurance claimants who are at least fifty years of age. [1987 c 284 § 2; 1985 ex.s. c 5 § 2.]

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.62.030 Job service program or activity. Job service resources shall be used to assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery. The job service program of the employment security department may undertake any pro-

gram or activity for which funds are available and which furthers the goals of this chapter. These programs and activities shall include, but are not limited to:

(1) Giving older unemployed workers and the long-term unemployed the highest priority for all services made available under this section. The employment security department shall make the services provided under this chapter available to the older unemployed workers and the long-term unemployed as soon as they register under the employment assistance program;

(2) Supplementing basic employment services, with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(3) Providing employment services, such as recruitment, screening, and referral of qualified workers, to agricultural areas where these services have in the past contributed to positive economic conditions for the agricultural industry; and

(4) Providing otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment. [1995 c 135 § 4. Prior: 1987 c 284 § 3; 1987 c 171 § 2; 1985 ex.s. c 5 § 3.]

Intent—1995 c 135: See note following RCW 29A.08.760.

Conflict with federal requirements—Severability—1987 c 171: See notes following RCW 50.62.010.

Conflict with federal requirements—Severability—1985 ex.s. c 5: See notes following RCW 50.62.010.

50.62.040 Annual report—Wage and benefit history.

(1) Each year the employment security department may publish an annual report on the unemployed based on research conducted on the continuous wage and benefit history and other sources that identifies:

(a) The demographic groups of unemployment insurance claimants that experience the greatest difficulty finding new employment with wages comparable to their prelayoff earnings;

(b) The demographic groups of unemployment insurance claimants that have the highest rates of failure to find unemployment insurance covered-employment after a layoff;

(c) The demographic, industry, and employment characteristics of the unemployment insurance claimant population most closely associated with the exhaustion of an unemployment claim;

(d) The demographic, industry, and employment characteristics of those locked-out workers who are eligible for unemployment compensation under RCW 50.20.090; and

(e) The demographic groups which are defined as the "long-term unemployed" for purposes of this chapter. This listing shall be updated each year.

(2) The employment security department shall continue to fund the continuing wage and benefit history at a level necessary to produce the annual report described in subsection (1) of this section. [1998 c 245 § 102; 1987 c 284 § 4.]

Chapter 50.65 RCW

WASHINGTON SERVICE CORPS

Sections

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50.65.908	Severability—1993 sp.s. c 7.

Washington conservation corps: Chapter 43.220 RCW.

50.65.010 Legislative findings. The legislature finds that:

(1) The unemployment rate in the state of Washington is the highest since the great depression, with a significantly higher rate among Washington youth.

(2) The policy of the state is to conserve and protect its natural and urban resources, scenic beauty, and historical and cultural sites.

(3) It is in the public interest to target employment projects to those activities which have the greatest benefit to the local economy.

(4) There are many unemployed young adults without hope or opportunities for entrance into the labor force who are unable to afford higher education and who create a serious strain on tax revenues in community services.

(5) The severe cutbacks in community and human services funding leave many local community service agencies without the resources to provide necessary services to those in need.

(6) The talent and energy of Washington's unemployed young adults are an untapped resource which should be challenged to meet the serious shortage in community services and promote and conserve the valuable resources of the state.

Therefore, the legislature finds it necessary and in the public interest to enact the Washington youth employment and conservation act. As part of this chapter, the Washington service corps is established as an operating program of the employment security department. The legislature desires to facilitate the potential of youth to obtain available job opportunities in both public and private agencies. [1987 c 167 § 1; 1983 1st ex.s. c 50 § 1.]

Reviser's note: Wherever the phrase "this act" occurred in RCW 50.65.010 through 50.65.130, it has been changed to "this chapter." "This act" [1983 1st ex.s. c 50] consists of this chapter and three uncodified sections.

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

(1) "Commissioner" means the commissioner of the employment security department.

(2) "Department" means the employment security department.

(3) "Enrollees" means those persons who have completed enrollment forms, completed a work agreement, and who have entered into the Washington service corps following the approval of the director of the supervising agency.

(4) "Corps" means the Washington service corps.

(5) "Work agreement" means the written agreement between the department, the enrollee and the supervising agency under this chapter for a period of up to eighteen months.

(6) "Supervising agencies" means those private or public agencies which develop and implement full-time service projects in which enrollees agree to participate.

(7) "Matching funds" means funding that is provided to the employment security department by agencies or individuals as financial support for a portion of the stipend or wage and benefits paid to the enrollee.

(8) "Financial support" means any thing of value contributed by agencies or individuals to the department for a youth employment project which is reasonably calculated to support directly the development and expansion of a particular program under this chapter and which represents an addition to any financial support previously or customarily provided by the individual or agency. "Financial support" includes, but is not limited to funds, equipment, facilities, and training.

(9) "Director" means the individual who shall serve as the director of the exchange. [1987 c 167 § 2; 1983 1st ex.s. c 50 § 2.]

50.65.030 Washington service corps established—Commissioner's duties. The Washington service corps is established within the employment security department. The commissioner shall:

(1) Appoint a director and other personnel as necessary to carry out the purposes of this chapter;

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies or departments providing youth services to ensure

that funds appropriated for the purposes of this chapter will not be expended to duplicate existing services, but will increase the services of youth to the state;

(3) The employment security department is authorized to place subgrants with other federal, state, and local governmental agencies and private agencies to provide youth employment projects and to increase the numbers of youth employed;

(4) Determine appropriate financial support levels by private business, community groups, foundations, public agencies, and individuals which will provide matching funds for enrollees in service projects under work agreements. The matching funds requirement may be waived for public agencies or reduced for private agencies;

(5) Recruit enrollees who are residents of the state unemployed at the time of application and are at least eighteen years of age but have not reached their twenty-sixth birthday;

(6) Recruit supervising agencies to host the enrollees in full-time service activities which shall not exceed eleven months' duration;

(7) Assist supervising agencies in the development of scholarships and matching funds from private and public agencies, individuals, and foundations in order to support a portion of the enrollee's stipend and benefits;

(8) Develop general employment guidelines for placement of enrollees in supervising agencies to establish appropriate authority for hiring, firing, grievance procedures, and employment standards which are consistent with state and federal law;

(9) Match enrollees with appropriate public agencies and available service projects;

(10) Monitor enrollee activities for compliance with this chapter and compliance with work agreements;

(11) Assist enrollees in transition to employment upon termination from the programs, including such activities as orientation to the labor market, on-the-job training, and placement in the private sector;

(12) Establish a program for providing incentives to encourage successful completion of terms of enrollment in the service corps and the continuation of educational pursuits. Such incentives shall be in the form of educational assistance equivalent to two years of community or technical college tuition for eleven months of service. Educational assistance funding shall only be used for tuition, fees, and course-related books and supplies. Enrollees who receive educational assistance funding shall start using it within one year of their service completion and shall finish using it within four years of their service completion;

(13) Enter into agreements with the state's community and technical college system and other educational institutions or independent nonprofit agencies to provide special education in basic skills, including reading, writing, and mathematics for those participants who may benefit by participation in such classes. Participation is not mandatory but shall be strongly encouraged. [1993 c 302 § 1; 1987 c 167 § 3; 1983 1st ex.s. c 50 § 3.]

Effective date—1993 c 302: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 302 § 9.]

50.65.040 Washington service corps—Criteria for enrollment. The commissioner may select and enroll in the Washington service corps program any person who is at least eighteen years of age but has not reached their twenty-sixth birthday, is a resident of the state, and who is not for medical, legal, or psychological reasons incapable of service. Efforts shall be made to enroll youths who are economically, socially, physically, or educationally disadvantaged. The commissioner may prescribe such additional standards and procedures in consultation with supervising agencies as may be necessary in conformance with this chapter. In addition, the commissioner may select and enroll youth fourteen to seventeen years of age on special projects during the summer and at other times during the school year that may complement and support their school curriculum or that link and support service with learning. [1993 c 302 § 2; 1987 c 167 § 4; 1983 1st ex.s. c 50 § 4.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.050 Washington service corps—List of local youth employment opportunities. The commissioner shall use existing local offices of the employment security department or contract with independent, private nonprofit agencies in a local community to establish the Washington service corps program and to insure coverage of the program state-wide. Each local office shall maintain a list of available youth employment opportunities in the jurisdiction covered by the local office and the appropriate forms or work agreements to enable the youths to apply for employment in private or public supervising agencies. [1987 c 167 § 5; 1983 1st ex.s. c 50 § 5.]

50.65.060 Washington service corps—Placement under work agreements. Placements in the Washington service corps shall be made in supervising agencies under work agreements as provided under this chapter and shall include those assignments which provide for addressing community needs and conservation problems and will assist the community in economic development efforts. Each work agreement shall:

(1) Demonstrate that the service project is appropriate for the enrollee's interests, skills, and abilities and that the project is designed to meet unmet community needs;

(2) Include a requirement of regular performance evaluation. This shall include clear work performance standards set by the supervising agency and procedures for identifying strengths, recommended improvement areas and conditions for probation or dismissal of the enrollee; and

(3) Include a commitment for partial financial support for the enrollee from private industry, public agencies, community groups, or foundations. The commissioner may establish additional standards for the development of placements for enrollees with supervising agencies and assure that the work agreements comply with those standards. This section shall not apply to conservation corps programs established by chapter 43.220 RCW.

Agencies of the state may use the Washington service corps for the purpose of employing youth qualifying under this chapter. [1993 c 302 § 3; 1987 c 167 § 6; 1983 1st ex.s. c 50 § 6.]

(2008 Ed.)

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.065 Work agreements—Requirements. For each enrollee, the work agreements, or combination of work agreements, developed under RCW 50.65.060 shall:

(1) Include a variety of experiences consisting of: Indoor activities; outdoor activities; and volunteer activities;

(2) Provide time for participation in a core training program common to all participants. [1993 c 302 § 4.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.070 Enrollees not to displace current workers. The assignment of enrollees shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Supervising agencies that participate in the program may not terminate, lay-off, or reduce the working hours of any employee for the purpose of utilizing an enrollee with funds available. In circumstances where substantial efficiencies or a public purpose may result, supervising agencies may utilize enrollees to carry out essential agency work or contractual functions without displacing current employees. [1983 1st ex.s. c 50 § 7.]

50.65.080 Commissioner to seek assistance for Washington service corps. The commissioner shall seek and may accept, on behalf of the Washington service corps, charitable donations of cash and other assistance including, but not limited to, equipment and materials if the donations are available for appropriate use for the purposes set forth in this chapter. [1993 c 302 § 6; 1983 1st ex.s. c 50 § 8.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.090 Authority for income-generating projects—Disposition of income. The commissioner may enter into income-generating projects with public or private organizations to further the purposes of this chapter. Moneys received from contractual projects qualifying under this chapter shall be deposited in the state general fund. This section does not apply to conservation corps programs established by chapter 43.220 RCW. [1983 1st ex.s. c 50 § 9.]

50.65.100 Work agreements—Nondiscrimination. All parties entering into work agreements under this chapter shall agree that they will not discriminate in the providing of any service on the basis of race, creed, ethnic origin, sex, age, or political affiliation. [1983 1st ex.s. c 50 § 10.]

50.65.110 Enrollees—Training and subsistence allowance—Medical insurance and medical aid—Notice of coverage. The compensation received shall be considered a training and subsistence allowance. Comprehensive medical insurance, and medical aid shall be paid for the enrollees in the service corps by the commissioner in accordance with the standards and limitations of the appropriation provided for this chapter. The department shall give notice of coverage to the director of labor and industries after enrollment. The department shall not be deemed an employer of an enrollee for any other purpose.

Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age health and survivor's insurance, state retirement plans, and vacation leave do not apply to enrollees. [1987 c 167 § 7; 1985 c 230 § 6; 1983 1st ex.s. c 50 § 11.]

Severability—1985 c 230: See RCW 43.220.902.

50.65.120 Exemption of enrollees from unemployment compensation coverage. The services of enrollees placed with supervising agencies described in chapter 50.44 RCW are exempt from unemployment compensation coverage under *RCW 50.44.040(5) and the enrollees shall be so advised by the department. [1983 1st ex.s. c 50 § 12.]

***Reviser's note:** RCW 50.44.040 was amended by 2007 c 386 § 1, changing subsection (5) to subsection (4).

50.65.130 Federal and private sector funds and grants. In addition to any other power, duty, or function described by law or rule, the employment security department, through the program established under this chapter, may accept federal or private sector funds and grants and implement such programs relating to community services or employment programs and may enter into contracts respecting such funds or grants. The department may also use funds appropriated for the purposes of this chapter as matching funds for federal or private source funds to accomplish the purposes of this chapter. The Washington service corps shall be the sole recipient of federal funds for youth employment and conservation corps programs. [1987 c 167 § 8; 1983 1st ex.s. c 50 § 13.]

50.65.138 Use of funds for enrollees and projects in distressed areas—Service corps. Sixty percent of the general funds available to the service corps program shall be for enrollees from distressed areas and for projects in distressed areas. A distressed area shall mean:

(1) A county which has an unemployment rate which is twenty percent above the state average for the immediately preceding three years;

(2) A community which has experienced sudden and severe loss of employment; or

(3) An area within a county which area:

(a) Is composed of contiguous census tracts;

(b) Has a minimum population of five thousand persons;

(c) The median household income is at least thirty-five percent below the county's median household income, as determined from data collected for the preceding United States ten-year census; and

(d) Has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects. [1987 c 167 § 10.]

50.65.143 Limitation on use of funds for administration—Service corps. (1) Not more than fifteen percent of the funds available for the service corps shall be expended for

administrative costs. For the purposes of this chapter, "administrative costs" include, but are not limited to, program planning and evaluation, budget development and monitoring, personnel management, contract administration, administrative payroll, development of program reports, and administrative office space costs and utilities.

(2) The fifteen percent limitation does not include costs for any of the following: Program support activities such as direct supervision of enrollees and corpsmembers, counseling, education and job training, equipment, advisory board expenses, and extraordinary recruitment and placement procedures necessary to fill project positions.

(3) The total for all items included under subsection (1) of this section and excluded under subsection (2) of this section shall not: (a) Exceed thirty percent of the appropriated funds available during a fiscal biennium for the service and conservation corps programs; or (b) result in an average cost per enrollee or corpsmember from general funds exceeding seven thousand dollars in the 1987-89 biennium and in succeeding biennia as adjusted by inflation factors established by the office of financial management for state budgeting purposes. The test included in (a) and (b) of this subsection are in the alternative, and it is only required that one of the tests be satisfied. [1987 c 167 § 11.]

50.65.150 Washington service corps scholarship account—Created—Use. The Washington service corps scholarship account is created in the custody of the state treasurer. The account shall consist of a portion of Washington service corps funding, deposited by the commissioner, in an amount sufficient to provide for the future awarding of educational assistance grants described in RCW 50.65.030. Expenditures from the account may be used only for educational assistance grants described in RCW 50.65.030. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. All earnings of investments of surplus balances in the account shall be deposited to the treasury income account created in RCW 43.84.092. [1993 c 302 § 5.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.200 Washington serves—Findings—Declaration. The legislature finds that:

(1) Budget constraints are causing severe gaps and reductions in vital services to local communities and citizens. Some of these gaps in services can be filled by citizen volunteers through an organized program to recruit and place volunteers and to expand opportunities for volunteers to serve their communities;

(2) The federal government is proposing expansion of national services programs. These programs may require significant matching resources from states. State funds supporting the Washington serves program can serve as a required matching source to leverage additional federal national service resources;

(3) Washington state has, through the Washington service corps, successfully offered service opportunities and

meaningful work experience to young adults between the ages of eighteen and twenty-five years;

(4) The need exists to expand full-time volunteer opportunities to citizens age twenty-one and over, to encourage senior citizens, college graduates, professional and technically skilled persons, and other adult citizens, to contribute their critical expertise, experience, labor, and commitment to meeting the needs of their communities;

(5) It is appropriate and in the public's interest for Washington state to create opportunities for citizens to engage in full-time, meaningful volunteer service in governmental or private nonprofit agencies, institutions, programs, or activities that address the social, economic, educational, civic, cultural, or environmental needs of local communities;

(6) Through volunteer service, citizens apply their skills and knowledge to the resolution of critical problems or meeting unmet needs, gain valuable experience, refine or develop new skills, and instill a sense of civic pride and commitment to their community;

(7) There is a need to coordinate state and federally funded volunteer service programs that provide living allowances and other benefits to volunteers to maximize the benefits to volunteers and the organizations in which they serve.

It is therefore the legislature's desire to expand full-time volunteer opportunities for citizens age twenty-one and over and to provide appropriate incentives to those who serve. Such a program should be implemented statewide and coordinated across programs. [1993 sp.s. c 7 § 1.]

50.65.210 Washington serves—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Commissioner" means the commissioner of the employment security department.

(2) "**Council" means the Washington council on volunteerism and citizen service authorized by chapter 43.150 RCW.

(3) "Department" means the employment security department.

(4) "Volunteer" means a person at least twenty-one years of age who, upon application and acceptance into the program, is placed in a governmental or private, nonprofit organization to perform full-time service for the benefit of the community, and who receives a living allowance and other benefits as authorized under this chapter. [1993 sp.s. c 7 § 2.]

***Reviser's note:** RCW 43.150.060, which created the Washington state council on volunteerism and citizen service, was repealed by 1995 c 269 § 2302, effective July 1, 1995.

50.65.220 Washington serves—Program—Created—Procedure—Intent. There is hereby created within the employment security department a program for full-time community service that shall be known and referred to as the Washington serves program. The department shall recruit, train, place, and evaluate applicants to the program. The department may accept applications and enter into agreements or contracts with any governmental or private nonprofit organization appropriate for placement of volunteers under this program. The commissioner, after consultation with the council, may adopt rules as needed to carry out the intent and purposes of this program. It is the intent of the leg-

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islature that the commissioner coordinate this program with all volunteer service programs, whether funded with state or federal dollars, in order to maximize the benefits to volunteers and the communities served under the program. It is also the legislature's intent that to the extent that state funds are paid directly to persons that participate in the program, whether to reimburse, support, assist, or provide other direct payment, no volunteer may have such reimbursement, support, assistance, or other payment reduced or withheld for having served in the program. [1993 sp.s. c 7 § 3.]

50.65.230 Washington serves—Applicants—Eligibility. (1) Applicants to the Washington serves program shall be at least twenty-one years of age and a resident of Washington state.

(2) Applicants may apply to serve for a period of service of one year, except that volunteers may serve for periods of service of less than one year if it is determined by the commissioner, on an individual basis, that a period of service of less than one year is necessary to meet a critical scarce skill or necessary to enable a person or organization to participate in the program.

(3) Volunteers may reapply for periods of service totaling not more than two additional years.

(4) Applicants to the program shall be committed to providing full-time service to the community. [1993 sp.s. c 7 § 4.]

50.65.240 Washington serves—Disqualification for Washington service corps participation. No individual may participate in the Washington serves program created by chapter 7, Laws of 1993 sp. sess., if the person has previously participated for six months or longer in the Washington service corps within the last three years. [1993 c 302 § 10.]

Effective date—1993 c 302: See note following RCW 50.65.030.

50.65.250 Washington serves—Volunteers—Selection—Placement. (1) Program volunteers shall be selected from among qualified individuals submitting applications for full-time service at such time, in such form, and containing such information as may be necessary to evaluate the suitability of each individual for service, and available placements. The commissioner or the commissioner's designee shall review the application of each individual who applies in conformance with selection criteria established by the commissioner after consultation with the council, and who, on the basis of the information provided in the application, is determined to be suitable to serve as a volunteer under the Washington serves program.

(2) Within available funds, volunteers may be placed with any public or private nonprofit organization, program, or project that qualifies to accept program volunteers according to the rules and application procedures established by the commissioner. Work shall benefit the community or state at-large and may include but is not limited to programs, projects, or activities that:

(a) Address the problems of jobless, homeless, hungry, illiterate, or functionally illiterate persons, and low-income youths;

(b) Provide support and a special focus on those project activities that address the needs of the unemployed and those in need of job training or retraining;

(c) Address significant health care problems, including services to homeless individuals and other low-income persons, especially children, through prevention and treatment;

(d) Meet the health, education, welfare, or related needs of low-income persons, particularly children and low-income minority communities;

(e) Provide care or rehabilitation services to the mentally ill, developmentally disabled, or other persons with disabilities;

(f) Address the educational and education-related needs of children, youth, families, and young adults within public educational institutions or related programs;

(g) Address alcohol and drug abuse prevention, education, and related activities; and

(h) Seek to enhance, improve, or restore the environment or that educate or advocate for a sustainable environment.

(3) Every reasonable effort shall be made to place participants in programs, projects, or activities of their choice if the agencies, programs, or activities are consistent with the intent and purposes of the Washington serves program, if there is mutual agreement between the agency, program, or activity and the volunteer, and if the volunteer's service is consistent with the intent and purpose of the program and would benefit the community or the state as a whole. [1993 sp.s. c 7 § 5.]

50.65.260 Washington serves—Volunteers—Support. (1) Volunteers accepted into the Washington serves program and placed in an approved agency, program, or activity, shall be provided a monthly subsistence allowance in an amount determined by the commissioner taking into consideration the allowance given to VISTA, Washington service corps, and other similar service programs. For those persons who qualify and are granted a deferment of federal student loan payments while serving in the program, the rate of compensation shall be equal to but not greater than the monthly subsistence allowance granted Volunteers In Service To America (VISTA) serving in this state, as determined by the national ACTION agency or its successor, in accordance with section 105(b)(2) of the Domestic Volunteer Service Act of 1973, P.L. 93-113, as amended.

(2) The commissioner or the commissioner's designee shall, within available funds, ensure that each volunteer has available support to enable the volunteer to perform the work to which the volunteer is assigned. Such support may include, but is not limited to, reimbursement for travel expenses, payment for education and training expenses, including preservice and on-the-job training necessary for the performance of duties, technical assistance, and other support deemed necessary and appropriate.

(3) At the end of each volunteer's period of service of not less than one year, each volunteer may receive a postservice stipend for each month of completed service in an amount determined by the commissioner. The postservice stipend for those persons who qualify and are granted a deferment of federal student loan payments while serving in this program shall be an amount equal to but not greater than the amount or rate determined by the national ACTION agency or its successor, in accordance with section 105(b)(2) of the Domestic

Volunteer Service Act of 1973, P.L. 93-113 as amended, for Volunteers In Service To America (VISTA), who are providing services in this state. Volunteers under the Washington serves program may accrue the stipend for each month of their service period of not less than one year, including any month during which they were in training. The commissioner or the commissioner's designee may, on an individual basis, make an exception to provide a stipend to a volunteer who has served less than one year.

(4) Stipends shall be payable to the volunteer only upon completion of the period of service. Under circumstances determined by the commissioner, the stipend may be paid on behalf of the volunteer to members of the volunteer's family or others designated by the volunteer. [1993 sp.s. c 7 § 6.]

50.65.270 Washington serves—Volunteers—Medical benefits—Benefit limits. Within available funds, medical aid coverage under chapter 51.36 RCW and medical insurance shall be provided to all volunteers under this program. The department shall give notice of medical aid coverage to the director of labor and industries upon acceptance of the volunteer into the program. The department shall not be deemed an employer of any volunteer under the Washington serves program for any other purpose. Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, unemployment compensation, old age, health and survivor's insurance, state retirement plans, and vacation leave do not apply to volunteers under this program. [1993 sp.s. c 7 § 7.]

50.65.280 Washington serves—Displacement of current workers prohibited. The assignment of volunteers under the Washington serves program shall not result in the displacement of currently employed workers, including partial displacement such as would result from a reduction in hours of nonovertime work, wages, or other employment benefits. Participating agencies, programs, or activities may not terminate, lay off, or reduce the working hours of any employee for the purpose of using volunteers under the Washington serves program. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use volunteers to carry out essential agency work or contractual functions without displacing current employees. [1993 sp.s. c 7 § 8.]

50.65.290 Washington serves—Volunteers—Unemployment compensation coverage limited. The services of volunteers placed with participating agencies described in chapter 50.44 RCW are not eligible for unemployment compensation coverage. Each volunteer shall be so advised by the commissioner or the commissioner's designee. [1993 sp.s. c 7 § 9.]

50.65.300 Washington serves—Volunteers—Assistance to defer student loan payments. The commissioner or the commissioner's designee may assist any volunteer serving full-time under the Washington serves program in obtaining a service deferment of federally funded student loan payments during his or her period of service. [1993 sp.s. c 7 § 10.]

50.65.310 Washington serves—Volunteers—Subsequent development of skills and experience—Recognition. The commissioner or the commissioner’s designee may provide or arrange for educational, vocational, or job counseling for program volunteers at the end of their period of service to (1) encourage volunteers to use the skills and experience which they have derived from their training and service, and (2) promote the development of appropriate opportunities for the use of such skills and experience, and the placement therein of such volunteers. The commissioner or the commissioner’s designee may also assist volunteers in developing a plan for gainful employment.

The commissioner shall provide for an appropriate means of recognition or certification of volunteer service. [1993 sp.s. c 7 § 11.]

50.65.320 Washington serves—Service placement—Work agreements—Contracts—Rules for agencies—Financial support for organizations. The executive administrator of the Washington serves program shall recruit and develop service placements and may enter into work agreements or contracts as needed to implement the Washington serves program. The commissioner, after consultation with the council, may adopt rules for participating agencies which rules may include, but are not limited to: Supervision of volunteers, reasonable work space or other working environment conditions, ongoing training, the handling of grievances or disputes, performance evaluations, frequency of agency contacts, and liability insurance coverage. The commissioner shall determine financial support levels for organizations receiving volunteer placements that will provide matching funds for enrollees in service projects under work agreements. [1993 sp.s. c 7 § 12.]

50.65.330 Washington serves—Gifts, grants, endowments—Matching funds. The department may receive such gifts, grants, and endowments from private or public sources that may be made from time to time, in trust or otherwise, for the use and benefit of the Washington serves program and spend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

The department may also use funds appropriated for the purposes of this chapter as matching funds for federal or private source funds to accomplish the purposes of this chapter. [1993 sp.s. c 7 § 13.]

50.65.901 Conflict with federal requirements—1983 1st ex.s. c 50. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 1st ex.s. c 50 § 16.]

50.65.902 Severability—1983 1st ex.s. c 50. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 50 § 17.]

50.65.903 Conflict with federal requirements—1987 c 167. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1987 c 167 § 12.]

50.65.904 Severability—1987 c 167. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 167 § 13.]

50.65.905 Effective date—1987 c 167. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987. [1987 c 167 § 15.]

50.65.906 Conflict with federal requirements—1993 sp.s. c 7. If any part of this act is found to be in conflict with federal requirements which are prescribed conditions to the receipt of federal funds or participation in any federal program, such conflicting part of this act is declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of the act. Rules adopted pursuant to this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1993 sp.s. c 7 § 14.]

50.65.907 Short title—1993 sp.s. c 7. Sections 1 through 13 of this act may be known and cited as the Washington serves act. [1993 sp.s. c 7 § 15.]

50.65.908 Severability—1993 sp.s. c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 sp.s. c 7 § 18.]

Chapter 50.70 RCW

PROGRAMS FOR DISLOCATED FOREST PRODUCTS WORKERS

Sections

- 50.70.030 Employment opportunities—Benefits.
- 50.70.040 Recruitment—Career orientation services—Career counseling.
- 50.70.050 Department of natural resources duties.
- 50.70.900 Severability—1991 c 315.
- 50.70.901 Conflict with federal requirements—1991 c 315.
- 50.70.902 Effective date—1991 c 315.

Community college program for dislocated forest products workers: RCW 28B.50.259.

Emergency mortgage and rental assistance program—Rural natural resources impact areas—Grants and loans: RCW 43.63A.610 through 43.63A.640.

Enrollment of persons in timber impact areas in basic health plan: RCW 70.47.115.

Skagit river salmon recovery plan: RCW 77.95.140.

50.70.030 Employment opportunities—Benefits. (1) Employment opportunities under the program shall consist of activities that improve the value of state lands and waters. These activities may include, but are not limited to, thinning and precommercial thinning, pruning, slash removal, reforestation, fire suppression, trail maintenance, maintenance of recreational facilities, dike repair, development and maintenance of tourist facilities, and stream enhancement.

(2) Enrollees in the program shall receive medical and dental benefits as provided under chapter 41.05 RCW, but are exempt from the provisions of chapter 41.06 RCW. Each week, enrollees shall not work more than thirty-two hours in this program and must participate in eight hours of career orientation as established in RCW 50.70.040. Participation in the program is limited to six months. [1991 c 315 § 7.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.040 Recruitment—Career orientation services—Career counseling. (1) The department shall recruit program applicants and provide employment opportunities by:

(a) Notifying dislocated forest products workers who are receiving unemployment benefits, or dislocated forest products workers who have exhausted unemployment benefits, of their eligibility for the program.

(b) Establishing procedures for dislocated forest products workers to apply to the program.

(c) Developing a pool of workers eligible to enroll in the program.

(d) Contracting with the department of natural resources to provide employment opportunities for not less than two hundred eligible enrollees.

(2) The department shall provide career orientation services to enrollees in the program. The career orientation services shall include, but are not limited to, counseling on employment options and assistance in accessing retraining programs, and assistance in accessing social service programs.

(3) The department shall provide at least eight hours of career counseling each week for program enrollees. [1991 c 315 § 8.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.050 Department of natural resources duties. (1) The department of natural resources shall enroll candidates in the program from a pool of eligible workers developed by the department.

(2) The department of natural resources shall provide compensation for enrollees. [1991 c 315 § 9.]

Intent—1991 c 315: See note following RCW 28B.50.030.

50.70.900 Severability—1991 c 315. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1991 c 315 § 31.]

50.70.901 Conflict with federal requirements—1991 c 315. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state. [1991 c 315 § 32.]

50.70.902 Effective date—1991 c 315. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 21, 1991], except for section 4 of this act, which shall take effect July 1, 1991. [1991 c 315 § 33.]

Chapter 50.72 RCW YOUTHBUILD PROGRAM

Sections

50.72.010	Legislative findings.
50.72.020	Definitions.
50.72.030	Commissioner's duties—Education and employment training grants.
50.72.040	Education and employment training grants—Eligible activities.
50.72.050	Participation time limits—Educational services and activities requirement.
50.72.060	Grant applications—Requirements.
50.72.070	Grant applicants—Information required—Evaluation reports.

50.72.010 Legislative findings. (1) The legislature finds that there is a need to:

(a) Expand the supply of permanent affordable housing for homeless individuals, low and very low-income persons, and special need populations by utilizing the energies and talents of economically disadvantaged youth;

(b) Provide economically disadvantaged youth with opportunities for meaningful work and service to their communities in helping to meet the housing needs of homeless individuals, low and very low-income persons, and special need populations;

(c) Enable economically disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency; and

(d) Foster the development of leadership skills and commitment to community development among youth in designated community empowerment zones.

(2) The legislature declares that the purpose of the Washington youthbuild program is to:

(a) Help disadvantaged youth who have dropped out of school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in designated community empowerment zones; and

(b) Provide funding assistance to entities implementing programs that provide comprehensive education and skills training programs designed to lead to self-sufficiency for economically disadvantaged youth. [1994 sp.s. c 3 § 1.]

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

(1) "Applicant" means a public or private nonprofit organization agency eligible to provide education and employment training under federal or state employment training programs.

(2) "Commissioner" means the commissioner of employment security.

(3) "Department" means the employment security department.

(4) "Low income" has the same meaning as in RCW 43.185A.010.

(5) "Participant" means an individual that:

(a) Is sixteen to twenty-four years of age, inclusive;

(b) Is or is a member of a very low-income household; and

(c) Is neither attending any school nor subject to a compulsory attendance law and who has not received a secondary school diploma or a certificate of equivalency for such diploma.

(6) "Very low income" means a person or household whose income is at or below fifty percent of the median family income, adjusted for household size, for the county where the household is located.

(7) "Youthbuild" means any program that provides disadvantaged youth with opportunities for employment, education, leadership development, entrepreneurial skills development, and training in the construction or rehabilitation of housing for special need populations, very low-income households, or low-income households. [1994 sp.s. c 3 § 2.]

50.72.030 Commissioner's duties—Education and employment training grants. The Washington youthbuild program is established within the department. The commissioner, in cooperation and consultation with the director of the department of community, trade, and economic development, shall:

(1) Make grants, up to the lesser of three hundred thousand dollars or twenty-five percent of the total costs of the youthbuild activities, to applicants eligible to provide education and employment training under federal or state employment training programs, for the purpose of carrying out a wide range of multidisciplinary activities and services to assist economically disadvantaged youth under the federal opportunities for youth: Youthbuild program (106 Stat. 3723; 42 U.S.C. Sec. 8011), or locally developed youthbuild-type programs for economically disadvantaged youth; and

(2) Coordinate youth employment and training efforts under the department's jurisdiction and cooperate with other agencies and departments providing youth services to ensure that funds appropriated for the purposes of this chapter will be used to supplement funding from federal, state, local, or private sources. [1994 sp.s. c 3 § 3.]

(2008 Ed.)

50.72.040 Education and employment training grants—Eligible activities. (1) Grants made under this chapter shall be used to fund an applicant's activities to implement a comprehensive education and employment skills training program.

(2) Activities eligible for assistance under this chapter include:

(a) Education and job skills training services and activities that include:

(i) Work experience and skills training, coordinated to the maximum extent feasible, with preapprenticeship and apprenticeship programs in construction and rehabilitation trades;

(ii) Services and activities designed to meet the educational needs of participants, including basic skills instruction and remedial education, bilingual education for participants with limited-English proficiency, secondary education services and activities designed to lead to the attainment of a high school diploma or its equivalent, and counseling and assistance in attaining postsecondary education and required financial aid;

(b) Counseling services and related activities;

(c) Activities designed to develop employment and leadership skills;

(d) Support services and need-based stipends necessary to enable the participant to participate in the program and to assist participants through support services in retaining employment;

(e) Wage stipends and benefits provided to participants; and

(f) Administrative costs of the applicant, not to exceed five percent of the amount of assistance provided under this chapter. [1994 sp.s. c 3 § 4.]

50.72.050 Participation time limits—Educational services and activities requirement. (1) An individual selected as a participant in the youthbuild program under this chapter may be offered full-time participation for a period of not less than six months and not more than twenty-four months.

(2) An applicant's program that is selected for funding under this chapter shall be structured so that fifty percent of the time spent by the participants in the youthbuild program is devoted to educational services and activities, such as those outlined in RCW 50.72.040. [1994 sp.s. c 3 § 5.]

50.72.060 Grant applications—Requirements. (1) An application for a grant under this chapter shall be submitted by the applicant in such form and in accordance with the requirements as determined by the commissioner.

(2) The application for a grant under this chapter shall contain at a minimum:

(a) The amount of the grant request and its proposed use;

(b) A description of the applicant and a statement of its qualifications, including a description of the applicant's past experience with housing rehabilitation or construction with youth and youth education and employment training programs, and its relationship with local unions and apprenticeship programs and other community groups;

(c) A description of the proposed site for the program;

(d) A description of the educational and job training activities, work opportunities, and other services that will be provided to participants;

(e) A description of the proposed construction or rehabilitation activities to be undertaken and the anticipated schedule for carrying out such activities;

(f) A description of the manner in which eligible participants will be recruited and selected, including a description of arrangements which will be made with federal or state agencies, community-based organizations, local school districts, the courts of jurisdiction for status and youth offenders, shelters for homeless individuals and other agencies that serve homeless youth, foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women, including young women with dependent children;

(h) A description of how the proposed program will be coordinated with other federal, state, local, and private resources and programs, including vocational, adult, and bilingual education programs, and job training programs;

(i) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the program who have attained the level of journeyman or have served an apprenticeship through the Washington state apprenticeship training council;

(j) A description of the applicant's relationship with building contractor groups and trade unions regarding their involvement in training, and the relationship of the youth-build program with established apprenticeship and training programs;

(k) A description of activities that will be undertaken to develop the leadership skills of the participants;

(l) A description of the commitments for any additional resources to be made available to the local program from the applicant, from recipients of other federal, state, local, or private sources; and

(m) Other factors the commissioner deems necessary. [1994 sp.s. c 3 § 6.]

50.72.070 Grant applicants—Information required—Evaluation reports. (1) An applicant selected for funding under this chapter shall provide the department information on program and participant accomplishments. The information shall be provided in progress and final reports as requested by the department.

(2) A final evaluation report shall be prepared on individual programs at the time of their completion. The final evaluation report shall include, but is not limited to, information on the effectiveness of the program, the status of program participants, and recommendations on program administration at the state and local level. [1998 c 245 § 103; 1994 sp.s. c 3 § 7.]

Chapter 50.98 RCW CONSTRUCTION

Sections

50.98.010	Saving clause—1945 c 35.
50.98.020	Appointments and regulations continued.
50.98.030	Actions commenced under prior laws.

50.98.040	Acts repealed.
50.98.050	Conflicting acts repealed.
50.98.060	Repealed acts not reenacted.
50.98.070	Separability of provisions—1945 c 35.
50.98.080	Effective date—1945 c 35.
50.98.100	Base year wages to include remuneration paid for previously uncovered services.
50.98.110	Compliance with federal unemployment tax act—Internal references—Interpretation.

50.98.010 Saving clause—1945 c 35. If any provisions of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby. [1945 c 35 § 184; no RRS.]

50.98.020 Appointments and regulations continued. The repeal of any acts or parts of acts by this act shall not affect the appointment or employment of any individual or salary, wages, compensation, powers or duties relating to such individual which would continue in effect except for such repeal. Rules and regulations adopted pursuant to the provisions of any acts or parts of acts repealed by this act consistent with the provisions of this act are not affected by such repeal and are hereby continued in full force and effect. [1945 c 35 § 185; no RRS.]

50.98.030 Actions commenced under prior laws. Any action or proceeding had or commenced in any civil or criminal cause prior to the effective date of this act may be prosecuted and continued with the same effect and under the same provisions of the law in effect at the time the action or proceeding was had or commenced: PROVIDED, That no appeal taken subsequent to the effective date of this act will be effective or valid unless there is compliance with the requirements of this act relating to appeals. [1945 c 35 § 186; no RRS.]

50.98.040 Acts repealed. The following acts and parts of acts relating to unemployment compensation are hereby repealed: Chapter 162, Session Laws of 1937; chapter 12, Session Laws of 1939; chapter 214, Session Laws of 1939; section 6 of chapter 201, Session Laws of 1941; chapter 253, Session Laws of 1941; chapter 65, Session Laws of 1943; chapter 127, Session Laws of 1943; chapter 226, Session Laws of 1943. [1945 c 35 § 188; no RRS.]

50.98.050 Conflicting acts repealed. All acts or parts of acts in conflict with or in derogation of this act or any part of this act are hereby repealed insofar as the same are in conflict with or in derogation of this act or any part thereof. [1945 c 35 § 189; no RRS.]

50.98.060 Repealed acts not reenacted. The repeal of any acts or parts of acts hereby shall not be construed to reenact or revive any act or parts of acts repealed or superseded by the acts or parts of acts hereby repealed. [1945 c 35 § 190; no RRS.]

50.98.070 Separability of provisions—1945 c 35. If any section, sentence, clause or phrase of this act should be held to be invalid or unconstitutional the invalidity or uncon-

stitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1945 c 35 § 191; no RRS.]

Severability—1951 c 265: "If any section, sentence, clause or word of this act shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this act, it being the intent of this legislative assembly to enact the remainder of this act notwithstanding such part so declared unconstitutional should or may be so declared." [1951 c 265 § 14.]

50.98.080 Effective date—1945 c 35. An emergency exists and this act is necessary for the preservation of the public peace, health, safety, and welfare and shall take effect on the first day of July, 1945. [1945 c 35 § 192; no RRS.]

50.98.100 Base year wages to include remuneration paid for previously uncovered services. (1) Effective with benefit years beginning on and after January 1, 1978, base year wages shall include remuneration paid for previously uncovered services: PROVIDED, That the maximum benefits payable to an individual as computed for the benefit year will be reduced to the extent that benefits were paid on the basis of identical calendar quarters of the previously uncovered services with respect to a claim filed by the individual under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974. Benefits will be paid, subject to the provisions of this title, based upon the previously uncovered services to the extent that the unemployment compensation trust fund will be reimbursed for the cost thereof by the federal government under section 121 of PL 94-566 and regulations published by the secretary of labor relating thereto.

(2) For the purposes of this section, the term "previously uncovered services" means services performed before January 1, 1978, which are not employment as defined in Title 50 RCW at any time during the one year period ending December 31, 1975, and which:

(a) Is agricultural labor as defined in RCW 50.04.150 and covered by RCW 50.04.155 or domestic services as defined in and covered by RCW 50.04.160; or

(b) Is service performed by an employee of this state or a political subdivision of this state newly covered by chapter 292, Laws of 1977 ex. sess. or by an employee of a nonprofit educational institution which is not an institution of higher education as provided in *RCW 50.44.040(3).

(3) Any nonprofit organization or governmental entity electing to make payments in lieu of contributions shall not be liable to make payments with respect to benefits paid any individual whose base year wages include wages for previously uncovered services as defined in subsection (2)(a) and (b) of this section to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566.

(4) Benefits paid any individual whose base year wages include wages for previously uncovered services as defined in subsection (2)(a) and (b) of this section shall not be charged to the experience rating account of any contribution paying employer to the extent that the unemployment compensation fund is reimbursed for the benefits under section 121 of PL 94-566. [1977 ex.s. c 292 § 20.]

***Reviser's note:** RCW 50.44.040 was amended by 2007 c 386 § 1, deleting subsection (3).

(2008 Ed.)

Effective dates—1977 ex.s. c 292: See note following RCW 50.04.116.

50.98.110 Compliance with federal unemployment tax act—Internal references—Interpretation. Chapter 292, Laws of 1977 ex. sess. has been enacted to meet the requirements imposed by the federal unemployment tax act as amended by PL 94-566. Internal references in any section of chapter 292, Laws of 1977 ex. sess. to the provisions of that act are intended only to apply to those provisions as they existed as of *the effective date of chapter 292, Laws of 1977 ex. sess.

In view of the importance of compliance of chapter 292, Laws of 1977 ex. sess. with the federal unemployment tax act, any ambiguities contained herein should be resolved in a manner consistent with the provisions of that act. Considerable weight has been given to the commentary contained in that document entitled "Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976 PL 94-566", published by the United States department of labor, employment and training administration, and that commentary should be referred to when interpreting the provisions of chapter 292, Laws of 1977 ex. sess. [1977 ex.s. c 292 § 21.]

***Reviser's note:** For the effective dates of 1977 ex.s. c 292, see note following RCW 50.04.116.

Title 51

INDUSTRIAL INSURANCE

Chapters

- 51.04** General provisions.
- 51.08** Definitions.
- 51.12** Employments and occupations covered.
- 51.14** Self-insurers.
- 51.16** Assessment and collection of premiums—Pay-rolls and records.
- 51.18** Retrospective rating plan.
- 51.24** Actions at law for injury or death.
- 51.28** Notice and report of accident—Application for compensation.
- 51.32** Compensation—Right to and amount.
- 51.36** Medical aid.
- 51.44** Funds.
- 51.48** Penalties.
- 51.52** Appeals.
- 51.98** Construction.

Autopsies in industrial deaths: RCW 68.50.103.

Civil defense workers, compensation for: Chapter 38.52 RCW.

Constitutional protection of employees: State Constitution Art. 2 § 35.

Department of labor and industries: Chapter 43.22 RCW.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

Fisheries patrol officers, compensation insurance and medical aid: RCW 77.12.262.

Labor regulations, generally: Title 49 RCW.

Lien of employees for contributions to benefit plans: Chapter 60.76 RCW.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.

Supervisor of industrial insurance: RCW 43.22.020.

Trusts, duration for employee's benefits: Chapter 49.64 RCW.

Unemployment compensation: Title 50 RCW.

Victims of crimes, benefits: Chapter 7.68 RCW.

Chapter 51.04 RCW

GENERAL PROVISIONS

Sections

- 51.04.010 Declaration of police power—Jurisdiction of courts abolished.
- 51.04.020 Powers and duties.
- 51.04.024 Establishment of investigation unit—Receipt and use of criminal history information.
- 51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment.
- 51.04.040 Subpoena power of director—Enforcement by superior court.
- 51.04.050 Physician or licensed advanced registered nurse practitioner's testimony not privileged.
- 51.04.060 No evasion of benefits or burdens.
- 51.04.070 Minor worker is sui juris—Guardianship expense.
- 51.04.080 Sending notices, orders, warrants to claimants.
- 51.04.082 Notices and orders—Mail or personal service.
- 51.04.085 Transmission of amounts payable.
- 51.04.090 Effect of adjudication of applicability.
- 51.04.100 Statutes of limitation saved.
- 51.04.105 Continuation of medical aid contracts.
- 51.04.110 Workers' compensation advisory committee.
- 51.04.120 Certificate of coverage required—Contents.
- 51.04.130 Industrial insurance coverage for Hanford workers—Special agreements.

51.04.010 Declaration of police power—Jurisdiction of courts abolished. The common law system governing the remedy of workers against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided. [1977 ex.s. c 350 § 1; 1972 ex.s. c 43 § 1; 1961 c 23 § 51.04.010. Prior: 1911 c 74 § 1; RRS § 7673.]

51.04.020 Powers and duties. The director shall:

- (1) Establish and adopt rules governing the administration of this title;
- (2) Ascertain and establish the amounts to be paid into and out of the accident fund;
- (3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency;
- (4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;
- (5) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;
- (6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department;
- (7) Compile statistics which will afford reliable information upon which to base operations of all divisions under the department;
- (8) Make an annual report to the governor of the workings of the department;
- (9) Be empowered to enter into agreements with the appropriate agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and injuries are received in the other state, and insofar as permitted by the Constitution and laws of the United States, to

enter into similar agreements with the provinces of Canada; and

(10) Designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. [2000 c 5 § 14; 1994 c 164 § 24; 1977 c 75 § 77; 1963 c 29 § 1; 1961 c 23 § 51.04.020. Prior: 1957 c 70 § 3; prior: (i) 1921 c 182 § 9; 1911 c 74 § 24; RRS § 7703. (ii) 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

Severability—1963 c 29: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 29 § 2.]

Assignment of wage claims: RCW 49.48.040.

Electricians, installations: Chapters 19.28, 19.29 RCW.

Farm labor contractors: Chapter 19.30 RCW.

Health and safety, underground workers: Chapter 49.24 RCW.

Minimum wage act: Chapter 49.46 RCW.

Seasonal labor disputes: Chapter 49.40 RCW.

Washington Industrial Safety and Health Act: Chapter 49.17 RCW.

51.04.024 Establishment of investigation unit—Receipt and use of criminal history information. (1) There is established an investigation unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful under this title. The director will employ supervisory and investigative personnel for the program, who must be qualified by training and experience.

(2) The director and the investigation unit are authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation, abuse, fraud, or suitability for involvement of persons under Title 51 RCW. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. [2008 c 74 § 2.]

Finding—2008 c 74: "The legislature finds it necessary to provide the authority to allow specific units within the agencies affected by this act to access criminal history information for certified criminal justice purposes. For the agencies indicated in sections 2 through 7 of this act, the accessing of this information is for investigative purposes so that the agencies are able to efficiently address areas of potential fraud and abuse and to maintain the safety of investigative staff. For the agency responsible for administering and enforcing section 8 of this act, accessing this information is necessary for any purpose associated with employment by the commission or peace officer certification." [2008 c 74 § 1.]

51.04.030 Medical aid—Rules—Maximum fees—Records and bill payment. (1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to

that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it. [2004 c 65 § 1; 1998 c 230 § 1; 1997 c 325 § 2; 1994 c 164 § 25. Prior: 1993 c 515 § 1; 1993 c 159 § 1; 1989 c 189 § 1; 1986 c 200 § 8; 1980 c 14 § 1; prior: 1977 ex.s. c 350 § 2; 1977 ex.s. c 239 § 1; 1971 ex.s. c 289 § 74; 1961 c 23 § 51.04.030; prior: (i) 1917 c 28 § 6; RRS § 7715. (ii) 1919 c 129 § 3; 1917 c 29 § 7; RRS § 7716. (iii) 1923 c 136 § 10; RRS § 7719.]

Report to legislature—2004 c 65: "By December 1, 2006, the department of labor and industries shall report to the senate committee on commerce and trade and the house committee on commerce and labor, or succes-

sor committees, on the implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims." [2004 c 65 § 17.]

Effective date—2004 c 65: "This act takes effect July 1, 2004." [2004 c 65 § 18.]

Severability—2004 c 65: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 65 § 20.]

51.04.040 Subpoena power of director—Enforcement by superior court. The director and his or her authorized assistants shall have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department, any billing submitted to the department, or the assessment or collection of premiums. The superior court shall have the power to enforce any such subpoena by proper proceedings. [1987 c 316 § 1; 1986 c 200 § 9; 1977 ex.s. c 323 § 1; 1961 c 23 § 51.04.040. Prior: 1915 c 188 § 7; RRS § 7699.]

Severability—1977 ex.s. c 323: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 323 § 29.]

Effective date—1977 ex.s. c 323: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 ex.s. c 323 § 30.]

51.04.050 Physician or licensed advanced registered nurse practitioner's testimony not privileged. In all hearings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to patient. [2004 c 65 § 2; 1961 c 23 § 51.04.050. Prior: 1915 c 188 § 4; RRS § 7687.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Nurse-patient privilege subject to RCW 51.04.050: RCW 5.62.030.

51.04.060 No evasion of benefits or burdens. No employer or worker shall exempt himself or herself from the burden or waive the benefits of this title by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void. [1977 ex.s. c 350 § 3; 1961 c 23 § 51.04.060. Prior: 1911 c 74 § 11; RRS § 7685.]

51.04.070 Minor worker is sui juris—Guardianship expense. A minor shall be deemed sui juris for the purpose of this title, and no other person shall have any cause of action or right to compensation for an injury to such minor worker, except as expressly provided in this title, but in the event of any disability payments becoming due under this title to a minor worker, under the age of eighteen, such disability payments shall be paid to his or her parent, guardian or

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other person having legal custody of his or her person until he or she reaches the age of eighteen. Upon the submission of written authorization by any such parent, guardian, or other person, any such disability payments may be paid directly to such injured worker under the age of eighteen years. If it is necessary to appoint a legal guardian to receive such disability payments, there shall be paid from the accident fund or by the self-insurer, as the case may be, toward the expenses of such guardianship a sum not to exceed three hundred dollars. [1980 c 14 § 2. Prior: 1977 ex.s. c 350 § 4; 1977 ex.s. c 323 § 2; 1961 c 23 § 51.04.070; prior: 1959 c 308 § 1; 1957 c 70 § 4; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.080 Sending notices, orders, warrants to claimants. On all claims under this title, claimants' written notices, orders, or warrants must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals. Claimants' written notices, orders, or warrants may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded. [2007 c 78 § 1; 1972 ex.s. c 43 § 2; 1961 c 23 § 51.04.080. Prior: 1959 c 308 § 2; 1957 c 70 § 5; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.04.082 Notices and orders—Mail or personal service. Any notice or order required by this title to be mailed to any employer may be served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state, but if the notice or order is mailed, it shall be addressed to the address of the employer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the employer to receive such notice or order whether served or mailed shall not release the employer from any tax or any increases or penalties thereon. [1986 c 9 § 2.]

51.04.085 Transmission of amounts payable. The department may, at any time, on receipt of written authorization, transmit amounts payable to a claimant, beneficiary, or any supplier of goods or services to the account of such person in a bank or other financial institution regulated by state or federal authority. [1977 ex.s. c 323 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.090 Effect of adjudication of applicability. If any employer shall be adjudicated to be outside the lawful scope of this title, the title shall not apply to him or her or his or her worker, or if any worker shall be adjudicated to be outside the lawful scope of this title because of remoteness of his or her work from the hazard of his or her employer's work, any such adjudication shall not impair the validity of this title

in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions for the creation of the accident fund, or the provisions of this title making the compensation to the worker provided in it exclusive of any other remedy on the part of the worker shall be held invalid the entire title shall be thereby invalidated. In other respects an adjudication of invalidity of any part of this title shall not affect the validity of the title as a whole or any other part thereof. [1977 ex.s. c 350 § 5; 1961 c 23 § 51.04.090. Prior: 1911 c 74 § 27; RRS § 7706.]

51.04.100 Statutes of limitation saved. If the provisions of this title relative to compensation for injuries to or death of workers become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: PROVIDED, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the worker on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by this title, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed. [1977 ex.s. c 350 § 6; 1961 c 23 § 51.04.100. Prior: 1911 c 74 § 28; RRS § 7707.]

51.04.105 Continuation of medical aid contracts. The obligations of all medical aid contracts approved by the supervisor prior to the repeal of any section of this title pertaining to medical aid contracts shall continue until the expiration of such contracts notwithstanding any such repeal and all provisions of this title pertaining to the operation of medical aid contracts and the control and supervision of such contracts which were in effect at the time of such approval shall, notwithstanding any other provision of law, remain in full force and effect. [1977 ex.s. c 323 § 25.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.04.110 Workers' compensation advisory committee. The director shall appoint a workers' compensation advisory committee composed of ten members: Three representing subject workers, three representing subject employers, one representing self-insurers, one representing workers of self-insurers, and two ex officio members, without a vote, one of whom shall be the chairman of the board of industrial appeals and the other the representative of the department. The member representing the department shall be chairman. This committee shall conduct a continuing study of any aspects of workers' compensation as the committee shall determine require their consideration. The committee shall

report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on July 1, 1971 and the terms of the members representing the workers and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The committee may hire such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All expenses of this committee shall be paid by the department. [1982 c 109 § 2; 1980 c 14 § 3. Prior: 1977 ex.s. c 350 § 7; 1977 c 75 § 78; 1975-'76 2nd ex.s. c 34 § 150; 1975 ex.s. c 224 § 1; 1972 ex.s. c 43 § 37; 1971 ex.s. c 289 § 67.]

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

Effective date—1975 1st ex.s. c 224: "This 1975 amendatory act shall take effect on July 1, 1975." [1975 1st ex.s. c 224 § 20.]

Managed care pilot projects: RCW 43.72.860.

51.04.120 Certificate of coverage required—Contents. Any employer other than a self-insurer subject to this title shall, under such rules as the department shall prescribe, apply for and obtain from the department a certificate of coverage. The certificate shall be personal and nontransferable and shall be valid as long as the employer continues in business and pays the taxes due the state. In case the employer maintains more than one place of business, a separate certificate of coverage for each place at which business is transacted shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the employer and such other information as the department deems necessary and shall be posted conspicuously at the place of business for which it is issued. Where a place of business of the employer is changed, the employer must notify the department within thirty days of the new address and a new certificate shall be issued for the new place of business. No employer may engage in any business for which taxes are due under this title without having a certificate of coverage in compliance with this section, except that the department, by general rule, may provide for the issuance of a certificate of coverage to employers with temporary places of business. [1986 c 9 § 1.]

Engaging in business without certificate of coverage—Unlawful actions—Penalties: RCW 51.48.103.

51.04.130 Industrial insurance coverage for Hanford workers—Special agreements. The department of labor and industries upon the request of the secretary of defense of the United States or the secretary of the United States department of energy, may in its discretion approve special insuring agreements providing industrial insurance coverage for workers engaged in the performance of work, either directly or indirectly, for the United States, regarding projects and contracts at the Hanford Nuclear Reservation. The agree-

ments need not conform to the requirements specified in the industrial insurance law of this state if the department finds that the application of the plan will effectively aid the national interest. The department may also approve or direct changes or modifications of the agreements as it deems necessary.

An agreement entered into under this section remains in full force and effect for as long as the department deems it necessary to accomplish the purposes of this section. [1997 c 109 § 1; 1951 c 144 § 1.]

Severability—1997 c 109: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 109 § 4.]

Chapter 51.08 RCW DEFINITIONS

Sections

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51.08.010 Meaning of words. Unless the context indicates otherwise, words used in this title shall have the meaning given in this chapter. [1961 c 23 § 51.08.010. Prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.012 "Accredited school." For the purposes of this title, "accredited school" means a school or course of instruction which is:

(1) Approved by the state superintendent of public instruction, the state board of education, the *state board for community college education, or the state division of vocational education of the **coordinating council for occupational education; or

(2) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under

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an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW. [1975 1st ex.s. c 224 § 2; 1969 ex.s. c 77 § 3.]

Reviser's note: *(1) The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

***(2) The coordinating council for occupational education was abolished by 1975 1st ex.s. c 174 § 9.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.08.013 "Acting in the course of employment." (1) "Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

(2) "Acting in the course of employment" does not include:

(a) Time spent going to or coming from the employer's place of business in an alternative commute mode, notwithstanding that the employer (i) paid directly or indirectly, in whole or in part, the cost of a fare, pass, or other expense associated with the alternative commute mode; (ii) promoted and encouraged employee use of one or more alternative commute modes; or (iii) otherwise participated in the provision of the alternative commute mode.

(b) An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

(3) "Alternative commute mode" means (a) a carpool or vanpool arrangement whereby a group of at least two but not more than fifteen persons including passengers and driver, is transported between their places of abode or termini near those places, and their places of employment or educational or other institutions, where the driver is also on the way to or from his or her place of employment or educational or other institution; (b) a bus, ferry, or other public transportation service; or (c) a nonmotorized means of commuting such as bicycling or walking. [1997 c 250 § 10; 1995 c 179 § 1; 1993 c 138 § 1; 1979 c 111 § 15; 1977 ex.s. c 350 § 8; 1961 c 107 § 3.]

Severability—1979 c 111: See note following RCW 46.74.010.

51.08.014 "Agriculture." "Agriculture" means the business of growing or producing any agricultural or horticultural produce or crop, including the raising of any animal,

bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. [1971 ex.s. c 289 § 75.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.015 "Amount," "payment," "premium," "contribution," "assessment." Wherever and whenever in any of the provisions of this title relating to any payments by an employer or worker the words "amount" and/or "amounts," "payment" and/or "payments," "premium" and/or "premiums," "contribution" and/or "contributions," and "assessment" and/or "assessments" appear said words shall be construed to mean taxes, which are the money payments by an employer or worker which are required by this title to be made to the state treasury for the accident fund, the medical aid fund, the supplemental pension fund, or any other fund created by this title. [1977 ex.s. c 350 § 9; 1972 ex.s. c 43 § 3; 1961 c 23 § 51.08.015. Prior: 1959 c 308 § 25.]

51.08.018 "Average monthly wage." For purposes of this title, the average monthly wage in the state shall be the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve. [1977 ex.s. c 323 § 3; 1971 ex.s. c 289 § 15.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.020 "Beneficiary." "Beneficiary" means a husband, wife, child, or dependent of a worker in whom shall vest a right to receive payment under this title: PROVIDED, That a husband or wife of an injured worker, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for maintenance, shall be deemed living in a state of abandonment. [1977 ex.s. c 350 § 10; 1973 1st ex.s. c 154 § 91; 1961 c 23 § 51.08.020. Prior: 1957 c 70 § 6; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

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

51.08.030 "Child." "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the worker, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap. [1986 c 293 § 1; 1980 c 14 § 4. Prior: 1977 ex.s. c 323

§ 4; 1977 ex.s. c 80 § 36; 1975-'76 2nd ex.s. c 42 § 37; 1972 ex.s. c 65 § 1; 1969 ex.s. c 77 § 1; 1961 c 23 § 51.08.030; prior: 1957 c 70 § 7; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1941 c 209 § 3, part; Rem. Supp. 1941 § 7679, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

51.08.040 "Department." "Department" means department of labor and industries. [1961 c 23 § 51.08.040.]

Department of labor and industries: Chapter 43.22 RCW.

51.08.050 "Dependent." "Dependent" means any of the following named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower, or child, viz: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the worker. [1997 c 325 § 6; 1977 ex.s. c 350 § 11; 1961 c 23 § 51.08.050. Prior: 1957 c 70 § 8; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.060 "Director." "Director" means the director of labor and industries. [1961 c 23 § 51.08.060.]

51.08.070 "Employer"—Exception. "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers. Or as an exception to the definition of employer, persons or entities are not employers when they contract or agree to remunerate the services performed by an individual who meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW. [2008 c 102 § 2; 1991 c 246 § 2; 1981 c 128 § 1; 1977 ex.s. c 350 § 12; 1971 ex.s. c 289 § 1; 1961 c 23 § 51.08.070. Prior: 1957 c 70 § 9; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Conflict with federal requirements—2008 c 102: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the

conflict, and such finding or determination may not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2008 c 102 § 6.]

Severability—2008 c 102: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 102 § 7.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.095 "Health services provider"—"Provider." "Health services provider" or "provider" means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. [1986 c 200 § 12.]

51.08.100 "Injury." "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom. [1961 c 23 § 51.08.100. Prior: 1959 c 308 § 3; 1957 c 70 § 12; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.110 "Invalid." "Invalid" means one who is physically or mentally incapacitated from earning. [1961 c 23 § 51.08.110. Prior: 1957 c 70 § 13; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

51.08.140 "Occupational disease." "Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. [1961 c 23 § 51.08.140. Prior: 1959 c 308 § 4; 1957 c 70 § 16; prior: 1951 c 236 § 1; 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

51.08.142 "Occupational disease"—Exclusion of mental conditions caused by stress. The department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140. [1988 c 161 § 16.]

51.08.150 "Permanent partial disability." "Permanent partial disability" means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. [1961 c 23 § 51.08.150. Prior: 1957 c 70 § 17; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1,

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part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.160 "Permanent total disability." "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation. [1977 ex.s. c 350 § 13; 1961 c 23 § 51.08.160. Prior: 1957 c 70 § 18; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.08.173 "Self-insurer." "Self-insurer" means an employer or group of employers which has been authorized under this title to carry its own liability to its employees covered by this title. [1983 c 174 § 1; 1971 ex.s. c 289 § 80.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.175 "State fund"—"State of Washington industrial insurance fund." "State fund" means those funds held by the state or any agency thereof for the purposes of this title. The "state of Washington industrial insurance fund" means the department when acting as the agency to insure the industrial insurance obligation of employers. The terms "state fund" and "state of Washington industrial insurance fund" shall be deemed synonymous when applied to the functions of the department connected with the insuring of employers who secure the payment of industrial insurance benefits through the state. The director shall manage the state fund and the state of Washington industrial insurance fund and shall have such powers as are necessary to carry out its functions and may reinsure any risk insured by the state fund. [1977 ex.s. c 323 § 5; 1972 ex.s. c 43 § 5; 1971 ex.s. c 289 § 88.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.177 "Successor." "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, a major part of the property, whether real or personal, tangible or intangible, of the taxpayer. [2004 c 243 § 1; 1986 c 9 § 3.]

Adoption of rules—2004 c 243: "The department shall adopt rules to implement this act." [2004 c 243 § 10.]

51.08.178 "Wages"—Monthly wages as basis of compensation—Computation thereof. (1) For the purposes of this title, the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the worker's wages are not fixed by the month, they shall be determined by multiplying the daily wage the worker was receiving at the time of the injury:

- (a) By five, if the worker was normally employed one day a week;
- (b) By nine, if the worker was normally employed two days a week;
- (c) By thirteen, if the worker was normally employed three days a week;
- (d) By eighteen, if the worker was normally employed four days a week;
- (e) By twenty-two, if the worker was normally employed five days a week;
- (f) By twenty-six, if the worker was normally employed six days a week;
- (g) By thirty, if the worker was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer as part of the contract of hire, but shall not include overtime pay except in cases under subsection (2) of this section. As consideration of like nature to board, housing, and fuel, wages shall also include the employer's payment or contributions, or appropriate portions thereof, for health care benefits unless the employer continues ongoing and current payment or contributions for these benefits at the same level as provided at the time of injury. However, tips shall also be considered wages only to the extent such tips are reported to the employer for federal income tax purposes. The daily wage shall be the hourly wage multiplied by the number of hours the worker is normally employed. The number of hours the worker is normally employed shall be determined by the department in a fair and reasonable manner, which may include averaging the number of hours worked per day.

(2) In cases where (a) the worker's employment is exclusively seasonal in nature or (b) the worker's current employment or his or her relation to his or her employment is essentially part-time or intermittent, the monthly wage shall be determined by dividing by twelve the total wages earned, including overtime, from all employment in any twelve successive calendar months preceding the injury which fairly represent the claimant's employment pattern.

(3) If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages.

(4) In cases where a wage has not been fixed or cannot be reasonably and fairly determined, the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed. [2007 c 297 § 1; 1988 c 161 § 12; 1980 c 14 § 5. Prior: 1977 ex.s. c 350 § 14; 1977 ex.s. c 323 § 6; 1971 ex.s. c 289 § 14.]

Application—2007 c 297 § 1: "Section 1 of this act applies to all wage determinations issued on or after July 22, 2007." [2007 c 297 § 2.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.08.180 "Worker"—Exceptions. "Worker" means every person in this state who is engaged in the employment

of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as an exception to the definition of worker, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier. [2008 c 102 § 3; 1991 c 246 § 3; 1987 c 175 § 3; 1983 c 97 § 1; 1982 c 80 § 1; 1981 c 128 § 2; 1977 ex.s. c 350 § 15; 1961 c 23 § 51.08.180. Prior: 1957 c 70 § 20; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1937 c 211 § 2; RRS § 7674-1.]

Conflict with federal requirements—Severability—2008 c 102: See notes following RCW 51.08.070.

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

51.08.181 "Worker"—Registered contractor and electrician exclusions. For the purposes of this title, any individual performing services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW for remuneration under an independent contract is not a worker when:

(1) The individual has been, and will continue to be, free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the

particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW. [2008 c 102 § 5.]

Conflict with federal requirements—Severability—2008 c 102: See notes following RCW 51.08.070.

51.08.185 "Employee." "Employee" shall have the same meaning as "worker" when the context would so indicate, and shall include all officers of the state, state agencies, counties, municipal corporations, or other public corporations, or political subdivisions. [1977 ex.s. c 350 § 16; 1972 ex.s. c 43 § 4.]

51.08.195 "Employer" and "worker"—Additional exception. As an exception to the definition of "employer" under RCW 51.08.070 and the definition of "worker" under RCW 51.08.180, services performed by an individual for remuneration shall not constitute employment subject to this title if it is shown that:

(1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact; and

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business

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which the individual is conducting. [2008 c 102 § 4; 1991 c 246 § 1.]

Conflict with federal requirements—Severability—2008 c 102: See notes following RCW 51.08.070.

Effective date—1991 c 246: "This act shall take effect January 1, 1992." [1991 c 246 § 10.]

Conflict with federal requirements—1991 c 246: "If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this act. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [1991 c 246 § 9.]

Chapter 51.12 RCW

EMPLOYMENTS AND OCCUPATIONS COVERED

Sections

51.12.010	Employments included—Declaration of policy.
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Health and safety of underground workers: Chapter 49.24 RCW.

51.12.010 Employments included—Declaration of policy. There is a hazard in all employment and it is the purpose of this title to embrace all employments which are within the legislative jurisdiction of the state.

This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment. [1972 ex.s. c 43 § 6; 1971 ex.s. c 289 § 2; 1961 c 23 § 51.12.010. Prior: 1959 c 55 § 1; 1955 c 74 § 2; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

51.12.020 Employments excluded. (Effective until July 1, 2009.) The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in *RCW 23B.01.400(21) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance agent, insurance broker, or insurance solicitor, as defined in RCW **48.17.010, ***48.17.020, and ***48.17.030, respectively.

(12) Services performed by a booth renter as defined in ***RCW 18.16.020. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation. [1999 c 68 § 1; 1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020; prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Reviser's note: *(1) RCW 23B.01.400 was amended by 2000 c 168 § 1, changing subsection (21) to subsection (22); and was subsequently amended by 2002 c 297 § 9, changing subsection (22) to subsection (24).

** (2) RCW 48.17.010 was amended by 2007 c 117 § 1, deleting the definition of "agent," effective July 1, 2009.

*** (3) RCW 48.17.020 and 48.17.030 were repealed by 2007 c 117 § 39, effective July 1, 2009.

**** (4) RCW 18.16.020 was amended by 2002 c 111 § 2, deleting the definition of "booth renter."

Severability—1991 c 324: See RCW 18.16.910.

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.12.020 Employments excluded. (Effective July 1, 2009.) The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to

restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400(24) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010(5).

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation. [2008 c 217 § 98; 1999 c 68 § 1; 1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020; prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

Severability—1991 c 324: See RCW 18.16.910.

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.12.025 Persons working on parents' family farms—Optional exclusion from coverage. (1) The parent or parents of a person at least eighteen years of age but under twenty-one years of age may elect to exclude from mandatory coverage under this title the parent's employment of that person in agricultural activities on their family farm if:

(a) The person resides with his or her parent or parents or resides on their family farm; and

(b) The parent or parents file a written notice with the department electing exclusion from coverage.

(2) A parent or parents who have elected to exclude a person under this subsection may subsequently obtain coverage for that person under RCW 51.12.110. [1996 c 8 § 1.]

51.12.035 Volunteers. (1) Volunteers shall be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW.

A "volunteer" shall mean a person who performs any assigned or authorized duties for the state or any agency thereof, except emergency services workers as described by chapter 38.52 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by the state or any agency thereof, prior to the occurrence of the injury or the contraction of an occupational disease, for

the purpose of engaging in authorized volunteer service: PROVIDED, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties.

Any and all premiums or assessments due under this title on account of such volunteer service shall be the obligation of and be paid by the state or any agency thereof which has registered and accepted the services of volunteers.

(2) Except as provided in RCW 51.12.050, volunteers may be deemed employees and/or workers, as the case may be, for all purposes relating to medical aid benefits under chapter 51.36 RCW at the option of any city, county, town, special district, municipal corporation, or political subdivision of any type, or any private nonprofit charitable organization, when any such unit of local government or any such nonprofit organization has given notice of covering all of its volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

A "volunteer" shall mean a person who performs any assigned or authorized duties for any such unit of local government, or any such organization, except emergency services workers as described by chapter 38.52 RCW, or firefighters covered by chapter 41.24 RCW, brought about by one's own free choice, receives no wages, and is registered and accepted as a volunteer by any such unit of local government, or any such organization which has given such notice, for the purpose of engaging in authorized volunteer services: PROVIDED, That such person shall be deemed to be a volunteer although he or she may be granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties: PROVIDED FURTHER, That juveniles performing community restitution under chapter 13.40 RCW may not be granted coverage as volunteers under this section.

Any and all premiums or assessments due under this title on account of such volunteer service for any such unit of local government, or any such organization shall be the obligation of and be paid by such organization which has registered and accepted the services of volunteers and exercised its option to secure the medical aid benefits under chapter 51.36 RCW for such volunteers. [2002 c 175 § 39; 2001 c 138 § 3; 1981 c 266 § 3; 1977 ex.s. c 350 § 17; 1975 1st ex.s. c 79 § 1; 1974 ex.s. c 171 § 44; 1971 c 20 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—Purpose—2001 c 138: See note following RCW 51.12.050.

51.12.045 Offenders performing community restitution. Offenders performing community restitution pursuant to court order or under RCW 13.40.080 may be deemed employees and/or workers under this title at the option of the state, county, city, town, or nonprofit organization under whose authorization the community restitution is performed. Any premiums or assessments due under this title for community restitution work shall be the obligation of and be paid for by the state agency, county, city, town, or nonprofit organization for which the offender performed the community restitution. Coverage commences when a state agency, county, city, town, or nonprofit organization has given notice to the director that it wishes to cover offenders performing

community restitution before the occurrence of an injury or contraction of an occupational disease. [2002 c 175 § 40; 1986 c 193 § 1; 1984 c 24 § 4; 1981 c 266 § 1.]

Effective date—2002 c 175: See note following RCW 7.80.130.

Offenders treated as employees or workers by local governments: RCW 35.21.209, 35A.21.220, 36.16.139.

51.12.050 Public entity work—Partnerships with volunteer groups and businesses for community improvement projects. (1) Whenever a public entity engages in any work, or let a contract therefor, in which workers are employed for wages, this title shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the public entity. If the work is being done by contract, the payroll of the contractor and the subcontractor shall be the basis of computation and, in the case of contract work consuming less than one year in performance, the required payment into the accident fund shall be based upon the total payroll. The contractor and any subcontractor shall be subject to the provisions of this title, and the state for its general fund, the county, municipal corporation, or other taxing district shall be entitled to collect from the contractor the full amount payable to the accident fund and the contractor, in turn, shall be entitled to collect from the subcontractor his or her proportionate amount of the payment.

(2)(a) A public entity may seek partnerships with volunteer groups and businesses to engage in community improvement projects to benefit the public entity. In administering a project, the public entity must:

(i) Provide prospective donors and participants written notice of the risks and responsibilities to be assumed by the public entity and the donors or participants. A volunteer donating labor on the project must, before beginning work, document in writing that he or she has received the notice and that he or she is donating labor as a result of his or her own free choice; and

(ii) Pay premiums and assessments required under this title to secure medical aid benefits under chapter 51.36 RCW for volunteers donating labor on the project.

(b) A contractor or employer donating equipment or materials for use on a community improvement project shall not, for the purposes of this title, be considered the employer of an individual donating labor unless the contractor or employer pays the individual wages for working on the project or makes working on the project a condition of employment. This subsection applies regardless of whether:

(i) The contractor or employer informs the individual about the community improvement project or encourages the individual to donate labor on the project;

(ii) The individual uses equipment or materials on the project that are donated by the contractor or the individual's employer; or

(iii) The individual is granted maintenance or reimbursement for actual expenses necessarily incurred in performing labor for the project.

(3) Whenever and so long as, by state law, city charter, or municipal ordinance, provision is made for employees or peace officers injured in the course of employment, such employees shall not be entitled to the benefits of this title and shall not be included in the payroll of the municipality under

this title: PROVIDED, That whenever any state law, city charter, or municipal ordinance only provides for payment to the employee of the difference between his or her actual wages and that received under this title such employees shall be entitled to the benefits of this title and may be included in the payroll of the municipality.

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

(a) "Community improvement project" means a project sponsored by a public entity that uses donated labor, materials, or equipment and includes, but is not limited to, projects to repair, restore, or preserve historic property.

(b) "Historic property" means real property owned by a public entity including, but not limited to, barns, schools, military structures, and cemeteries.

(c) "Public entity" means the state, county, any municipal corporation, or other taxing district. [2001 c 138 § 2; 1977 ex.s. c 350 § 18; 1972 ex.s. c 43 § 8; 1961 c 23 § 51.12.050. Prior: 1955 c 74 § 6; prior: (i) 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part. (ii) 1923 c 128 § 1, part; RRS § 7674a, part.]

Finding—Purpose—2001 c 138: "The legislature finds that government and business partnerships on projects for community improvement can assist communities to preserve historic property and create opportunities for volunteer service. The legislature also recognizes that uncertainty about risks and obligations may deter employers who would otherwise be willing to donate materials and equipment to a community project. The purpose of this act is to encourage participation by establishing clear criteria for determining industrial insurance obligations with respect to donated labor on certain community projects." [2001 c 138 § 1.]

51.12.060 Federal projects. The application of this title and related safety laws is hereby extended to all lands and premises owned or held by the United States of America, by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of the state of Washington, and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which are within the exterior boundaries of the state, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the state, and as fully as is permitted under the provisions of that act of the congress of the United States approved June 25, 1936, granting to the several states jurisdiction and authority to apply their state workers' compensation laws on all property and premises belonging to the United States of America, being 49 United States Statutes at large 1938, title 40, section 290 United States code, 1958 edition: PROVIDED, That this title shall not apply to employees of the United States of America. [1977 ex.s. c 350 § 19; 1961 c 23 § 51.12.060. Prior: 1937 c 147 § 1; RRS § 7676-2.]

51.12.070 Work done by contract—Subcontractors. The provisions of this title apply to all work done by contract; the person, firm, or corporation who lets a contract for such work is responsible primarily and directly for all premiums upon the work. The contractor and any subcontractor are subject to the provisions of this title and the person, firm, or corporation letting the contract is entitled to collect from the contractor the full amount payable in premiums and the contractor in turn is entitled to collect from the subcontractor his or her proportionate amount of the payment.

For the purposes of this section, a contractor registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW is not responsible for any premiums upon the work of any subcontractor if:

(1) The subcontractor is currently engaging in a business which is registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW;

(2) The subcontractor has a principal place of business which would be eligible for a business deduction for internal revenue service tax purposes other than that furnished by the contractor for which the business has contracted to furnish services;

(3) The subcontractor maintains a separate set of books or records that reflect all items of income and expenses of the business;

(4) The subcontractor has contracted to perform:

(a) The work of a contractor as defined in RCW 18.27.010; or

(b) The work of installing wires or equipment to convey electric current or installing apparatus to be operated by such current as it pertains to the electrical industry as described in chapter 19.28 RCW; and

(5) The subcontractor has an industrial insurance account in good standing with the department or is a self-insurer. For the purposes of this subsection, a contractor may consider a subcontractor's account to be in good standing if, within a year prior to letting the contract or master service agreement, and at least once a year thereafter, the contractor has verified with the department that the account is in good standing and the contractor has not received written notice from the department that the subcontractor's account status has changed. Acceptable documentation of verification includes a department document which includes an issued date or a dated printout of information from the department's internet web site showing a subcontractor's good standing. The department shall develop an approach to provide contractors with verification of the date of inquiries validating that the subcontractor's account is in good standing.

It is unlawful for any county, city, or town to issue a construction building permit to any person who has not submitted to the department an estimate of payroll and paid premium thereon as provided by chapter 51.16 RCW of this title or proof of qualification as a self-insurer. [2004 c 243 § 2; 1981 c 128 § 4; 1971 ex.s. c 289 § 81; 1965 ex.s. c 20 § 1; 1961 c 23 § 51.12.070. Prior: 1955 c 74 § 7; prior: 1923 c 136 § 5, part; 1921 c 182 § 8, part; 1915 c 188 § 6, part; 1911 c 74 § 17, part; RRS § 7692, part.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.12.080 Railway employees. Inasmuch as it has proved impossible in the case of employees of common carriers by railroad, engaged in maintenance and operation of railways doing interstate, foreign and intrastate commerce, and in maintenance and construction of their equipment, to separate and distinguish the connection of such employees with interstate or foreign commerce from their connection with intrastate commerce, and such employees have, in fact, received no compensation under this title, the provisions of this title shall not apply to work performed by such employ-

ees in the maintenance and operation of such railroads or performed in the maintenance or construction of their equipment, or to the employees of such common carriers by railroad engaged therein, but nothing herein shall be construed as excluding from the operation of this title railroad construction work, or the employees engaged thereon: PROVIDED, That common carriers by railroad engaged in such interstate or foreign commerce and in intrastate commerce shall, in all cases where liability does not exist under the laws of the United States, be liable in damages to any person suffering injury while employed by such carrier, or in case of the death of such employee, to the surviving spouse and child, or children, and if no surviving spouse or child or children, then to the parents, minor sisters, or minor brothers, residents of the United States at the time of such death, and who were dependent upon such deceased for support, to the same extent and subject to the same limitations as the liability now existing, or hereafter created, by the laws of the United States governing recoveries by railroad employees injured while engaged in interstate commerce: PROVIDED FURTHER, That if any interstate common carrier by railroad shall also be engaged in one or more intrastate enterprises or industries (including street railways and power plants) other than its railroad, the foregoing provisions of this section shall not exclude from the operation of the other sections of this title or bring under the foregoing proviso of this section any work of such other enterprise or industry, the payroll of which may be clearly separable and distinguishable from the payroll of the maintenance or operation of such railroad, or of the maintenance or construction of its equipment: PROVIDED FURTHER, That nothing in this section shall be construed as relieving an independent contractor engaged through or by his employees in performing work for a common carrier by railroad, from the duty of complying with the terms of this title, nor as depriving any employee of such independent contractor of the benefits of this title. [1973 1st ex.s. c 154 § 92; 1972 ex.s. c 43 § 9; 1961 c 23 § 51.12.080. Prior: 1925 ex.s. c 84 § 1; 1919 c 67 § 1; 1917 c 29 § 19; 1911 c 74 § 18; RRS § 7693.]

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

51.12.090 Intrastate and interstate commerce. The provisions of this title shall apply to employers and workers (other than railways and their workers) engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability or method of compensation now exists under or may hereafter be established by the congress of the United States, only to the extent that the payroll of such workers may and shall be clearly separable and distinguishable from the payroll of workers engaged in interstate or foreign commerce: PROVIDED, That as to workers whose payroll is not so clearly separable and distinguishable the employer shall in all cases be liable in damages for injuries to the same extent and under the same circumstances as is specified in the case of railroads in the first proviso of RCW 51.12.080: PROVIDED FURTHER, That nothing in this title shall be construed to exclude goods or materials and/or workers brought into this state for the purpose of engaging in work. [1983 c 170 § 1; 1982 c 63 § 16; 1977 ex.s. c 350 § 20; 1972 ex.s. c 43 § 10; 1961 c 23 § 51.12.090. Prior: 1959 c 308 § 10; 1919 c 67 § 3; RRS § 7695.]

[Title 51 RCW—page 14]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.12.095 Common carrier employees—Owners and operators of trucks. (1) Common or contract carriers doing business in this state that are engaged exclusively in interstate or foreign commerce, or any combination thereof, shall provide coverage under this title for their Washington employees, unless the employer has furnished workers' compensation insurance coverage under the laws of another state for the coverage of employees in this state: PROVIDED, That any common or contract carrier or its successor that formerly had coverage under this title and by virtue of being exclusively engaged in interstate or foreign commerce, or any combination thereof, withdrew its acceptance of liability under this title by filing written notice with the director of the withdrawal of its acceptance prior to January 2, 1987, shall be governed by the provisions of this section that were in effect as of that date.

(2) A person who is domiciled in this state and who owns and operates a truck engaged in intrastate, interstate, or foreign commerce, or any combination thereof, may elect coverage under this title in the manner provided by RCW 51.32.030, whether or not the truck is leased to a common or contract carrier. [1989 c 368 § 1; 1983 c 170 § 2.]

Effective date—1989 c 368: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 368 § 2.]

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise—Geoduck harvesting. (*Effective until January 1, 2009.*) (1) Except as otherwise provided in this section, the provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws or federal employees' compensation act for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made both under this title and under the maritime laws or federal employees' compensation act, such benefits paid under this title shall be repaid by the worker or beneficiary. For any claims made under the Jones Act, the employer is deemed a third party, and the

(2008 Ed.)

injured worker's cause of action is subject to RCW 51.24.030 through 51.24.120.

(5) Commercial divers harvesting geoduck clams under an agreement made pursuant to RCW 79.135.210, workers tending to such divers, and the employers of such divers and tenders shall be subject to the provisions of this title whether or not such work is performed from a vessel. [2007 c 324 § 1; 1991 c 88 § 3; 1988 c 271 § 2; 1977 ex.s. c 350 § 21; 1975 1st ex.s. c 224 § 3; 1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Effective date—Applicability—1988 c 271 §§ 1-4: See note following RCW 51.12.102.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

51.12.100 Maritime occupations—Segregation of payrolls—Common enterprise—Geoduck harvesting. (Effective January 1, 2009.) (1) Except as otherwise provided in this section, the provisions of this title shall not apply to a master or member of a crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws or federal employees' compensation act for personal injuries or death of such workers.

(2) If an accurate segregation of payrolls of workers for whom such a right or obligation exists under the maritime laws cannot be made by the employer, the director is hereby authorized and directed to fix from time to time a basis for the approximate segregation of the payrolls of employees to cover the part of their work for which no right or obligation exists under the maritime laws for injuries or death occurring in such work, and the employer, if not a self-insurer, shall pay premiums on that basis for the time such workers are engaged in their work.

(3) Where two or more employers are simultaneously engaged in a common enterprise at one and the same site or place in maritime occupations under circumstances in which no right or obligation exists under the maritime laws for personal injuries or death of such workers, such site or place shall be deemed for the purposes of this title to be the common plant of such employers.

(4) In the event payments are made both under this title and under the maritime laws or federal employees' compensation act, such benefits paid under this title shall be repaid by the worker or beneficiary. For any claims made under the Jones Act, the employer is deemed a third party, and the injured worker's cause of action is subject to RCW 51.24.030 through 51.24.120.

(5) Commercial divers harvesting geoduck clams under an agreement made pursuant to RCW 79.135.210 and the employers of such divers shall be subject to the provisions of this title whether or not such work is performed from a vessel. [2008 c 70 § 1; 2007 c 324 § 1; 1991 c 88 § 3; 1988 c 271 § 2; 1977 ex.s. c 350 § 21; 1975 1st ex.s. c 224 § 3; 1972 ex.s. c 43 § 11; 1961 c 23 § 51.12.100. Prior: 1931 c 79 § 1; 1925 ex.s. c 111 § 1; RRS § 7693a.]

Effective date—2008 c 70: "This act takes effect January 1, 2009." [2008 c 70 § 2.]

Effective date—Applicability—1988 c 271 §§ 1-4: See note following RCW 51.12.102.

(2008 Ed.)

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Ferry system employees in extrahazardous employment: RCW 47.64.070.

51.12.102 Maritime workers—Asbestos-related disease. (1) The department shall furnish the benefits provided under this title to any worker or beneficiary who may have a right or claim for benefits under the maritime laws of the United States resulting from an asbestos-related disease if (a) there are objective clinical findings to substantiate that the worker has an asbestos-related claim for occupational disease and (b) the worker's employment history has a prima facie indicia of injurious exposure to asbestos fibers while employed in the state of Washington in employment covered under this title. The department shall render a decision as to the liable insurer and shall continue to pay benefits until the liable insurer initiates payments or benefits are otherwise properly terminated under this title.

(2) The benefits authorized under subsection (1) of this section shall be paid from the medical aid fund, with the self-insurers and the state fund each paying a pro rata share, based on number of worker hours, of the costs necessary to fund the payments. For the purposes of this subsection only, the employees of self-insured employers shall pay an amount equal to one-half of the share charged to the self-insured employer.

(3) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a self-insurer or the state fund, then the self-insurer or state fund shall reimburse the medical aid fund for all benefits paid and costs incurred by the fund.

(4) If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program other than the federal social security, old age survivors, and disability insurance act, 42 U.S.C. or an insurer under the maritime laws of the United States:

(a) The department shall pursue the federal program insurer on behalf of the worker or beneficiary to recover from the federal program insurer the benefits due the worker or beneficiary and on its own behalf to recover the benefits previously paid to the worker or beneficiary and costs incurred;

(b) For the purpose of pursuing recovery under this subsection, the department shall be subrogated to all of the rights of the worker or beneficiary receiving compensation under subsection (1) of this section; and

(c) The department shall not pursue the worker or beneficiary for the recovery of benefits paid under subsection (1) of this section unless the worker or beneficiary receives recovery from the federal program insurer, in addition to receiving benefits authorized under this section. The director may exercise his or her discretion to waive, in whole or in part, the recovery of any such benefits where the recovery would be against equity and good conscience.

(d) Actions pursued against federal program insurers determined by the department to be liable for benefits under this section may be prosecuted by special assistant attorneys general. The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state

bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate actions under this subsection. Attorneys' fees and costs shall be paid in conformity with applicable federal and state law. Any legal costs remaining as an obligation of the department shall be paid from the medical aid fund.

(5) The provisions of subsection (1) of this section shall not apply if the worker or beneficiary refuses, for whatever reason, to assist the department in making a proper determination of coverage. If a worker or beneficiary refuses to cooperate with the department, self-insurer, or federal program insurer by failing to provide information that, in the opinion of the department, is relevant in determining the liable insurer, or if a worker refuses to submit to medical examination, or obstructs or fails to cooperate with the examination, or if the worker or beneficiary fails to cooperate with the department in pursuing benefits from the federal program insurer, the department shall reject the application for benefits. No information obtained under this section is subject to release by subpoena or other legal process.

(6) The amount of any third party recovery by the worker or beneficiary shall be subject to a lien by the department to the full extent that the medical aid fund has not been otherwise reimbursed by another insurer. Reimbursement shall be made immediately to the medical aid fund upon recovery from the third party suit. If the department determines that the benefits paid under subsection (1) of this section are owed to the worker or beneficiary by a federal program insurer, the department shall not participate in the costs or attorneys' fees incurred in bringing the third party suit. [1993 c 168 § 1; 1988 c 271 § 1.]

Applicability—1993 c 168: "This act applies to all claims without regard to the date of injury or date of filing of the claim." [1993 c 168 § 2.]

Effective date—1993 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 168 § 3.]

Report to legislature—1988 c 271 § 1: "The department of labor and industries shall conduct a study of the program established by RCW 51.12.102. The department's study shall include the use of benefits under the program and the cost of the program. The department shall report the results of the study to the economic development and labor committee of the senate and the commerce and labor committee of the house of representatives, or the appropriate successor committees, at the start of the 1993 regular legislative session." [1988 c 271 § 4.]

Effective date—Applicability—1988 c 271 §§ 1-4: "Sections 1 through 4 of this act shall take effect July 1, 1988, and shall apply to all claims filed on or after that date or pending a final determination on that date." [1988 c 271 § 5.]

51.12.110 Elective adoption—Withdrawal—Cancellation. Any employer who has in his or her employment any person or persons excluded from mandatory coverage pursuant to RCW 51.12.020 may file notice in writing with the director, on such forms as the department may provide, of his or her election to make such persons otherwise excluded subject to this title. The employer shall forthwith display in a conspicuous manner about his or her works, and in a sufficient number of places to reasonably inform his or her workers of the fact, printed notices furnished by the department stating that he or she has so elected. Said election shall

become effective upon the filing of said notice in writing. The employer and his or her workers shall be subject to all the provisions of this title and entitled to all of the benefits thereof: PROVIDED, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his or her acceptance of liability under this title by filing written notice with the director of the withdrawal of his or her acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected worker or workers work and shall otherwise notify personally the affected workers. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

The department shall have the power to cancel the elective adoption coverage if any required payments or reports have not been made. Cancellation by the department shall be no later than thirty days from the date of notice in writing by the department advising of cancellation being made. [1991 c 246 § 5; 1982 c 63 § 17; 1980 c 14 § 6. Prior: 1977 ex.s. c 350 § 22; 1977 ex.s. c 323 § 8; 1971 ex.s. c 289 § 85; 1961 c 23 § 51.12.110; prior: 1959 c 308 § 11; 1929 c 132 § 5; 1923 c 136 § 6; 1911 c 74 § 19; RRS § 7696.]

Effective date—Conflict with federal requirements—1991 c 246: See notes following RCW 51.08.195.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.12.120 Extraterritorial coverage. (1) If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had the injury occurred within this state, the worker, or his or her beneficiaries, shall be entitled to compensation under this title if at the time of the injury:

(a) His or her employment is principally localized in this state; or

(b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or

(d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation or other recoveries, including settlement proceeds, under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title if that claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation or other recoveries, including settlement proceeds, paid or awarded the worker or beneficiary under such other workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

(3)(a) An employer not domiciled in this state who is employing workers in this state in work for which the employer must be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or prequalified under RCW 47.28.070, must secure the payment of compensation under this title by:

(i) Insuring the employer's workers' compensation obligation under this title with the department;

(ii) Being qualified as a self-insurer under this title; or

(iii) For employers domiciled in a state or province of Canada subject to an agreement entered into under subsection (7) of this section, as permitted by the agreement, filing with the department a certificate of coverage issued by the agency that administers the workers' compensation law in the employer's state or province of domicile certifying that the employer has secured the payment of compensation under the other state's or province's workers' compensation law.

(b) The department shall adopt rules to implement this subsection.

(4) If a worker or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state or province of Canada and the employer:

(a) Is not subject to subsection (3) of this section and has neither opened an account with the department nor qualified as a self-insurer under this title, the employer or his or her insurance carrier shall file with the director a certificate issued by the agency that administers the workers' compensation law in the state of the employer's domicile, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the worker or beneficiary is entitled to the benefits provided under the other state's law.

(b) Has filed a certificate under subsection (3)(a)(iii) of this section or (a) of this subsection (4):

(i) The filing of the certificate constitutes appointment by the employer or his or her insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(ii) The director shall send to such employer or his or her insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(iii) If the employer is a self-insurer under the workers' compensation law of the other state or province of Canada, the employer shall, upon submission of evidence or security,

satisfactory to the director, of his or her ability to meet his or her liability to the claimant under this title, be deemed to be a qualified self-insurer under this title; and

(iv) If the employer's liability under the workers' compensation law of the other state or province of Canada is insured:

(A) The employer's carrier, as to such claimant only, shall be deemed to be subject to this title. However, unless the insurer's contract with the employer requires the insurer to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed the insurer's liability under the workers' compensation law of the other state or province; and

(B) If the total amount for which the employer's insurer is liable under (b)(iv)(A) of this subsection is less than the total of the compensation to which the claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title.

(c) If subject to subsection (3) of this section, has not complied with subsection (3) of this section or, if not subject to subsection (3) of this section, has neither qualified as a self-insurer nor secured insurance coverage under the workers' compensation law of another state or province of Canada, the claimant shall be paid compensation by the department and the employer shall have the same rights and obligations, and is subject to the same penalties, as other employers subject to this title.

(5) As used in this section:

(a) A person's employment is principally localized in this or another state when: (i) His or her employer has a place of business in this or the other state and he or she regularly works at or from the place of business; or (ii) if (a)(i) of this subsection is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or the other state;

(b) "Workers' compensation law" includes "occupational disease law" for the purposes of this section.

(6) A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall govern as to any injury occurring after the effective date of the agreement.

(7) The director is authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada that administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another. If the other state's or province's law requires Washington employers to secure the payment of compensation under the other state's or province's workers' compensation laws for work performed in that state or province, then employers domiciled in that state or province must purchase compensation covering their workers engaged in that work in this state under this state's industrial insurance law. When an agreement under this subsection has been executed and adopted as a rule of the department under chapter 34.05 RCW, it binds

all employers and workers subject to this title and the jurisdiction of this title is governed by this rule.

(8) Washington employers who are not self-insured under chapter 51.14 RCW shall obtain workers' compensation coverage from the state fund for temporary and incidental work performed on jobs or at jobsites in another state by their Washington workers. The department is authorized to adopt rules governing premium liability and reporting requirements for hours of work in excess of temporary and incidental as defined in this chapter.

(9) "Temporary and incidental" means work performed by Washington employers on jobs or at jobsites in another state for thirty or fewer consecutive or nonconsecutive full or partial days within a calendar year. Temporary and incidental days are considered on a per state basis.

(10) By December 1, 2011, the department shall report to the workers' compensation advisory committee on the effect of this section on the revenue and costs to the state fund. [2008 c 88 § 1; 1999 c 394 § 1; 1998 c 279 § 2; 1995 c 199 § 1; 1977 ex.s. c 350 § 23; 1972 ex.s. c 43 § 12; 1971 ex.s. c 289 § 82.]

Finding—Intent—1998 c 279: "The legislature finds that a competitive disadvantage exists in the construction industry because of a disparity in workers' compensation coverage requirements among the states. The intent of this act is (1) to provide an equal footing for all contractors bidding on or engaging in construction work in this state, (2) to ensure that all workers injured while in the course of employment in this state receive the benefits to which they are entitled, and (3) to not create disincentives for employers to hire workers in this state." [1998 c 279 § 1.]

Severability—1995 c 199: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 199 § 8.]

51.12.130 Registered apprentices or trainees. (1) All persons registered as apprentices or trainees with the state apprenticeship council and participating in supplemental and related instruction classes conducted by a school district, a community college, a vocational school, or a local joint apprenticeship committee, shall be considered as workers of the state apprenticeship council and subject to the provisions of Title 51 RCW, for the time spent in actual attendance at such supplemental and related instruction classes.

(2) The assumed wage rate for all apprentices or trainees during the hours they are participating in supplemental and related instruction classes, shall be three dollars per hour. This amount shall be used for purposes of computations of premiums. For purposes of computing disability compensation payments, the actual wage rate during employment shall be used.

(3) Only those apprentices or trainees who are registered with the state apprenticeship council prior to their injury or death and who incur such injury or death while participating in supplemental and related instruction classes shall be entitled to benefits under the provisions of Title 51 RCW.

(4) The filing of claims for benefits under the authority of this section shall be the exclusive remedy of apprentices or trainees and their beneficiaries for injuries or death compensable under the provisions of Title 51 RCW against the state, its political subdivisions, the school district, community college, or vocational school and their members, officers or employees or any employer regardless of negligence.

(5) This section shall not apply to any apprentice or trainee who has earned wages for the time spent in participating in supplemental and related instruction classes. [1988 c 140 § 1; 1987 c 185 § 31; 1973 c 110 § 1.]

Intent—1987 c 185: "In 1977, in two separate pieces of legislation relating to industrial insurance, the Washington legislature changed certain references from "workmen's" or "workman's" compensation to "workers'" compensation. The purpose of this act is to correct remaining obsolete references to "workmen's compensation" and "workmen."" [1987 c 185 § 1.]

Severability—1987 c 185: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 185 § 41.]

51.12.140 Volunteer law enforcement officers. (1) As used in this section:

(a) "Municipal corporation" means any city, town, or county authorized by law to maintain and operate a law enforcement department;

(b) "Law enforcement department" means any regularly organized police department, sheriff's department, department of public safety, or other similar organization which has as its primary purpose the enforcement of state or local penal laws and the preservation of public order, which consists wholly of volunteer law enforcement officers or a combination of volunteer and paid law enforcement officers, and which is duly organized and maintained by a municipal corporation;

(c) "Volunteer law enforcement officer" means a person who is a member of a law enforcement department and who (i) performs assigned or authorized duties for the law enforcement department by his or her own free choice; (ii) serves in a position that is not basically clerical or secretarial in nature; (iii) is registered and accepted as a volunteer by the law enforcement department; and (iv) receives no monetary remuneration other than maintenance and reimbursement for actual expenses necessarily incurred in performing assigned duties; and

(d) "Performance of duty" includes any work in and about the volunteer law enforcement officers' quarters, police station, or any other place under the direction or general orders of the officer having the authority to order a volunteer law enforcement officer to perform the work; providing law enforcement assistance; patrol; drill; and any work of an emergency nature performed in accordance with the rules of the law enforcement department.

(2) Any municipal corporation maintaining and operating a law enforcement department may elect to provide coverage under this title for all of its volunteer law enforcement officers for death or disability occurring in the performance of their duties as volunteer law enforcement officers. Any municipal corporation electing to provide the coverage shall file a written notice of coverage with the director.

(3) Coverage under this section shall be for all the applicable death, disability, and medical aid benefits of this title and shall be effective only for injuries which occur and occupational diseases which are contracted after the notice of coverage has been filed with the director.

Nothing in this subsection shall be construed to prohibit a municipal corporation from covering its volunteer law enforcement officers and other volunteers under RCW

51.12.035(2), as now or hereafter amended, for medical aid benefits only.

(4) Volunteer law enforcement officers for whom municipal corporations have given notice of coverage under this section shall be deemed workers or employees, as the case may be, and the performance of their duties shall be deemed employment or in the course of employment, as the case may be, for all purposes of this title except where expressly excluded or where the context clearly requires otherwise.

(5) All premiums, assessments, contributions, and penalties due under this title because coverage is provided under this section shall be the obligation of and be paid by the municipal corporation giving the notice of coverage to the director.

(6) Any municipal corporation electing coverage under this section shall maintain a time log in which the number of hours worked by each of its volunteer law enforcement officers is recorded. The log shall be made available for inspection upon the request of any authorized employee of the department.

(7) Any municipal corporation electing coverage under this section may withdraw the coverage by filing a written notice of the withdrawal with the director. The withdrawal shall become effective thirty days after filing the notice or on the date of the termination of the security for payment of compensation, whichever occurs later. At least thirty days before the effective date of the withdrawal, the municipal corporation shall notify each of its volunteer law enforcement officers of the withdrawal. Withdrawal of coverage under this section shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period in which coverage was provided. [1977 ex.s. c 113 § 1.]

Severability—1977 ex.s. c 113: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 113 § 2.]

51.12.150 Musicians and entertainers. Any musician or entertainer who performs as a member of a group or recognized entity is deemed an employee of the group or entity and the leader of the group or entity shall be required to properly register as an employer with the department and pay industrial insurance premiums on behalf of his or her employees. If a musician or entertainer is a sole performer or performs as a partner in a group or entity, or performs on a casual basis, the musician or entertainer shall be exempted from mandatory coverage of this title. However, any such sole performer, partner, or casual performer may elect to be covered under this title and shall be subject to all the provisions and entitled to all the benefits under this title. [1983 c 252 § 2.]

Employments excluded—Musicians and entertainers: RCW 51.12.020.

51.12.160 Foreign degree-granting institutions—Employee services in country of domicile. The services of employees of a foreign degree-granting institution who are nonimmigrant aliens under the immigration laws of the United States, shall, for the purposes of RCW 51.12.120, be considered to be localized or principally localized, in the country of domicile of the foreign degree-granting institution

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as defined in RCW 28B.90.010 in those instances where the income of those employees would be exempt from taxation by virtue of the terms and provisions of any treaty between the United States and the country of domicile of the foreign degree-granting institution. However, a foreign degree-granting institution is not precluded from otherwise establishing that a nonimmigrant employee's services are, for the purpose of such statutes, principally located in its country of domicile. [1993 c 181 § 9.]

51.12.170 Student volunteers. (1) An employer covered under this title may elect to include student volunteers as employees or workers for all purposes relating to medical aid benefits under chapter 51.36 RCW. The employer shall give notice of its intent to cover all of its student volunteers to the director prior to the occurrence of the injury or contraction of an occupational disease.

(2) A student volunteer is an enrolled student in a public school as defined in RCW 28A.150.010 who is participating as a volunteer under a program authorized by the public school. The student volunteer shall perform duties for the employer without wages. The student volunteer shall be deemed to be a volunteer even if the student is granted maintenance and reimbursement for actual expenses necessarily incurred in performing his or her assigned or authorized duties. A person who earns wages for the services performed is not a student volunteer.

(3) Any and all premiums or assessments due under this title on account of service by a student volunteer shall be paid by the employer who has registered and accepted the services of volunteers and has exercised its option to secure the medical aid benefits under chapter 51.36 RCW for the student volunteers. [1994 c 246 § 1.]

Effective date—Implementation—1994 c 246 § 1: "Section 1 of this act shall take effect October 1, 1994. The department of labor and industries may take such steps as are necessary to ensure that this section is implemented on its effective date." [1994 c 246 § 3.]

Chapter 51.14 RCW SELF-INSURERS

Sections

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SELF-INSURED EMPLOYERS

51.14.010 Duty to secure payment of compensation—Options. Every employer under this title shall secure the payment of compensation under this title by:

- (1) Insuring and keeping insured the payment of such benefits with the state fund; or
- (2) Qualifying as a self-insurer under this title. [1971 ex.s. c 289 § 26.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.14.020 Qualification. (1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he or she has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer. Each application for certification as a self-insurer submitted by an employer shall be accompanied by payment of a fee of one hundred fifty dollars or such larger sum as the director shall find necessary for the administrative costs of evaluation of the applicant's qualifications. Any employer who has formerly been certified as a self-insurer and thereafter ceases to be so certified may not apply for certification within three years of ceasing to have been so certified.

(2)(a) A self-insurer may be required by the director to supplement existing financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state, or provide an irrevocable letter of credit issued by a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington filed with the department. The money, securities, bond, or letter of credit shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, bond, or letter of credit required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his or her probable continuity of operation.

However, a letter of credit shall be acceptable only if the self-insurer has a net worth of not less than five hundred million dollars as evidenced in an annual financial statement prepared by a qualified, independent auditor using generally accepted accounting principles. The money, securities, bond, or letter of credit so deposited shall be held by the director solely for the payment of compensation by the self-insurer and his or her assessments. In the event of default the self-insurer loses all right and title to, any interest in, and any right to control the surety. The amount of surety may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(b) The letter of credit option authorized in (a) of this subsection shall not apply to self-insurers authorized under RCW 51.14.150 or to self-insurers who are counties, cities, or municipal corporations.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him or her upon his or her written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his or her proper share of any deficit or insufficiency in the state fund as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his or her liability under this title with any reinsurer authorized to transact such reinsurance in this state: PROVIDED, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

(6) For purposes of the application of this section, the department may adopt separate rules establishing the security requirements applicable to units of local government. In setting such requirements, the department shall take into consideration the ability of the governmental unit to meet its self-insured obligations, such as but not limited to source of funds, permanency, and right of default.

(7) The director shall adopt rules to carry out the purposes of this section including, but not limited to, rules respecting the terms and conditions of letters of credit and the establishment of the appropriate level of net worth of the self-insurer to qualify for use of the letter of credit. Only letters of credit issued in strict compliance with the rules shall be deemed acceptable. [1995 c 31 § 1; 1990 c 209 § 1; 1986 c 57 § 1; 1977 ex.s. c 323 § 9; 1972 ex.s. c 43 § 16; 1971 ex.s. c 289 § 27.]

Effective date—1990 c 209 § 1: "Section 1 of this act shall take effect January 1, 1991." [1990 c 209 § 3.]

Intent—1986 c 57: See note following RCW 51.14.077.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.14.030 Certification of employer as self-insurer. The director may issue a certification that an employer is qualified as a self-insurer when such employer meets the following requirements:

- (1) He or she has fulfilled the requirements of RCW 51.14.020.

(2) He or she has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He or she has submitted to the department a sworn itemized statement accompanied by an independent audit of the employer's books demonstrating to the director's satisfaction that the employer has sufficient liquid assets to meet his or her estimated liabilities as a self-insurer.

(4) He or she has demonstrated to the department the existence of the safety organization maintained by him or her within his or her establishment that indicates a record of accident prevention.

(5) He or she has submitted to the department a description of the administrative organization to be maintained by him or her to manage industrial insurance matters including:

- (a) The reporting of injuries;
- (b) The authorization of medical care;
- (c) The payment of compensation;
- (d) The handling of claims for compensation;
- (e) The name and location of each business location of the employer; and
- (f) The qualifications of the personnel of the employer to perform this service.

(6) He or she has demonstrated to the department the ability and commitment to submit electronically the claims [data] required by RCW 51.14.110.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification. [2005 c 145 § 3; 1977 ex.s. c 323 § 10; 1971 ex.s. c 289 § 28.]

Effective date—2005 c 145 §§ 2 and 3: See note following RCW 51.14.110.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.14.040 Surety liability—Termination. (1) The surety on a bond filed by a self-insurer pursuant to this title may terminate its liability thereon by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective.

(2) In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring prior to the termination of the surety's liability.

(3) If the bond is terminated for any reason other than the employer's terminating his status as a self-insurer, the employer shall, prior to the date of termination of the surety's liability, otherwise comply with the requirements of this title.

(4) The liability of a surety on any bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided either such liability is secured by another bond filed, or money or securities deposited as required by this title. [1971 ex.s. c 289 § 29.]

51.14.050 Termination of status—Notice—Financial requirements. (1) Any employer may at any time terminate his status as a self-insurer by giving the director written notice stating when, not less than thirty days thereafter, such

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termination shall be effective, provided such termination shall not be effective until the employer either shall have ceased to be an employer or shall have filed with the director for state industrial insurance coverage under this title.

(2) An employer who ceases to be a self-insurer, and who so files with the director, must maintain money, securities or surety bonds deemed sufficient in the director's discretion to cover the entire liability of such employer for injuries or occupational diseases to his employees which occurred during the period of self-insurance: PROVIDED, That the director may agree for the medical aid and accident funds to assume the obligation of such claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment of such obligations on behalf of the employer. [1971 ex.s. c 289 § 30.]

51.14.060 Default by self-insurer—Authority of director—Liability for reimbursement. (1) The director may, in cases of default upon any obligation under this title by the self-insurer, after ten days notice by certified mail to the defaulting self-insurer of the intention to do so, bring suit upon such bond or collect the interest and principal of any of the securities as they may become due or sell the securities or any of them as may be required or apply the money deposited, all in order to pay compensation and discharge the obligations of the defaulting self-insurer under this title.

(2) The director shall be authorized to fulfill the defaulting self-insured employer's obligations under this title from the defaulting self-insured employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting self-insured employer. The defaulting self-insured employer is liable to and shall reimburse the director for the amounts necessary to fulfill the obligations of the defaulting self-insured employer that are in excess of the amounts received by the director from any bond filed, or securities or money deposited, by the defaulting self-insured employer pursuant to chapter 51.14 RCW. The amounts to be reimbursed shall include all amounts paid or payable as compensation under this title together with administrative costs, including attorneys' fees, and shall be considered taxes due the state of Washington. [1986 c 57 § 2; 1971 ex.s. c 289 § 31.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.070 Payments upon default. Whenever compensation due under this title is not paid because of an uncorrected default of a self-insurer, such compensation shall be paid from the medical aid and accidents funds, and any moneys obtained by the director from the bonds or other security provided under RCW 51.14.020 shall be deposited to the appropriate fund for the payment of compensation and administrative costs, including attorneys' fees. [1986 c 57 § 3; 1971 ex.s. c 289 § 36.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.073 Default lien. (1) In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the amounts necessary to fulfill the obligations of a defaulting self-insured employer together with administrative costs and attorneys' fees is a lien

prior to all other liens or claims and on a parity with prior tax liens and the mere existence of a default by a self-insured employer is sufficient to create the lien without any prior or subsequent action by the state. All administrators, receivers, and assignees for the benefit of creditors shall notify the director of such administration, receivership, or assignment within thirty days of their appointment or qualification.

(2) Separate and apart and in addition to the lien established by this section, the department may issue an assessment, as provided for in RCW 51.48.120, for the amount necessary to fulfill the defaulting self-insured employer's obligations, including all amounts paid and payable as compensation under this title and administrative costs, including attorneys' fees. [1986 c 57 § 4.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.077 Self-insurers' insolvency trust—Assessments—Rules. (1) A self-insurers' insolvency trust is established to provide for the unsecured benefits paid to the injured workers of self-insured employers under this title for insolvent or defaulting self-insured employers and for the department's associated administrative costs, including attorneys' fees. The self-insurers' insolvency trust shall be funded by an insolvency assessment which shall be levied on a post-insolvency basis and after the defaulting self-insured employer's security deposit, assets, and reinsurance, if any, have been exhausted. Insolvency assessments shall be imposed on all self-insured employers, except school districts, cities, and counties. The manner of imposing and collecting assessments to the insolvency fund shall be set forth in rules adopted by the department to ensure that self-insured employers pay into the fund in proportion to their claim costs. The department's rules shall provide that self-insured employers who have surrendered their certification shall be assessed for a period of not more than three calendar years following the termination date of their certification.

(2) The director shall adopt rules to carry out the purposes of this section, including but not limited to:

(a) Governing the formation of the self-insurers' insolvency trust for the purpose of this chapter;

(b) Governing the organization and operation of the self-insurers' insolvency trust to assure compliance with the requirements of this chapter;

(c) Requiring adequate accountability of the collection and disbursement of funds in the self-insurers' insolvency trust; and

(d) Any other provisions necessary to carry out the requirements of this chapter. [1986 c 57 § 6.]

Intent—1986 c 57: "It is the intent of the legislature to provide for the continuation of workers' compensation benefits in the event of the failure of a self-insured employer to meet its compensation obligations when the employer's security deposit, assets, and reinsurance are inadequate. The legislature finds and declares that the establishment of a self-insurers' insolvency trust is necessary to assure that benefit payments to injured workers of self-insured employers will not become the responsibility of the state fund." [1986 c 57 § 5.]

51.14.080 Withdrawal of certification—Grounds. Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

(1) The employer no longer meets the requirements of a self-insurer; or

(2) The self-insurer's deposit is insufficient; or

(3) The self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to proceedings against the employer to obtain compensation; or

(4) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or

(5) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions; or

(6) The self-insurer fails to pay an insolvency assessment under the procedures established pursuant to RCW 51.14.077. [1986 c 57 § 7; 1971 ex.s. c 289 § 32.]

Intent—1986 c 57: See note following RCW 51.14.077.

51.14.090 Withdrawal of certification, corrective action upon employees' petition. (1) Upon the petition of any employee or union or association having a substantial number of employees in the employ of the self-insurer the director or the director's designee may, in the director or designee's sole discretion, hold a hearing to determine whether or not there are grounds for the withdrawal of certification of a self-insurer or for corrective action by the department.

(2) The director shall serve upon the self-insurer and upon any employee or union or association having a substantial number of employees in the employ of said self-insurer, personally or by certified mail, a notice of intention to withdraw, or not to withdraw, certification of the self-insurer, which notice shall describe the nature and location or locations of the plants or operations involved; and the specific nature of the reasons for the decision. Similar notice shall be provided for decisions regarding corrective actions. The corrective action notice shall also include a directive to the self-insurer specifying the program deficiencies to be eliminated.

(3) If the decision is to withdraw certification, it shall include: The period of time within which the ground or grounds therefor existed or arose; and the date, not less than ninety days after the self-insurer's receipt of the notice, when the certification will be withdrawn.

(4) An appeal of any action taken by the director under this section may be taken by the self-insurer, or by any employee or union or association having a substantial number of employees in the employ of the self-insurer. Proceedings on the appeal shall be as prescribed in this title. Appeal by a self-insurer of notice of intention to withdraw certification or to take corrective action shall not act as a stay of the withdrawal or corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) The director may adopt rules to carry out the purposes of this section. [1996 c 58 § 1; 1983 c 21 § 1; 1971 ex.s. c 289 § 33.]

51.14.095 Corrective action—Appeal. (1) The director shall take corrective action against a self-insured employer if the director determines that:

(a) The employer is not following proper industrial insurance claims procedures;

(b) The employer's accident prevention program is inadequate; or

(c) Any condition described in RCW 51.14.080 (1) through (5) exists.

(2) Corrective actions may be taken upon the director's initiative or in response to a petition filed under RCW 51.14.090. Corrective actions which may be taken by the director shall include:

(a) Probationary certification for a period of time determined by the director;

(b) Mandatory training for employers in areas including claims management, safety procedures, and administrative reporting requirements; and

(c) Monitoring of the activities of the employer to determine progress towards compliance.

The director shall adopt rules defining the corrective actions which may be taken in response to a given condition.

Corrective actions shall be limited to those described in (a), (b), and (c) of this subsection.

(3) Upon the termination of the corrective action, the director shall review the employer's program for compliance with state statutes and regulations. A written report regarding the employer's compliance shall be provided to the employer and to any party to a petition filed under RCW 51.14.090. If the director determines that compliance has been attained, no further action shall be taken. If compliance has not been attained, the director may take additional corrective action as defined in this section, or proceed toward decertification as described in RCW 51.14.080.

(4) An employer may appeal any action taken by the director under this section. Proceedings during the appeal shall be as prescribed in this title. An appeal by a self-insurer shall not act as a stay of the corrective action, unless the board or court, for good cause shown, orders otherwise.

(5) This section shall not be construed to limit the responsibilities or authority of the department under RCW 51.14.080 or 51.14.090. [1983 c 21 § 2.]

51.14.100 Notice of compliance to be posted—Penalty. (1) Every employer subject to the provisions of this title shall post and keep posted in a conspicuous place or places in and about his place or places of business a reasonable number of typewritten or printed notices of compliance substantially identical to a form prescribed by the director, stating that such employer is subject to the provisions of this title. Such notice shall advise whether the employer is self-insured or has insured with the department, and shall designate a person or persons on the premises to whom report of injury shall be made.

(2) Any employer who has failed to open an account with the department or qualify as a self-insurer shall not post or permit to be posted on or about his place of business or premises any notice of compliance with this title and any wilful violation of this subsection by any officer or supervisory employee of an employer shall be a misdemeanor. [1971 ex.s. c 289 § 34.]

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51.14.110 Employer's duty to maintain records, furnish information—Electronic reporting system—Requirement and penalties—Confidentiality of claims data—Rules. (1) Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information the self-insurer has in its possession as to any disputed claim, upon forms approved by the director.

(2)(a) The department shall establish an electronic reporting system for the submission to the department of specified self-insurance claims data to more effectively monitor the performance of self-insurers and to obtain claims information in an efficient manner.

(b) Self-insurers shall submit claims data electronically in the format and frequency prescribed by the department.

(c) Electronic submittal to the department of specified claims data is required to maintain self-insurance certification. The department shall establish an escalating schedule of penalties for noncompliance with this requirement, up to and including withdrawal of self-insurance certification.

(d) Claims data reported to the department electronically by individual self-insurers are confidential in accordance with RCW 51.16.070 and 51.28.070. The department may publish, for statistical purposes, aggregated claims data that contain no personal identifiers.

(3) The department shall adopt rules to administer this section. [2005 c 145 § 2; (2005 c 145 § 1 expired July 1, 2008); 1971 ex.s. c 289 § 35.]

Effective date—2005 c 145 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2008." [2005 c 145 § 5.]

Expiration date—2005 c 145 § 1: "Section 1 of this act expires July 1, 2008." [2005 c 145 § 4.]

51.14.120 Copy of claim file—Notice of protest or appeal—Medical report. (1) The self-insurer shall provide, when authorized under RCW 51.28.070, a copy of the employee's claim file at no cost within fifteen days of receipt of a request by the employee or the employee's representative, and shall provide the physician performing an examination with all relevant medical records from the worker's claim file, but only to the extent required of the department under RCW 51.36.070. If the self-insured employer determines that release of the claim file to an unrepresented worker in whole or in part, may not be in the worker's best interests, the employer must submit a request for denial with an explanation along with a copy of that portion of the claim file not previously provided within twenty days after the request from the worker. In the case of second or subsequent requests, a reasonable charge for copying may be made. The self-insurer shall provide the entire contents of the claim file unless the request is for only a particular portion of the file. Any new material added to the claim file after the initial request shall be provided under the same terms and conditions as the initial request.

(2) The self-insurer shall transmit notice to the department of any protest or appeal by an employee relating to the administration of an industrial injury or occupational disease claim under this chapter within five working days of receipt. The date that the protest or appeal is received by the self-insurer shall be deemed to be the date the protest is received by the department for the purpose of RCW 51.52.050.

(3) The self-insurer shall submit a medical report with the request for closure of a claim under this chapter. [2001 c 152 § 1; 1993 c 122 § 2.]

51.14.130 Request for claim resolution—Time. The self-insurer shall request allowance or denial of a claim within sixty days from the date that the claim is filed. If the self-insurer fails to act within sixty days, the department shall promptly intervene and adjudicate the claim. [1993 c 122 § 3.]

51.14.140 Violations of disclosure or request for resolution—Order by director. Failure of a self-insurer to comply with RCW 51.14.120 and 51.14.130 shall subject the self-insurer to a penalty under RCW 51.48.080, which shall accrue for the benefit of the employee. The director shall issue an order conforming with RCW 51.52.050 determining whether a violation has occurred within thirty days of a request by an employee. [1993 c 122 § 4.]

51.14.150 School districts, ESDs, public hospital districts, or hospitals as self-insurers—Authorized—Organization—Qualifications. (1) For the purposes of this section, "hospital" means a hospital as defined in *RCW 70.41.020(2) or a psychiatric hospital regulated under chapter 71.12 RCW, but does not include beds utilized by a comprehensive cancer center for cancer research.

(2)(a) Any two or more employers which are school districts or educational service districts, or (b) any two or more employers which are public hospital districts or hospitals, and are owned or operated by a state agency or municipal corporation of this state, or (c) any two or more employers which are hospitals, no one of which is owned or operated by a state agency or municipal corporation of this state, may enter into agreements to form self-insurance groups for the purposes of this chapter.

(3) No more than one group may be formed under subsection (2)(b) of this section and no more than one group may be formed under subsection (2)(c) of this section.

(4) The self-insurance groups shall be organized and operated under rules promulgated by the director under RCW 51.14.160. Such a self-insurance group shall be deemed an employer for the purposes of this chapter, and may qualify as a self-insurer if it meets all the other requirements of this chapter. [1997 c 35 § 1; 1993 c 158 § 1; 1983 c 174 § 2; 1982 c 191 § 7.]

***Reviser's note:** RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

Severability—1982 c 191: See note following RCW 28A.335.210.

Educational service district as self-insurer—Authority: RCW 28A.310.440.

School district as self-insurer—Authority: RCW 28A.320.070.

51.14.160 School districts, ESDs, or hospitals as self-insurers—Rules—Scope. The director shall promulgate rules to carry out the purposes of RCW 51.14.150:

(1) Governing the formation of self-insurance groups for the purposes of this chapter;

(2) Governing the organization and operation of the groups to assure their compliance with the requirements of this chapter;

(3) Requiring adequate monetary reserves, determined under accepted actuarial practices, to be maintained by each group to assure financial solvency of the group; and

(4) Requiring each group to carry adequate reinsurance. [1983 c 174 § 3; 1982 c 191 § 8.]

Severability—1982 c 191: See note following RCW 28A.335.210.

OFFICE OF THE OMBUDSMAN

51.14.300 Ombudsman office created—Appointment—Open and competitive contracting. The office of the ombudsman for workers of industrial insurance self-insured employers is created. The ombudsman shall be appointed by the governor and report directly to the director of the department. The office of the ombudsman may be openly and competitively contracted by the governor in accordance with chapter 39.29 RCW but shall not be physically housed within the industrial insurance division. [2007 c 281 § 1.]

51.14.310 Ombudsman—Term of office—Removal—Vacancies. The person appointed ombudsman shall hold office for a term of six years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombudsman only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term. [2007 c 281 § 2.]

51.14.320 Ombudsman—Training or experience qualifications. Any ombudsman appointed under this chapter shall have training or experience, or both, in the following areas:

(1) Washington state industrial insurance including self-insurance programs;

(2) The Washington state legal system;

(3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation. [2007 c 281 § 3.]

51.14.330 Ombudsman office—Staffing level. During the first two years after the office of the ombudsman is created, the staffing level shall be no more than four persons, including the ombudsman and any administrative staff. Thereafter, the staffing levels shall be determined based upon the office of the ombudsman's workload and whether any additional locations are needed. [2007 c 281 § 4.]

51.14.340 Ombudsman office—Powers and duties. The office of the ombudsman shall have the following powers and duties:

(1) To act as an advocate for injured workers of self-insured employers;

(2) To offer and provide information on industrial insurance as appropriate to workers of self-insured employers;

(3) To identify, investigate, and facilitate resolution of industrial insurance complaints from workers of self-insured employers;

(4) To maintain a statewide toll-free telephone number for the receipt of complaints and inquiries; and

(5) To refer complaints to the department when appropriate. [2007 c 281 § 5.]

51.14.350 Ombudsman office—Referral procedures—Department response to referred complaints. (1) The office of the ombudsman shall develop referral procedures for complaints by workers of self-insured employers. The department shall act as quickly as possible on any complaint referred to them by the office of the ombudsman.

(2) The department shall respond to any complaint against a self-insured employer referred to it by the office of the ombudsman and shall forward the office of the ombudsman a summary of the results of the investigation and action proposed or taken. [2007 c 281 § 6.]

51.14.360 Ombudsman liability—Discriminatory, disciplinary, or retaliatory actions—Communications privileged and confidential—Testimony. (1) No ombudsman is liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any employee of a self-insured employer for any communication made, or information given or disclosed, to assist the ombudsman in carrying out its duties and responsibilities, unless the same was done maliciously. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by the ombudsman, if reasonably related to the requirements of his or her responsibilities under this chapter and done in good faith, are privileged and confidential, and this shall serve as a defense to any action in libel or slander.

(4) Representatives of the office of the ombudsman are exempt from being required to testify as to any privileged or confidential matters except as the court may deem necessary to enforce this chapter. [2007 c 281 § 7.]

51.14.370 Confidentiality of ombudsman records and files—Disclosure prohibited—Exception. All records and files of the ombudsman relating to any complaint or investigation made pursuant to carrying out its duties and the identities of complainants, witnesses, or injured workers shall remain confidential unless disclosure is authorized by the complainant or injured worker or his or her guardian or legal representative. No disclosures may be made outside the office of the ombudsman without the consent of any named witness or complainant unless the disclosure is made without the identity of any of these individuals being disclosed. [2007 c 281 § 8.]

51.14.380 Explaining ombudsman program—Posters and brochures. The ombudsman shall integrate into existing posters and brochures information explaining the ombudsman program. Both the posters and the brochures shall contain the ombudsman's toll-free telephone number. Every self-insured employer must place a poster in an area where all workers have access to it. The self-insured employer must provide a brochure to all injured workers at

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the time the employer is notified of the worker's injury. [2007 c 281 § 9.]

51.14.390 Ombudsman office—Funding. (1) To provide start-up funding for the office of the ombudsman, the department shall impose a one-time assessment on all self-insurers. The amount of the assessment shall be determined by the department and shall not exceed the amount needed to pay the start-up costs.

(2) Ongoing funding for the office of the ombudsman shall be obtained as part of an annual administrative assessment of self-insurers under RCW 51.44.150. This assessment shall be proportionately based on the number of claims for each self-insurer during the past year. [2007 c 281 § 10.]

51.14.400 Ombudsman—Annual report to governor. (1) The ombudsman shall provide the governor with an annual report that includes the following:

(a) A description of the issues addressed during the past year and a very brief description of case scenarios in a form that does not compromise confidentiality;

(b) An accounting of the monitoring activities by the ombudsman; and

(c) An identification of the deficiencies in the industrial insurance system related to self-insurers, if any, and recommendations for remedial action in policy or practice.

(2) The first annual report shall be due on or before October 1, 2008. Subsequent reports shall be due on or before October 1st. [2007 c 281 § 12.]

Chapter 51.16 RCW

ASSESSMENT AND COLLECTION OF PREMIUMS—PAYROLLS AND RECORDS

Sections

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51.16.035 Classifications—Premiums—Rules—Workers' compensation advisory committee recommen-

dations. (1) The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be:

(a) The lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles; and

(b) Designed to attempt to limit fluctuations in premium rates.

(2) The department shall formulate and adopt rules governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workers' compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to achieve the objectives under this section, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

(3)(a) After the first report is issued by the state auditor under RCW 51.44.115, the workers' compensation advisory committee shall review the report and, as the committee deems appropriate, may make recommendations to the department concerning:

(i) The level or levels of a contingency reserve that are appropriate to maintain actuarial solvency of the accident and medical aid funds, limit premium rate fluctuations, and account for economic conditions; and

(ii) When surplus funds exist in the trust funds, the circumstances under which the department should give premium dividends, or similar measures, or temporarily reduce rates below the rates fixed under subsection (1) of this section, including any recommendations regarding notifications that should be given before taking the action.

(b) Following subsequent reports issued by the state auditor under RCW 51.44.115, the workers' compensation advisory committee may, as it deems appropriate, update its recommendations to the department on the matters covered under (a) of this subsection.

(4) In providing a retrospective rating plan under RCW 51.18.010, the department may consider each individual retrospective rating group as a single employing entity for purposes of dividends or premium discounts. [2005 c 410 § 1; 1999 c 7 § 8; 1989 c 49 § 1; 1980 c 129 § 4; 1977 ex.s. c 350 § 24; 1971 ex.s. c 289 § 16.]

Applicability—2005 c 410 § 1: "Section 1 of this act applies to industrial insurance rates adopted by the department of labor and industries that take effect on or after January 1, 2008." [2005 c 410 § 2.]

Severability—1999 c 7: See RCW 51.18.900.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.040 Occupational diseases. The compensation and benefits provided for occupational diseases shall be paid and in the same manner as compensation and benefits for injuries under this title. [1971 ex.s. c 289 § 83; 1961 c 23 § 51.16.040. Prior: 1959 c 308 § 12; 1941 c 235 § 2; Rem. Supp. 1941 7679-1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.042 Occupational and environmental research facility. Inasmuch as business, industry and labor desire to provide for testing, research, training and teaching facilities and consulting services at the University of Washington for industrial and occupational health for workers in the environmental research facility thereat, all employers shall bear their proportionate share of the cost therefor. The director may require payments to the department from all employers under this title and may make rules and regulations in connection therewith, which costs shall be paid from the department, in lieu of the previous provisions of RCW 28B.20.458. [1977 ex.s. c 350 § 25; 1971 ex.s. c 289 § 84; 1963 c 151 § 2.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

Occupational and environmental research facility at University of Washington: RCW 28B.20.450 through 28B.20.458.

51.16.060 Quarterly report of payrolls. Every employer not qualifying as a self-insurer, shall insure with the state and shall, on or before the last day of January, April, July and October of each year thereafter, furnish the department with a true and accurate payroll for the period in which workers were employed by it during the preceding calendar quarter, the total amount paid to such workers during such preceding calendar quarter, and a segregation of employment in the different classes established pursuant to this title, and shall pay its premium thereon to the appropriate fund. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter. The sufficiency of such statement shall be subject to the approval of the director: PROVIDED, That the director may in his or her discretion and for the effective administration of this title require an employer in individual instances to furnish a supplementary report containing the name of each individual worker, his or her hours worked, his or her rate of pay and the class or classes in which such work was performed: PROVIDED FURTHER, That in the event an employer shall furnish the department with four consecutive quarterly reports wherein each such quarterly report indicates that no premium is due the department may close the account: PROVIDED FURTHER, That the department may promulgate rules and regulations in accordance with chapter 34.05 RCW to establish other reporting periods and payment due dates in lieu of reports and payments following each calendar quarter, and may also establish terms and conditions for payment of premiums and assessments based on estimated payrolls, with such payments being subject to approval as to sufficiency of the estimated payroll by the department, and also subject to appropriate periodic adjustments made by the department based on actual payroll: AND PROVIDED FURTHER, That a temporary help company which provides workers on a temporary basis to its customers shall be considered the employer for purposes of reporting and paying premiums and assessments under this title according to the appropriate rate classifications as determined by the department: PROVIDED, That the employer shall be liable for paying premiums and assessments, should the temporary help company fail to pay the premiums and assessments under this title. [1985 c 315 § 1; 1981 c 260 § 13. Prior: 1977 ex.s. c 350 § 26; 1977 ex.s. c 323 § 11; 1973 1st ex.s. c 32 §

1; 1971 ex.s. c 289 § 76; 1965 ex.s. c 80 § 1; 1961 c 23 § 51.16.060; prior: 1959 c 308 § 14; 1957 c 70 § 47; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.070 Employer's records—Unified business identifier—Confidentiality. (1)(a) Every employer shall keep at his or her place of business a record of his or her employment from which the information needed by the department may be obtained and such record shall at all times be open to the inspection of the director, supervisor of industrial insurance, or the traveling auditors, agents, or assistants of the department, as provided in RCW 51.48.040.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and the compensation paid to the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty under RCW 51.48.030.

(2) Information obtained from employing unit records under the provisions of this title shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but any interested party shall be supplied with information from such records to the extent necessary for the proper presentation of the case in question: PROVIDED, That any employing unit may authorize inspection of its records by written consent. [2008 c 120 § 5; 1997 c 54 § 3; 1961 c 23 § 51.16.070. Prior: 1957 c 70 § 48; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

51.16.090 Continuity of cost experience. To the end that no employer shall evade the burdens imposed by an unfavorable or high cost experience, the director may determine whether or not an increase, decrease, or change (1) of operating property; (2) of interest in operating property; (3) of employer; (4) of personnel or interest in employer is sufficient to show a bona fide change which would make inoperative any high cost experience: PROVIDED, That where an employer is now or has prior to January 1, 1958, been covered under the provisions of this title for a period of at least two years and subsequent thereto the legal structure of the employer changes by way of incorporation, disincorporation, merger, consolidation, transfer of stock ownership, or by any other means, such person or entity as legally reconstituted shall be entitled to a continuation of the experience rating which existed prior to such change in the employer's legal structure unless there has been such a substantial change as provided in subdivisions (1), (2), (3) or (4) of this section as would warrant making inoperative any high cost experience. [1961 c 23 § 51.16.090. Prior: 1959 c 179 § 1; 1957 c 70 § 49; prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

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51.16.100 Classification changes. It is the intent that the accident fund shall ultimately become neither more nor less than self-supporting, except as provided in RCW 51.16.105 and, if in the adjustment of premium rates by the director the moneys paid into the fund by any class or classes shall be insufficient to properly and safely distribute the burden of accidents occurring therein, the department may divide, rearrange, or consolidate such class or classes, making such adjustment or transfer of funds as it may deem proper. The director shall make corrections of classifications or subclassifications or changes in rates, classes and subclasses when the best interest of such classes or subclasses will be served thereby. [1961 c 23 § 51.16.100. Prior: 1953 c 218 § 1; prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

51.16.105 Departmental expenses, financing. All department expenses relating to industrial safety and health services of the department pertaining to workers' compensation shall be paid by the department and financed by premiums and by assessments collected from a self-insurer as provided in this title. [1994 c 164 § 26; 1977 ex.s. c 350 § 27; 1973 1st ex.s. c 52 § 8; 1971 ex.s. c 289 § 86; 1961 c 23 § 51.16.105. Prior: 1953 c 218 § 2.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.107 Information and training on premium liability. The department shall, working with business associations and other employer and employee groups when practical, publish information and provide training to promote understanding of the premium liability that may be incurred under this chapter. [2004 c 243 § 4.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.16.110 New businesses or resumed or continued operations. Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of his or her payroll in connection therewith, or who was formerly a self-insurer and wishes to continue his or her operations subject to this title, shall, before so commencing or resuming or continuing operations, as the case may be, notify the department of such fact. [1991 c 88 § 4; 1977 ex.s. c 323 § 12; 1971 ex.s. c 289 § 4; 1961 c 23 § 51.16.110. Prior: 1959 c 179 § 2; 1959 c 308 § 15; prior: 1957 c 70 § 50; 1951 c 236 § 4; 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676c, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.120 Distribution of further accident cost. (1) Whenever a worker has a previous bodily disability from any previous injury or disease, whether known or unknown to the employer, and shall suffer a further disability from injury or occupational disease in employment covered by this title and become totally and permanently disabled from the combined

effects thereof or die when death was substantially accelerated by the combined effects thereof, then the experience record of an employer insured with the state fund at the time of said further injury or disease shall be charged and a self-insured employer shall pay directly into the reserve fund only the accident cost which would have resulted solely from said further injury or disease, had there been no preexisting disability, and which accident cost shall be based upon an evaluation of the disability by medical experts. The difference between the charge thus assessed to such employer at the time of said further injury or disease and the total cost of the pension reserve shall be assessed against the second injury fund. The department shall pass upon the application of this section in all cases where benefits are paid for total permanent disability or death and issue an order thereon appealable by the employer. Pending outcome of such appeal the transfer or payment shall be made as required by such order.

(2) The department shall, in cases of claims of workers sustaining injuries or occupational diseases in the employ of state fund employers, recompute the experience record of such employers when the claims of workers injured in their employ have been found to qualify for payments from the second injury fund after the regular time for computation of such experience records and the department may make appropriate adjustments in such cases including cash refunds or credits to such employers.

(3) To encourage employment of injured workers who are not reemployed by the employer at the time of injury, the department may adopt rules providing for the reduction or elimination of premiums or assessments from subsequent employers of such workers and may also adopt rules for the reduction or elimination of charges against such employers in the event of further injury to such workers in their employ.

(4) To encourage employment of injured workers who have a developmental disability as defined in RCW 71A.10.020, the department may adopt rules providing for the reduction or elimination of premiums or assessments from employers of such workers and may also adopt rules for the reduction or elimination of charges against their employers in the event of further injury to such workers in their employ. [2004 c 258 § 1; 1984 c 63 § 1; 1980 c 14 § 7. Prior: 1977 ex.s. c 350 § 28; 1977 ex.s. c 323 § 13; 1972 ex.s. c 43 § 13; 1961 c 23 § 51.16.120; prior: 1959 c 308 § 16; 1945 c 219 § 1; 1943 c 16 § 1; Rem. Supp. 1945 § 7676-1a.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.16.130 Distribution of catastrophe cost. Whenever there shall occur an accident in which three or more employees of an employer insured with the state fund are fatally injured or sustain permanent total disability, the amount of total cost other than medical aid costs arising out of such accident that shall be charged to the account of the employer, shall be twice the average cost of the pension claims arising out of such accident. The entire cost of such accident, exclusive of medical aid costs, shall be charged against and defrayed by the catastrophe injury account. [1972 ex.s. c 43 § 14; 1961 c 23 § 51.16.130. Prior: 1957 c 70 § 22; prior: 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.16.140 Premium liability of worker. (1) Every employer who is not a self-insurer shall deduct from the pay of each of his or her workers one-half of the amount he or she is required to pay, for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him or her to all employers under this title: PROVIDED, That the state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in RCW 51.12.035, and the state apprenticeship council shall pay the entire amount into the medical aid fund for registered apprentices or trainees, for the purposes of RCW 51.12.130. The deduction under this section is not authorized for premiums assessed under RCW 51.16.210.

(2) It shall be unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him or her paid from the wages or earnings of any of his or her workers, and the making of or attempt to make any such deduction shall be a gross misdemeanor. [1989 c 385 § 3; 1977 ex.s. c 350 § 29; 1973 c 110 § 2; 1971 ex.s. c 289 § 77; 1971 c 20 § 2; 1961 c 23 § 51.16.140. Prior: (i) 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 28 § 4, part; RRS § 7713, part. (ii) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676e, part.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.150 Delinquent employers—Penalty after demand—Injunctive relief. If any employer shall default in any payment to any fund, the sum due may be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. If such default occurs after demand, the director may require from the defaulting employer a bond to the state for the benefit of any fund, with surety to the director's satisfaction, in the penalty of double the amount of the estimated payments which will be required from such employer into the said funds for and during the ensuing one year, together with any penalty or penalties incurred. In case of refusal or failure after written demand personally served to furnish such bond, the state shall be entitled to an injunction restraining the delinquent from prosecuting an occupation or work until such bond is furnished, and until all delinquent premiums, penalties, interest and costs are paid, conditioned for the prompt and punctual making of all payments into said funds during such periods, and any sale, transfer, or lease attempted to be made by such delinquent during the period of any of the defaults herein mentioned, of his works, plant, or lease thereto, shall be invalid until all past delinquencies are made good, and such bond furnished. [1986 c 9 § 4; 1985 c 315 § 2; 1972 ex.s. c 43 § 15; 1961 c 23 § 51.16.150. Prior: 1959 c 308 § 22; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.155 Failure or refusal of employer to report or pay premiums due—Collection. In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll

and the premiums due thereon and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand by the department, which shall include the amount of premiums estimated by the department, the employer shall be in default as provided by this title and the department may have and recover judgment, warrant, or file liens for such estimated premium or the actual premium, whichever is greater.

The director or the director's designee may compromise the amount of premiums estimated by the department, whether reduced to judgment or otherwise, arising under this title if collection of the premiums estimated by the department would be against equity and good conscience. [1996 c 60 § 1; 1985 c 315 § 3; 1971 ex.s. c 289 § 87.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.160 Lien for payments due—Priority—Probate, insolvency, etc. In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the payments due shall be a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and all administrators, receivers, or assignees for the benefit of creditors shall notify the department of such administration, receivership, or assignment within thirty days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and the amount of such payroll for the period stated in the certificate shall be prima facie evidence of such fact. [1985 c 315 § 4; 1971 ex.s. c 289 § 78; 1961 c 23 § 51.16.160. Prior: 1959 c 308 § 23; prior: 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.170 Lien for premiums, assessments, contributions, and penalties—Priority—In general—Notice. Separate and apart from and in addition to the foregoing provisions in this chapter, the claims of the state for payments and penalties due under this title shall be a lien prior to all other liens or claims and on a parity with prior tax liens not only against the interest of any employer, in real estate, plant, works, equipment, and buildings improved, operated, or constructed by any employer, and also upon any products or articles manufactured by such employer.

The lien created by this section shall attach from the date of the commencement of the labor upon such property for which such premiums are due. In order to avail itself of the lien hereby created, the department shall, within four months after the employer has made report of his payroll and has defaulted in the payment of his premiums thereupon, file with the county auditor of the county within which such property is then situated, a statement in writing describing in general terms the property upon which a lien is claimed and stating

the amount of the lien claimed by the department. If any employer fails or refuses to make report of his payroll, the lien hereby created shall continue in full force and effect, although the amount thereof is undetermined and the four months' time within which the department shall file its claim of lien shall not begin to run until the actual receipt by the department of such payroll report. From and after the filing of such claim of lien, the department shall be entitled to commence suit to cause such lien to be foreclosed in the manner provided by law for the foreclosure of other liens on real or personal property, and in such suit the certificate of the department stating the date of the actual receipt by the department of such payroll report shall be prima facie evidence of such fact. [1986 c 9 § 5; 1961 c 23 § 51.16.170. Prior: 1959 c 308 § 24; prior: 1951 c 214 § 1; 1929 c 132 § 4, part; 1923 c 136 § 3, part; 1917 c 120 § 5, part; 1917 c 28 § 2, part; 1915 c 188 § 3, part; 1911 c 74 § 8, part; RRS § 7682, part.]

51.16.180 Property acquired by state on execution. The director shall have the custody of all property acquired by the state at execution sale upon judgments obtained for delinquent payments and penalties therefor and costs, and may sell and dispose of the same at private sales for the sale purchase price, and shall pay the proceeds into the state treasury to the credit of the appropriate fund. In case of the sale of real estate the director shall execute the deed in the name of the state. [1971 ex.s. c 289 § 79; 1961 c 23 § 51.16.180. Prior: 1921 c 7 § 78, subdivision (4); RRS § 10836(4).]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.16.190 Limitation on collection actions. (1) "Action" means, but is not limited to, a notice of assessment pursuant to RCW 51.48.120, an action at law pursuant to RCW 51.16.150, or any other administrative or civil process authorized by this title for the determination of liability for premiums, assessments, penalties, contributions, or other sums, or the collection of premiums, assessments, penalties, contributions, or other sums.

(2) Any action to collect any delinquent premium, assessment, contribution, penalty, or other sum due to the department from any employer subject to this title shall be brought within three years of the date any such sum became due.

(3) In case of a false or fraudulent report with intent to evade premiums, assessments, contributions, penalties, interest, or other sums, or in the event of a failure to file a report, action may be begun at any time.

(4) Any claim for refund or adjustment by an employer of any premium, assessment, contribution, penalty, or other sum collected by the department shall be made in writing to the department within three years of the date the sum became due. [1987 c 111 § 7; 1985 c 315 § 5; 1977 ex.s. c 323 § 27.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.16.200 Payment of tax by employer quitting business—Liability of successor. Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the

employer's business or stock of goods, any tax payable hereunder shall become immediately due and payable, and the employer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the employer until such time as the employer shall produce a receipt from the department showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the payment thereof by such successor shall, to the extent thereof, be deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

No successor may be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of such acquisition and no assessment is issued by the department within one hundred eighty days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor. [1995 c 160 § 1; 1986 c 9 § 6.]

51.16.210 Horse racing employment—Premiums.

(1) The department shall assess premiums, under the provisions of this section, for certain horse racing employments licensed in accordance with chapter 67.16 RCW. This premium assessment shall be for the purpose of providing industrial insurance coverage for employees of trainers licensed under chapter 67.16 RCW, including but not limited to exercise riders, pony riders, and grooms, and including all on or off track employment. For the purposes of RCW 51.16.210, 67.16.300, 51.16.140, 51.32.073, and 67.16.020 a hotwalker shall be considered a groom. The department may adopt rules under chapter 34.05 RCW to carry out the purposes of this section, including rules providing for alternative reporting periods and payment due dates for coverage under this section. The department rules shall ensure that no licensee licensed prior to May 13, 1989, shall pay more than the assessment fixed at the basic manual rate.

(2) The department shall compute industrial insurance premium rates on a per license basis, which premiums shall be assessed at the time of each issuance or renewal of the license for owners, trainers, and grooms in amounts established by department rule for coverage under this section. Premium assessments shall be determined in accordance with the requirements of this title, except that assessments shall not be experience rated and shall be fixed at the basic manual rate. However, rates may vary according to differences in working conditions at major tracks and fair tracks.

(3) For the purposes of paying premiums and assessments under this section and making reports under this title, individuals licensed as trainers by the Washington horse racing commission shall be considered employers. The premium assessment for a groom's license shall be paid by the trainer responsible for signing the groom's license application and shall be payable at the time of license issuance or renewal.

(4) The fee to be assessed on owner licenses as required by this section shall not exceed one hundred fifty dollars. However, those owners having less than a full ownership in a horse or horses shall pay a percentage of the required license fee that is equal to the total percentage of the ownership that the owner has in the horse or horses. In no event shall an owner having an ownership percentage in more than one horse pay more than a one hundred fifty-dollar license fee. The assessment on each owner's license shall not imply that an owner is an employer, but shall be required as part of the privilege of holding an owner's license.

(5) Premium assessments under this section shall be collected by the Washington horse racing commission and deposited in the industrial insurance trust funds as provided under department rules. [1989 c 385 § 1.]

51.16.220 Reimbursement from disaster response account for nongovernment employees.

(1) When a worker of a nongovernment employer is injured or develops an occupational disease due to an exposure while assisting in the life and rescue phase of an emergency, in response to a request for assistance from a state or local government entity, including fire service or law enforcement, the cost of benefits shall be reimbursed from the disaster response account, RCW 38.52.105, to the appropriate workers' compensation fund, or to the self-insured employer, as the case may be. The cost of such injuries or occupational diseases shall not be charged to the experience record of a state fund employer.

(2) For the purposes of this section, "life and rescue phase" means the first seventy-two hours after the occurrence of a natural or man-made disaster in which a state or municipal entity, including fire service or law enforcement, acknowledges or declares such a disaster and requests assistance from the private sector in locating and rescuing survivors. The initial life and rescue phase may be extended for a finite period of time by declaration of the state or municipal entity requesting assistance. [2005 c 422 § 1.]

Rules—2005 c 422: "The department of labor and industries may adopt rules to implement this act." [2005 c 422 § 3.]

Effective date—2005 c 422: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 422 § 4.]

51.16.230 Hospitals—Premiums—Rules—Reports.

(1) By January 1, 2007, the department shall develop rules to provide a reduced workers' compensation premium for hospitals that implement a safe patient handling program. The rules shall include any requirements for obtaining the reduced premium that must be met by hospitals.

(2) The department shall complete an evaluation of the results of the reduced premium, including changes in claim frequency and costs, and shall report to the appropriate committees of the legislature by December 1, 2010, and 2012. [2006 c 165 § 4.]

Findings—2006 c 165: See note following RCW 70.41.390.

Chapter 51.18 RCW

RETROSPECTIVE RATING PLAN

Sections

51.18.005	Findings.
51.18.010	Availability—Rules—Coverage period.
51.18.020	Entrance criteria.
51.18.030	Sponsoring entities—New or existing retrospective rating groups.
51.18.040	Retrospective rating groups—Industry and business categories.
51.18.050	Retrospective rating groups—Probationary status—Denial of future enrollment.
51.18.060	Retrospective rating groups—Department approval.
51.18.900	Severability—1999 c 7.

51.18.005 Findings. The legislature finds that the retrospective rating plan provided for in RCW 51.16.035 has proven to be highly effective both in terms of improved workplace safety and injured worker outcomes. As a result, the number of industrial insurance claims of many employers participating in the retrospective rating plan have been reduced through sound risk management strategies and enhanced cooperation with department claims management activities.

The legislature further finds that entrance criteria for the retrospective rating plan under RCW 51.16.035 should be clear and understandable to both the department and potential retrospective rating plan participants.

The legislature therefore declares that a new retrospective rating plan is needed in order to protect and preserve the integrity and welfare of the retrospective rating system. [1999 c 7 § 1.]

51.18.010 Availability—Rules—Coverage period.

(1) The department shall offer a retrospective rating plan to insure the workers' compensation obligations of employers and groups of employers. The plan is to be made available to any employer or group of employers who:

(a) Voluntarily elects to participate in the plan; and

(b) Meets the requirements of this chapter and rules adopted by the department under subsection (2) of this section.

(2) The retrospective rating plan shall be consistent with recognized insurance principles and shall be administered according to rules adopted by the department. Rules adopted under this section shall encourage broad participation by qualified employers and sponsors of retrospective rating groups.

(3) Each retrospective rating group approved by the department under this chapter shall select a coverage period and may be renewed at the end of each coverage period. For the purposes of this section, "coverage period" means a twelve-month period provided by the department by rule. [1999 c 7 § 2.]

51.18.020 Entrance criteria. Prior to allowing initial entrance into the state's retrospective rating plan, the department shall review each proposed retrospective rating group to ensure that the following criteria are met:

(1) The entity sponsoring the retrospective rating group must have been in existence for at least four years;

(2) The entity sponsoring the retrospective rating group must exist primarily for a purpose other than that of obtaining or offering insurance coverage or insurance related services;

(3) The entity sponsoring the retrospective rating group must have a written workplace safety and accident prevention plan in place for the proposed retrospective rating group and must propose methods by which the retrospective rating group will cooperate with department claims management activities;

(4) All employers in the retrospective rating group must be members of the sponsoring entity;

(5) All employers in the retrospective rating group must have an industrial insurance account in good standing with the department;

(6) Fifty percent of the original employers in the retrospective rating group must have been members of the sponsoring entity for one year prior to the group's entrance into the retrospective rating plan;

(7) The retrospective rating group must be composed of employers who are substantially similar considering the services or activities performed by the employees of those employers;

(8) The initial premium level for the retrospective rating group must be at least one million five hundred thousand dollars and shall be based on the standard premium of the proposed group members' most current previous coverage period; and

(9) The formation and operation of the retrospective rating group must seek to substantially improve workplace safety and accident prevention for the employers in the group. [1999 c 7 § 3.]

51.18.030 Sponsoring entities—New or existing retrospective rating groups.

(1) Entities which sponsored retrospective rating groups prior to July 25, 1999, may not sponsor additional retrospective rating groups in a new business or industry category until the coverage period beginning January 1, 2003.

(2) For retrospective rating groups approved by the department on or after July 25, 1999, the sponsoring entity may not propose another retrospective rating group in a new business or industry category until the minimum mandatory adjustment periods required by the department for the first two coverage periods of the last formed retrospective rating group are completed.

(3) Subsections (1) and (2) of this section do not prohibit a sponsoring entity from proposing to:

(a) Divide an existing retrospective rating group into two or more groups provided that the proposed new groups fall within the same business or industry category as the group that is proposed to be divided; or

(b) Merge existing retrospective rating groups into one business or industry category provided that the proposed merged groups fall within the same business or industry category as the groups that are proposed to be merged.

(4) Under no circumstances may a sponsoring entity propose retrospective rating groups in multiple business or industry categories in the same application to the department.

(5) An insurer, insurance broker, agent, or solicitor may not:

- (a) Participate in the formation of a retrospective rating group; or
- (b) Sponsor a retrospective rating group. [1999 c 7 § 4.]

51.18.040 Retrospective rating groups—Industry and business categories. (1) In order to ensure that all retrospective rating groups are made up of employers who are substantially similar, considering the services or activities performed by the employees of those employers, the sponsoring entity of a retrospective rating group shall select a single, broad industry or business category for each retrospective rating group. Once an industry or business category is selected, the department shall allow all risk classifications reasonably related to that business or industry category into that retrospective rating group.

(2) The following broad industry and business categories shall be used by the sponsoring entity and the department in establishing retrospective rating groups:

- (a) Agriculture and related services;
- (b) Automotive, truck and boat manufacturing, sales, repair, and related services;
- (c) Construction and related services;
- (d) Distillation, chemical production, food, and related services;
- (e) Facilities or property management, maintenance, and related services;
- (f) Government, utilities, schools, health care, and related services;
- (g) Health care, pharmaceutical, laboratories, and related services;
- (h) Logging, wood products manufacturing, and related services;
- (i) Manufacturing, processing, mining, quarrying, and related services;
- (j) Retail stores, wholesale stores, professional services, and related services;
- (k) Temporary help and related services; and
- (l) Transportation, recycling, warehousing, facility maintenance, and related services.

(3) The industry and business categories in subsection (2) of this section are not exclusive. In response to significant changes in marketplace demographics or the discovery of unique business or industry categories, the department may, by rule, include additional broad industry or business category selections. The department may, by rule, remove an industry covered within an industry or business category in the event that the business or industry is no longer found within this state.

(4) Given the broad nature of the industry and business categories in subsection (2) of this section, the risk classification or classifications assigned to an individual employer may appropriately fall into multiple business or industry categories.

(5) In order to simplify administration and keep the administrative costs associated with devising a different classification system for a retrospective rating plan to a minimum, the state's retrospective rating plan shall follow the same classification procedure established by the department to assign workers' compensation insurance classifications to an employer.

(6) Employers who have been a member of an existing, approved retrospective rating group prior to July 25, 1999, may continue in that group even if they are not substantially similar to the industry or business category selected pursuant to subsection (1) of this section. However, new employers proposed for addition to a retrospective rating group on or after July 25, 1999, must fall within the selected industry or business category. [1999 c 7 § 5.]

51.18.050 Retrospective rating groups—Probationary status—Denial of future enrollment. (1) Any retrospective rating group required to pay additional net premium assessments in two consecutive coverage periods shall be immediately placed on probationary status. Once a group is placed on probationary status, the department shall review the group's workplace safety and accident prevention plan and its methods for cooperation with department claims management activities. Following the review, the department shall make recommendations for corrective steps that may be taken to improve the group's performance.

(2) If the same retrospective rating group is required to pay an additional net premium assessment in the third consecutive coverage period, that group shall be denied future enrollment in the state's retrospective rating plan. In addition, the sponsoring entity of the failed group may not sponsor another group in the same business or industry category for five coverage periods from the ending date of the failed group's last coverage period.

(3) This section applies prospectively only and not retroactively. It applies only to net assessments received by a retrospective rating group for plan years beginning after July 25, 1999. [1999 c 7 § 6.]

51.18.060 Retrospective rating groups—Department approval. All retrospective rating groups approved by the department prior to July 25, 1999, under RCW 51.16.035 as it existed prior to July 25, 1999, remain approved and, with the exception of RCW 51.18.020, are subject to the provisions of this chapter. [1999 c 7 § 7.]

51.18.900 Severability—1999 c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 7 § 10.]

Chapter 51.24 RCW

ACTIONS AT LAW FOR INJURY OR DEATH

Sections

51.24.020	Action against employer for intentional injury.
51.24.030	Action against third person—Election by injured person or beneficiary—Underinsured motorist insurance coverage.
51.24.035	Immunity of design professional and employees.
51.24.040	Election or recovery no bar to compensation or benefits.
51.24.050	Assignment of cause of action—Disposition of recovered amount.
51.24.060	Distribution of amount recovered—Lien.
51.24.070	Required election—Procedures—Right of reelection.
51.24.080	Notice of election or copy of complaint to department or self-insurer—Filing notice.
51.24.090	Compromise or settlement less than benefits.
51.24.100	Right to compensation not pleadable or admissible—Challenge to right to bring action.

51.24.110 Assigned cases—Special assistant attorneys general.
 51.24.120 Rules.
 51.24.900 Application—1977 ex.s. c 85.
 51.24.902 Application—1984 c 218.

51.24.020 Action against employer for intentional injury. If injury results to a worker from the deliberate intention of his or her employer to produce such injury, the worker or beneficiary of the worker shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any damages in excess of compensation and benefits paid or payable under this title. [1984 c 218 § 2; 1977 ex.s. c 350 § 31; 1973 1st ex.s. c 154 § 94; 1961 c 23 § 51.24.020. Prior: 1957 c 70 § 24; prior: 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part.]

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

51.24.030 Action against third person—Election by injured person or beneficiary—Underinsured motorist insurance coverage. (1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.

(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed. The department or self-insurer may file a notice of statutory interest in recovery. When such notice has been filed by the department or self-insurer, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department or self-insurer. The department or self-insurer may then intervene as a party in the action to protect its statutory interest in recovery.

(3) For the purposes of this chapter, "injury" shall include any physical or mental condition, disease, ailment or loss, including death, for which compensation and benefits are paid or payable under this title.

(4) Damages recoverable by a worker or beneficiary pursuant to the underinsured motorist coverage of an insurance policy shall be subject to this chapter only if the owner of the policy is the employer of the injured worker.

(5) For the purposes of this chapter, "recovery" includes all damages except loss of consortium. [1995 c 199 § 2; 1987 c 212 § 1701; 1986 c 58 § 1; 1984 c 218 § 3; 1977 ex.s. c 85 § 1.]

Severability—1995 c 199: See note following RCW 51.12.120.

51.24.035 Immunity of design professional and employees. (1) Notwithstanding RCW 51.24.030(1), the injured worker or beneficiary may not seek damages against a design professional who is a third person and who has been retained to perform professional services on a construction project, or any employee of a design professional who is assisting or representing the design professional in the performance of professional services on the site of the construction project, unless responsibility for safety practices is specifically assumed by contract, the provisions of which were mutually negotiated, or the design professional actually exercised control over the portion of the premises where the worker was injured.

(2) The immunity provided by this section does not apply to the negligent preparation of design plans and specifications.

(3) For the purposes of this section, "design professional" means an architect, professional engineer, land surveyor, or landscape architect, who is licensed or authorized by law to practice such profession, or any corporation organized under chapter 18.100 RCW or authorized under RCW 18.08.420 or 18.43.130 to render design services through the practice of one or more of such professions. [1987 c 212 § 1801.]

51.24.040 Election or recovery no bar to compensation or benefits. The injured worker or beneficiary shall be entitled to the full compensation and benefits provided by this title regardless of any election or recovery made under this chapter. [1977 ex.s. c 85 § 2.]

51.24.050 Assignment of cause of action—Disposition of recovered amount. (1) An election not to proceed against the third person operates as an assignment of the cause of action to the department or self-insurer, which may prosecute or compromise the action in its discretion in the name of the injured worker, beneficiary or legal representative.

(2) If an injury to a worker results in the worker's death, the department or self-insurer to which the cause of action has been assigned may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(3) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(4) Any recovery made by the department or self-insurer shall be distributed as follows:

(a) The department or self-insurer shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (5) of this section: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the compensation and benefits paid to or on behalf of the injured worker or beneficiary by the department and/or self-insurer; and

(d) The injured worker or beneficiary shall be paid any remaining balance.

(5) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(6) When the cause of action has been assigned to the self-insurer and compensation and benefits have been paid and/or are payable from state funds for the same injury:

(a) The prosecution of such cause of action shall also be for the benefit of the department to the extent of compensation and benefits paid and payable from state funds;

(b) Any compromise or settlement of such cause of action which results in less than the entitlement under this title is void unless made with the written approval of the department;

(c) The department shall be reimbursed for compensation and benefits paid from state funds;

(d) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the self-insurer in obtaining the award or settlement; and

(e) Any remaining balance under subsection (4)(d) of this section shall be applied, under subsection (5) of this section, to reduce the obligations of the department and self-insurer to pay further compensation and benefits in proportion to which the obligations of each bear to the remaining entitlement of the worker or beneficiary. [1995 c 199 § 3; 1984 c 218 § 4; 1983 c 211 § 1; 1977 ex.s. c 85 § 3.]

Severability—1995 c 199: See note following RCW 51.12.120.

Applicability—1983 c 211: "Sections 1 and 2 of this act apply to all actions against third persons in which judgment or settlement of the underlying action has not taken place prior to July 24, 1983." [1983 c 211 § 3.] "Sections 1 and 2 of this act" consist of the 1983 amendments of RCW 51.24.050 and 51.24.060.

Severability—1983 c 211: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 211 § 4.]

51.24.060 Distribution of amount recovered—Lien.

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the injured worker or beneficiary and the department and/or self-insurer: PROVIDED, That the department and/or self-insurer may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The injured worker or beneficiary shall be paid twenty-five percent of the balance of the award: PROVIDED, That in the event of a compromise and settlement by the parties, the injured worker or beneficiary may agree to a sum less than twenty-five percent;

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for benefits paid;

(i) The department and/or self-insurer shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the worker or beneficiary to the extent of the benefits paid under this title: PROVIDED, That the department's and/or self-insurer's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the

benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary;

(iii) The department's and/or self-insurer's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the injured worker or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a worker or beneficiary by the department and/or self-insurer for such injury until the amount of any further compensation and benefits shall equal any such remaining balance minus the department's and/or self-insurer's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the worker or beneficiary. Thereafter, such benefits shall be paid by the department and/or self-insurer to or on behalf of the worker or beneficiary as though no recovery had been made from a third person.

(2) The recovery made shall be subject to a lien by the department and/or self-insurer for its share under this section.

(3) The department or self-insurer has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department or self-insurer shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the injured worker or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(4) In an action under this section, the self-insurer may act on behalf and for the benefit of the department to the extent of any compensation and benefits paid or payable from state funds.

(5) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department or self-insurer of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(6) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such

worker or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the injured worker or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the injured worker or beneficiary within three days of filing with the clerk.

(7) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any worker or beneficiary upon whom a warrant has been served by the department for payments due to the state fund. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by certified mail, return receipt requested; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [2001 c 146 § 9; 1995 c 199 § 4; 1993 c 496 § 2; 1987 c 442 § 1118; 1986 c 305 § 403; 1984 c 218 § 5; 1983 c 211 § 2; 1977 ex.s. c 85 § 4.]

Severability—1995 c 199: See note following RCW 51.12.120.

Effective date—Application—1993 c 496: See notes following RCW 4.22.070.

Preamble—Report to legislature—Applicability—Severability—1986 c 305: See notes following RCW 4.16.160.

(2008 Ed.)

Applicability—Severability—1983 c 211: See notes following RCW 51.24.050.

51.24.070 Required election—Procedures—Right of reelection. (1) The department or self-insurer may require the injured worker or beneficiary to exercise the right of election under this chapter by serving a written demand by registered mail, certified mail, or personal service on the worker or beneficiary.

(2) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department or self-insurer, the injured worker or beneficiary is deemed to have assigned the action to the department or self-insurer. The department or self-insurer shall allow the worker or beneficiary at least ninety days from the election to institute or settle the action. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

(3) If an action which has been filed is not diligently prosecuted, the department or self-insurer may petition the court in which the action is pending for an order assigning the cause of action to the department or self-insurer. Upon a sufficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

(4) If the department or self-insurer has taken an assignment of the third party cause of action under subsection (2) of this section, the injured worker or beneficiary may, at the discretion of the department or self-insurer, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department or self-insurer. [1984 c 218 § 6; 1977 ex.s. c 85 § 5.]

51.24.080 Notice of election or copy of complaint to department or self-insurer—Filing notice. (1) If the injured worker or beneficiary elects to seek damages from the third person, notice of the election must be given to the department or self-insurer. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the injured worker or beneficiary, a copy of the complaint must be sent by registered mail to the department or self-insurer.

(2) A return showing service of the notice on the department or self-insurer shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by RCW 51.24.060(2). [1977 ex.s. c 85 § 6.]

51.24.090 Compromise or settlement less than benefits. (1) Any compromise or settlement of the third party cause of action by the injured worker or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department or self-insurer: PROVIDED, That for the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(2) If a compromise or settlement is void because of subsection (1) of this section, the department or self-insurer may petition the court in which the action was filed for an order assigning the cause of action to the department or self-insurer. If an action has not been filed, the department or self-

insurer may proceed as provided in chapter 7.24 RCW. [1995 c 199 § 5; 1984 c 218 § 7; 1977 ex.s. c 85 § 7.]

Severability—1995 c 199: See note following RCW 51.12.120.

51.24.100 Right to compensation not pleadable or admissible—Challenge to right to bring action. The fact that the injured worker or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law. [1977 ex.s. c 85 § 8.]

51.24.110 Assigned cases—Special assistant attorneys general. (1) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with chapter 51.24 RCW, may be prosecuted by special assistant attorneys general.

(2) The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall promulgate rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate third party actions under subsection (1) of this section. [1984 c 218 § 1.]

51.24.120 Rules. The department may adopt, amend, and rescind under chapter 34.05 RCW such rules as may be necessary to the administration of this chapter. [1984 c 218 § 8.]

51.24.900 Application—1977 ex.s. c 85. This 1977 amendatory act shall apply only to causes of action which arise on or after its effective date. [1977 ex.s. c 85 § 9.]

51.24.902 Application—1984 c 218. This act applies to all causes of action against third persons in which judgment or settlement of the underlying action has not taken place before June 7, 1984. [1984 c 218 § 9.]

Chapter 51.28 RCW

NOTICE AND REPORT OF ACCIDENT— APPLICATION FOR COMPENSATION

Sections

51.28.010	Notice of accident—Notification of worker's rights—Claim suppression.
51.28.015	Injury reporting—Findings—Department educational initiative—Pilot program, employers to assist workers in applying for benefits—Report.
51.28.020	Worker's application for compensation—Physician to aid in.
51.28.025	Duty of employer to report injury or disease—Contents of report—Claim suppression—Penalty.
51.28.030	Beneficiaries' application for compensation—Notification of rights.
51.28.040	Application for change in compensation.
51.28.050	Time limitation for filing application or enforcing claim for injury.
51.28.055	Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules.
51.28.060	Proof of dependency.

51.28.070	Claim files and records confidential.
51.28.080	Determination of compensation for temporary total disability—Notification of employer.
51.28.090	Notification of availability of basic health plan.
51.28.100	Physician assistant signatures—Documents required by the department.

51.28.010 Notice of accident—Notification of worker's rights—Claim suppression. (1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025 where the worker has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to receive health services from a physician or a licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and must list the types of providers authorized to provide these services.

(3) Employers shall not engage in claim suppression.

(4) For the purposes of this section, "claim suppression" means intentionally:

(a) Inducing employees to fail to report injuries;

(b) Inducing employees to treat injuries in the course of employment as off-the-job injuries; or

(c) Acting otherwise to suppress legitimate industrial insurance claims.

(5) In determining whether an employer has engaged in claim suppression, the department shall consider the employer's history of compliance with industrial insurance reporting requirements, and whether the employer has discouraged employees from reporting injuries or filing claims. The department has the burden of proving claim suppression by a preponderance of the evidence.

(6) Claim suppression does not include bona fide workplace safety and accident prevention programs or an employer's provision at the worksite of first aid as defined by the department. The department shall adopt rules defining bona fide workplace safety and accident prevention programs and defining first aid. [2007 c 77 § 1; 2004 c 65 § 3; 2001 c 231 § 1; 1977 ex.s. c 350 § 32; 1975 1st ex.s. c 224 § 4; 1971 ex.s. c 289 § 5; 1961 c 23 § 51.28.010. Prior: 1915 c 188 § 9; 1911 c 74 § 14; RRS § 7689.]

Implementation—2007 c 77: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 77 § 4.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—2001 c 231: "This act takes effect January 1, 2002." [2001 c 231 § 4.]

Effective date—1975 ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.015 Injury reporting—Findings—Department educational initiative—Pilot program, employers to assist workers in applying for benefits—Report. (1) The legislature finds that:

(a) In 1998, the joint legislative audit and review committee, in its performance audit of the Washington industrial insurance system, reported that one of the most significant causes for delayed benefit payments to workers and lack of employer involvement in claims was the manner in which claims were reported. Under this system of reporting, the worker generally reports the injury to a physician who, in turn, reports the injury to the department.

(b) The performance audit further reported that adopting a system in which the employee reports to the employer and the employer reports to the department would speed the first payment of benefits to the worker and involve the employer, from the beginning of the claim, in assisting in the management of the claim, including returning the worker to work.

(c) The performance audit also recognized that there would be instances in which workers would be reluctant to report injuries to employers and that, therefore, the system of physician reporting should be retained as an alternative, and employer reporting should be tested on a widespread basis.

(2) The department of labor and industries shall develop and implement an initiative to:

(a) Encourage the reporting of industrial injuries and occupational diseases by the worker to his or her employer and by the employer to the department;

(b) Encourage the employer to provide assistance to the worker in completing the application for compensation; and

(c) Educate workers and employers about the benefits and importance of prompt reporting of injuries and diseases.

(3)(a) By January 1, 2007, the department shall develop and begin a pilot program to allow employers to assist workers in completing an application for benefits. This pilot program does not replace the current method for reporting as provided in RCW 51.28.020.

(b) The department shall develop requirements or rules for employers who participate in the pilot program, including provisions to ensure prompt reporting of the claim and communicating a worker's rights and responsibilities under the pilot program. The pilot program shall include the voluntary participation of employers that represent a cross-section of industries, geographic areas, union and nonunion workers, large and small businesses, and other criteria established by the department with input of business and labor leaders.

(c) During the pilot period, the department shall consider steps to address the unique needs and issues of small employers.

(d) The number of participating employers must not be more than five hundred during the first year of the pilot program. This number may be increased to seven hundred fifty during the second year of the pilot program.

(e) The pilot program expires July 1, 2009.

(4) On December 1, 2007, and December 1, 2008, the department of labor and industries shall report to the appropriate committees of the legislature the findings of a study of:

(a) Claims that are not reported promptly, including but not limited to a review of the circumstances of such claims, the type of injuries involved in such claims, and the reasons for the failure to report such claims promptly;

(b) The effect of the educational initiative required under subsection (2) of this section on whether the number of claims reported to employers increased, whether there was a reduction in delays in benefit payments, and whether there was an improvement in employer involvement in assisting with claims management and an increase in appropriate return-to-work and better outcomes for injured workers and employers;

(c) The results of the efforts of the centers of occupational health education in early reporting and early notification of employers, and the general lessons that can be drawn from these results for the larger workers' compensation program; and

(d) The results of the pilot program for workers to begin the process of applying for compensation through the employer and whether additional statutory changes are required or recommended to implement this process for all employers and workers. [2006 c 254 § 1; 2005 c 108 § 1.]

51.28.020 Worker's application for compensation—

Physician to aid in. (1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician or licensed advanced registered nurse practitioner who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician or licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If the application required by this section is:

(a) Filed on behalf of the worker by the physician who attended the worker, the physician may transmit the application to the department electronically using facsimile mail;

(b) Made to the department and the employer has not received a copy of the application, the department shall immediately send a copy of the application to the employer; or

(c) Made to a self-insured employer, the employer shall forthwith send a copy of the application to the department. [2005 c 108 § 3; (2005 c 108 § 2 expired June 30, 2007); 2004 c 65 § 4; 2001 c 231 § 2; 1984 c 159 § 3; 1977 ex.s. c 350 § 33; 1971 ex.s. c 289 § 38; 1961 c 23 § 51.28.020. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Effective date—2005 c 108 § 3: "Section 3 of this act takes effect June 30, 2007." [2005 c 108 § 6.]

Expiration date—2005 c 108 § 2: "Section 2 of this act expires June 30, 2007." [2005 c 108 § 5.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—2001 c 231: See note following RCW 51.28.010.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.025 Duty of employer to report injury or disease—Contents of report—Claim suppression—Penalty.

(1) Whenever an employer has notice or knowledge of an injury or occupational disease sustained by any worker in his or her employment who has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, the employer shall immediately report the same to the department on forms prescribed by it. The report shall include:

- (a) The name, address, and business of the employer;
- (b) The name, address, and occupation of the worker;
- (c) The date, time, cause, and nature of the injury or occupational disease;
- (d) Whether the injury or occupational disease arose in the course of the injured worker's employment;
- (e) All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and
- (f) Such other pertinent information as the department may prescribe by regulation.

(2) The employer shall not engage in claim suppression. An employer found to have engaged in claim suppression shall be subject to a penalty of at least two hundred fifty dollars, not to exceed two thousand five hundred dollars, for each offense. The penalty shall be payable to the supplemental pension fund. The department shall adopt rules establishing the amount of penalties, taking into account the size of the employer and whether there are prior findings of claim suppression. When a determination of claim suppression has been made, the employer shall be prohibited from any current or future participation in a retrospective rating program. If self-insured, the director shall withdraw certification as provided in RCW 51.14.080.

(3) When a determination of claim suppression is made and the penalty is assessed, the department shall serve the employer and any affected retrospective rating group with a determination as provided in RCW 51.52.050. The determination may be protested to the department or appealed to the board of industrial insurance appeals. Once the order is final, the amount due shall be collected in accordance with the provisions of RCW 51.48.140 and 51.48.150.

(4) The director, or the director's designee, shall investigate reports or complaints that an employer has engaged in claim suppression as prohibited in RCW 51.28.010(3). The complaints or allegations must be received in writing, and must include the name or names of the individuals or organizations submitting the complaint. In cases where the department can show probable cause, the director may subpoena records from the employer, medical providers, and any other entity that the director believes may have relevant informa-

tion. The director's investigative and subpoena authority in this subsection is limited solely to investigations into allegations of claim suppression or where the director has probable cause that claim suppression might have occurred.

(5) If the director determines that an employer has engaged in claim suppression and, as a result, the worker has not filed a claim for industrial insurance benefits as prescribed by law, then the director in his or her sole discretion may waive the time limits for filing a claim provided in RCW 51.28.050, if the complaint or allegation of claim suppression is received within two years of the worker's accident or exposure. For the director to exercise this discretion, the claim must be filed with the department within ninety days of the date the determination of claim suppression is issued.

(6) For the purposes of this section, "claim suppression" has the same meaning as in RCW 51.28.010(4). [2007 c 77 § 2; 2004 c 65 § 5; 1987 c 185 § 32; 1985 c 347 § 1; 1975 1st ex.s. c 224 § 5; 1971 ex.s. c 289 § 39.]

Implementation—2007 c 77: See note following RCW 51.28.010.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.28.030 Beneficiaries' application for compensation—Notification of rights. Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department or self-insurer as the case may be, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician or licensed advanced registered nurse practitioner, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation under this section, notification, in nontechnical language, of their rights under this title. [2004 c 65 § 6; 1972 ex.s. c 43 § 17; 1971 ex.s. c 289 § 6; 1961 c 23 § 51.28.030. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

51.28.040 Application for change in compensation. If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. Where the application has been granted, compensation and other benefits if in order shall be allowed for periods of time up to sixty days prior to the receipt of such application. [1977 ex.s. c 199 § 1; 1961 c 23 § 51.28.040. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

51.28.050 Time limitation for filing application or enforcing claim for injury. No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued, except as provided in RCW 51.28.055 and 51.28.025(5). [2007 c 77 § 3; 1984 c 159 § 1; 1961 c 23 § 51.28.050. Prior: 1927 c 310 § 6, part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686, part.]

Implementation—2007 c 77: See note following RCW 51.28.010.

51.28.055 Time limitation for filing claim for occupational disease—Notice—Hearing loss claims—Rules. (1) Except as provided in subsection (2) of this section for claims filed for occupational hearing loss, claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician or a licensed advanced registered nurse practitioner: (a) Of the existence of his or her occupational disease, and (b) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician or licensed advanced registered nurse practitioner shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease.

(2)(a) Except as provided in (b) of this subsection, to be valid and compensable, claims for hearing loss due to occupational noise exposure must be filed within two years of the date of the worker's last injurious exposure to occupational noise in employment covered under this title or within one year of September 10, 2003, whichever is later.

(b) A claim for hearing loss due to occupational noise exposure that is not timely filed under (a) of this subsection can only be allowed for medical aid benefits under chapter 51.36 RCW.

(3) The department may adopt rules to implement this section. [2004 c 65 § 7; 2003 2nd sp.s. c 2 § 1; 1984 c 159 § 2; 1977 ex.s. c 350 § 34; 1961 c 23 § 51.28.055. Prior: 1959 c 308 § 18; prior: 1957 c 70 § 16, part; 1951 c 236 § 1, part.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

51.28.060 Proof of dependency. A dependent shall at all times furnish the department with proof satisfactory to the director of the nature, amount and extent of the contribution made by the deceased worker.

Proof of dependency by any beneficiary residing without the United States shall be made before the nearest United States consul or consular agency, under the seal of such consul or consular agent, and the department may cause any warrant or warrants to which such beneficiary is entitled to be transmitted to the beneficiary through the nearest United States consul or consular agent. [1977 ex.s. c 350 § 35; 1961 c 23 § 51.28.060. Prior: 1957 c 70 § 25; prior: (i) 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part. (ii) 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part;

(2008 Ed.)

1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

51.28.070 Claim files and records confidential. Information contained in the claim files and records of injured workers, under the provisions of this title, shall be deemed confidential and shall not be open to public inspection (other than to public employees in the performance of their official duties), but representatives of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant. A claimant may review his or her claim file if the director determines, pursuant to criteria adopted by rule, that the review is in the claimant's interest. Employers or their duly authorized representatives may review any files of their own injured workers in connection with any pending claims. Physicians treating or examining workers claiming benefits under this title, or physicians giving medical advice to the department regarding any claim may, at the discretion of the department, inspect the claim files and records of injured workers, and other persons may make such inspection, at the department's discretion, when such persons are rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this title. [1990 c 209 § 2; 1977 ex.s. c 350 § 36; 1975 1st ex.s. c 224 § 6; 1961 c 23 § 51.28.070. Prior: 1957 c 70 § 51.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.28.080 Determination of compensation for temporary total disability—Notification of employer. (1) An employer shall be promptly notified by the department when:

(a) The department has received an application for compensation under this title. If the employer is a state fund employer, the department shall instruct the employer to submit a report of accident form and provide a telephone number for assistance in the reporting process; and

(b) It has determined that a worker of that employer is entitled to compensation under RCW 51.32.090.

(2) Notification shall include, in nontechnical language, an explanation of the employer's rights under this title. [2005 c 108 § 4; 1985 c 338 § 2.]

51.28.090 Notification of availability of basic health plan. The director shall notify persons receiving time-loss payments under this chapter of the availability of basic health care coverage to qualified enrollees under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the director of closure of enrollment in the plan. The director shall maintain supplies of Washington basic health plan enrollment application forms in all field service offices where the plan is available, which shall be provided in reasonably necessary quantities by the administrator for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 17.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

51.28.100 Physician assistant signatures—Documents required by the department. The department shall

accept the signature of a physician assistant on any certificate, card, form, or other documentation required by the department that the physician assistant's supervising physician or physicians may sign, provided that it is within the physician assistant's scope of practice, and is consistent with the terms of the physician assistant's practice arrangement plan as required by chapters 18.57A and 18.71A RCW. Consistent with the terms of this section, the authority of a physician assistant to sign such certificates, cards, forms, or other documentation includes, but is not limited to, the execution of the certificate required in RCW 51.28.020. A physician assistant may not rate a worker's permanent partial disability under RCW 51.32.055. [2007 c 263 § 1.]

Report to legislature—2007 c 263: "By December 1, 2008, the department of labor and industries shall report to the legislature on implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims." [2007 c 263 § 2.]

Effective date—2007 c 263: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 263 § 3.]

Chapter 51.32 RCW

COMPENSATION—RIGHT TO AND AMOUNT

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Self-insured employer overpayment reimbursement fund: RCW 51.44.142.

Victims of crimes, benefits: Chapter 7.68 RCW.

51.32.010 Who entitled to compensation. Each worker injured in the course of his or her employment, or his or her family or dependents in case of death of the worker, shall receive compensation in accordance with this chapter, and, except as in this title otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever: PROVIDED, That if an injured worker, or the surviving spouse of an injured worker shall not have the legal custody of a child for, or on account of whom payments are required to be made under this title, such payment or payments shall be made to the person or persons having the legal custody of such child but only for the periods of time after the department has been notified of the fact of such legal custody, and it shall be the duty of any such person or persons receiving payments because of legal custody of any child immediately to notify the department of any change in such legal custody. [1977 ex.s. c 350 § 37; 1975 1st ex.s. c 224 § 7; 1971 ex.s. c 289 § 40; 1961 c 23 § 51.32.010. Prior: 1957 c 70 § 26; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.015 Time and place of coverage—Lunch period. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her lunch period as established by the employer while on the job-site. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business or work process in which the employer is then engaged: PROVIDED, That if a worker by reason of his or her employment

leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: AND PROVIDED FURTHER, That the employer need not consider the lunch period in his or her payroll for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 38; 1971 ex.s. c 289 § 41; 1961 c 107 § 1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.020 Who not entitled to compensation. If injury or death results to a worker from the deliberate intention of the worker himself or herself to produce such injury or death, or while the worker is engaged in the attempt to commit, or the commission of, a felony, neither the worker nor the widow, widower, child, or dependent of the worker shall receive any payment under this title.

If injury or death results to a worker from the deliberate intention of a beneficiary of that worker to produce the injury or death, or if injury or death results to a worker as a consequence of a beneficiary of that worker engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased worker and, at the same time, as the stepchild of a deceased worker. [1995 c 160 § 2; 1977 ex.s. c 350 § 39; 1971 ex.s. c 289 § 42; 1961 c 23 § 51.32.020. Prior: 1957 c 70 § 27; prior: (i) 1927 c 310 § 5, part; 1919 c 131 § 5, part; 1911 c 74 § 6, part; RRS § 7680, part. (ii) 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Application—1995 c 160 §§ 2 and 3: "Sections 2 and 3 of this act shall apply from July 23, 1995, without regard to the date of injury or the date of filing a claim." [1995 c 160 § 8.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.025 Payments for children cease at age eighteen—Exceptions. Any payments to or on account of any child or children of a deceased or temporarily or totally permanently disabled worker pursuant to any of the provisions of chapter 51.32 RCW shall terminate when any such child reaches the age of eighteen years unless such child is a dependent invalid child or is permanently enrolled at a full time course in an accredited school, in which case such payments after age eighteen shall be made directly to such child. Payments to any dependent invalid child over the age of eighteen years shall continue in the amount previously paid on account of such child until he shall cease to be dependent. Payments to any child over the age of eighteen years permanently enrolled at a full time course in an accredited school shall continue in the amount previously paid on account of such child until the child reaches an age over that provided for in the definition of "child" in this title or ceases to be perma-

nently enrolled whichever occurs first. Where the worker sustains an injury or dies when any of the worker's children is over the age of eighteen years and is either a dependent invalid child or is a child permanently enrolled at a full time course in an accredited school the payment to or on account of any such child shall be made as herein provided. [1987 c 185 § 33; 1975 1st ex.s. c 224 § 11.]

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.030 When compensation payable to employer or member of corporate employer. Any sole proprietor, partner, or joint venturer who has requested coverage under this title and who shall thereafter be injured or sustain an occupational disease, shall be entitled to the benefit of this title, as and under the same circumstances and subject to the same obligations as a worker: PROVIDED, That no such person or the beneficiaries thereof shall be entitled to benefits under this title unless the department has received notice in writing of such request on such forms as the department may provide prior to the date of the injury or occupational disease as the result of which claims are made: PROVIDED, That the department shall have the power to cancel the personal coverage of any such person if any required payments or reports have not been made. [1980 c 14 § 8. Prior: 1977 ex.s. c 350 § 40; 1977 ex.s. c 323 § 14; 1961 c 23 § 51.32.030; prior: 1957 c 70 § 28; prior: 1939 c 41 § 2, part; 1929 c 132 § 1, part; 1927 c 310 § 2, part; 1921 c 182 § 2, part; 1919 c 131 § 2, part; 1917 c 120 § 1, part; 1911 c 74 § 3, part; RRS § 7675, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.040 Protection of awards—Payment after death—Time limitations for filing—Confinement in institution. (1) Except as provided in RCW 43.20B.720, 72.09.111, 74.20A.260, and 51.32.380, no money paid or payable under this title shall, before the issuance and delivery of the check or warrant, be assigned, charged, or taken in execution, attached, garnished, or pass or be paid to any other person by operation of law, any form of voluntary assignment, or power of attorney. Any such assignment or charge is void unless the transfer is to a financial institution at the request of a worker or other beneficiary and made in accordance with RCW 51.32.045.

(2)(a) If any worker suffers (i) a permanent partial injury and dies from some other cause than the accident which produced the injury before he or she receives payment of the award for the permanent partial injury or (ii) any other injury before he or she receives payment of any monthly installment covering any period of time before his or her death, the amount of the permanent partial disability award or the monthly payment, or both, shall be paid to the surviving spouse or the child or children if there is no surviving spouse. If there is no surviving spouse and no child or children, the award or the amount of the monthly payment shall be paid by the department or self-insurer and distributed consistent with the terms of the decedent's will or, if the decedent dies intestate, consistent with the terms of RCW 11.04.015.

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

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

(3)(a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement. After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them.

(b) If any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she is entitled to payments under this title, subject to the requirements of chapter 72.65 RCW, unless his or her participation in the program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence.

(c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries had the worker not been confined.

(4) Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries. [2003 c 379 § 27; 1999 c 185 § 1; 1996 c 47 § 1; 1995 c 160 § 3; 1987 c 75 § 7; 1983 c 2 § 13. Prior: 1982 c 201 § 8; 1982 c 109 § 10; 1979 ex.s. c 171 § 11; 1977 ex.s. c 350 § 41; 1975 1st ex.s. c 224 § 8; 1974 ex.s. c 30 § 1; prior: 1973 1st ex.s. c 154 § 95; 1972 ex.s. c 43 § 18; 1971 ex.s. c 289 § 43; 1965 ex.s. c 165 § 2; 1961 c 23 § 51.32.040; prior: 1957 c 70 § 29; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Application—1995 c 160 §§ 2 and 3: See note following RCW 51.32.020.

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

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

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

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

For the purposes of this section "financial institution" shall have the meaning given in RCW 41.04.240 as now or hereafter amended. [1982 c 109 § 11.]

51.32.050 Death benefits. (1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(b) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or chil-

dren shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

(c) Payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

(d) In no event shall the monthly payments provided in subsection (2) of this section:

(i) Exceed the applicable percentage of the average monthly wage in the state as computed under RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (2)(d)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW 51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

(e) In addition to the monthly payments provided for in subsection (2)(a) through (c) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

(f) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided

in this section, but the monthly payments to such surviving spouse shall cease at the end of the month during which remarriage occurs. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection (2)(a)(i) of this section and subject to any modifications specified under subsection (2)(d) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)(f)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)(f)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(g) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)(f)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)(f)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

(h) The effective date of resumption of payments under subsection (2)(f)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

(i) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067. [2007 c 284 § 1; 1995 c 199 § 6; 1993 c 521 § 1; 1991 c 88 § 2; 1988 c 161 § 2; 1986 c 58 § 3; 1982 c 63 § 18; 1977 ex.s. c 350 § 42; 1975-'76 2nd ex.s. c 45 § 2; 1975 1st ex.s. c 179 § 1; 1973 1st ex.s. c 154 § 96; 1972 ex.s. c 43 § 19; 1971 ex.s. c 289 § 7; 1965 ex.s. c 122 § 1; 1961 c 274 § 1; 1961 c 23 § 51.32.050. Prior: 1957 c 70 § 30; 1951 c 115 § 1; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—2007 c 284: "This act takes effect July 1, 2008." [2007 c 284 § 4.]

Severability—1995 c 199: See note following RCW 51.12.120.

Effective date—1993 c 521: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 521 § 4.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: "The increases in benefits in RCW 51.32.050, 51.32.060, 51.32.090, and 51.32.180, contained in chapter 161, Laws of 1988 do not affect a retrospective rating agreement entered into by an employer with the department before July 1, 1988." [1988 c 161 § 15.]

Effective dates—1988 c 161 §§ 1, 2, 3, 4, and 6: "Section 4 of this act shall take effect on June 30, 1989. Sections 1, 2, 3, and 6 of this act shall take effect on July 1, 1988." [1988 c 161 § 17.]

Effective date—1986 c 58 §§ 2 and 3: See note following RCW 51.32.080.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Legislative intent—1975 1st ex.s. c 179: "The legislative intent of chapter 179, Laws of 1975 1st ex. sess. (2nd SSB No. 2241) was in part to offer surviving spouses of eligible workmen two options upon remarriage; such options to be available to any otherwise eligible surviving spouse regardless of the date of death of the injured workman. Accordingly this 1976 amendatory act is required to clarify that intent." [1975-'76 2nd ex.s. c 45 § 1.]

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

51.32.055 Determination of permanent disabilities—Closure of claims by self-insurers. (1) One purpose of this title is to restore the injured worker as nearly as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision, except as otherwise authorized in subsection (9) of this section, only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department, except as otherwise authorized in subsection (9) of this section. Either the worker, employer, or self-insurer may make a request or the inquiry may be initiated by the director or, as authorized in subsection (9) of this section, by the self-insurer on the director or the self-insurer's own motion. Determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or, if the self-insurer has made a request to the department, in the possession of or under the control of the self-insurer shall be forwarded to the director with the request.

(3) A request for determination of permanent disability shall be examined by the department or, if authorized in subsection (9) of this section, the self-insurer, and the department shall issue an order in accordance with RCW 51.52.050 or, in the case of a self-insured employer, the self-insurer may: (a) Enter a written order, communicated to the worker and the department self-insurance section in accordance with subsection (9) of this section, or (b) request the department to issue an order in accordance with RCW 51.52.050.

(4) The department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a personal interview. The costs of the examination or interview, including payment

of any reasonable travel expenses, shall be paid by the department or self-insurer, as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of the medical bureau in a manner to be determined by the department.

(6) Where a dispute arises from the handling of any claim before the condition of the injured worker becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7)(a) If a claim (i) is accepted by a self-insurer after June 30, 1986, and before August 1, 1997, (ii) involves only medical treatment and the payment of temporary disability compensation under RCW 51.32.090 or only the payment of temporary disability compensation under RCW 51.32.090, (iii) at the time medical treatment is concluded does not involve permanent disability, (iv) is one with respect to which the department has not intervened under subsection (6) of this section, and (v) the injured worker has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted under this subsection (7) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of a claim under (a) of this subsection, the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you must protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order."

(8)(a) If a claim (i) is accepted by a self-insurer after June 30, 1990, and before August 1, 1997, (ii) involves only medical treatment, (iii) does not involve payment of temporary disability compensation under RCW 51.32.090, and (iv) at the time medical treatment is concluded does not involve permanent disability, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your

claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you must protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order."

(b) All determinations of permanent disability for claims accepted under this subsection (8) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(9)(a) If a claim: (i) Is accepted by a self-insurer after July 31, 1997; (ii)(A) involves only medical treatment, or medical treatment and the payment of temporary disability compensation under RCW 51.32.090, and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; or (B) involves only the payment of temporary disability compensation under RCW 51.32.090 and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; (iii) is one with respect to which the department has not intervened under subsection (6) of this section; and (iv) concerns an injured worker who has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) If a physician or licensed advanced registered nurse practitioner submits a report to the self-insurer that concludes that the worker's condition is fixed and stable and supports payment of a permanent partial disability award, and if within fourteen days from the date the self-insurer mailed the report to the attending or treating physician or licensed advanced registered nurse practitioner, the worker's attending or treating physician or licensed advanced registered nurse practitioner disagrees in writing that the worker's condition is fixed and stable, the self-insurer must get a supplemental medical opinion from a provider on the department's approved examiner's list before closing the claim. In the alternative, the self-insurer may forward the claim to the department, which must review the claim and enter a final order as provided for in RCW 51.52.050.

(c) Upon closure of a claim under this subsection (9), the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with such medical benefits and temporary disability compensation as provided to date and with such award for permanent partial disability, if any, as set forth below, and with the condition that you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits, temporary disability compensation provided, or permanent partial disability that has been awarded, you must protest in writing to the Department of Labor and Industries, Self-Insurance Section, within sixty days of the date you received this order. If you do not protest this order to the department, this order will become final."

(d) All determinations of permanent partial disability for claims accepted by self-insurers under this subsection (9) may be made by the self-insurer or the self-insurer may request a determination by the self-insured section of the department. All determinations shall be made under subsections (1) through (4) of this section.

(10) If the department receives a protest of an order issued by a self-insurer under subsections (7) through (9) of this section, the self-insurer's closure order must be held in abeyance. The department shall review the claim closure action and enter a further determinative order as provided for in RCW 51.52.050. If no protest is timely filed, the closing order issued by the self-insurer shall become final and shall have the same force and effect as a department order that has become final under RCW 51.52.050.

(11) If within two years of claim closure under subsections (7) through (9) of this section, the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits paid or payable. This subsection (11) does not limit in any way the application of RCW 51.32.240.

(12) For the purposes of this section, "comparable wages and benefits" means wages and benefits that are at least ninety-five percent of the wages and benefits received by the worker at the time of injury. [2004 c 65 § 8; 1997 c 416 § 1; 1994 c 97 § 1; 1988 c 161 § 13; 1986 c 55 § 1; 1981 c 326 § 1; 1977 ex.s. c 350 § 43; 1971 ex.s. c 289 § 46.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Report to the legislature—1997 c 416: "The department of labor and industries shall review the permanent partial disability claims closure activity by self-insured employers authorized under RCW 51.32.055(9) through at least June 30, 1999. The department must also review the claims closure activity by the self-insured section of the department for the same period. The review of these activities must include the number and types of claims closed, protested, reconsidered, and appealed, and the results of such activities, including the results of injured worker satisfaction surveys conducted by the department. The department must report on its review to the appropriate committees of the legislature no later than January 1, 2000." [1997 c 416 § 2.]

Effective date—Applicability—1986 c 55 § 1: "Section 1 of this act shall take effect July 1, 1986, and shall apply to claims accepted after June 30, 1986." [1986 c 55 § 4.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.060 Permanent total disability compensation—Personal attendant. (1) When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

(a) If married at the time of injury, sixty-five percent of his or her wages.

(b) If married with one child at the time of injury, sixty-seven percent of his or her wages.

(c) If married with two children at the time of injury, sixty-nine percent of his or her wages.

(d) If married with three children at the time of injury, seventy-one percent of his or her wages.

(e) If married with four children at the time of injury, seventy-three percent of his or her wages.

(f) If married with five or more children at the time of injury, seventy-five percent of his or her wages.

(g) If unmarried at the time of the injury, sixty percent of his or her wages.

(h) If unmarried with one child at the time of injury, sixty-two percent of his or her wages.

(i) If unmarried with two children at the time of injury, sixty-four percent of his or her wages.

(j) If unmarried with three children at the time of injury, sixty-six percent of his or her wages.

(k) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages.

(l) If unmarried with five or more children at the time of injury, seventy percent of his or her wages.

(2) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

(3) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

(4) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

(5) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if a worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (5)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

The limitations under this subsection shall not apply to the payments provided for in subsection (3) of this section.

(6) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(7) The benefits provided by this section are subject to modification under RCW 51.32.067. [2007 c 284 § 2; 1993 c 521 § 2; 1988 c 161 § 1. Prior: 1986 c 59 § 1; 1986 c 58 § 5; 1983 c 3 § 159; 1977 ex.s. c 350 § 44; 1975 1st ex.s. c 224 § 9; 1973 c 147 § 1; 1972 ex.s. c 43 § 20; 1971 ex.s. c 289 § 8; 1965 ex.s. c 122 § 2; 1961 c 274 § 2; 1961 c 23 § 51.32.060; prior: 1957 c 70 § 31; 1951 c 115 § 2; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective date—2007 c 284: See note following RCW 51.32.050.

Effective date—1993 c 521: See note following RCW 51.32.050.

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.067 Permanent total disability—Death benefit options—Election. (1) After a worker elects one of the options in (a), (b), or (c) of this subsection, that option shall apply only if the worker dies during a period of permanent total disability from a cause unrelated to the injury, leaving a surviving spouse, child, children, or other dependent. If, after making an election under this subsection, a worker dies from a cause related to the injury during a period of permanent total disability, his or her beneficiaries shall receive benefits under RCW 51.32.050 (2) through (5).

(a) **Option I.** An injured worker selecting this option shall receive the benefits provided by RCW 51.32.060, with no benefits being paid to the worker's surviving spouse, children, or others.

(b) **Option II.** An injured worker selecting this option shall receive an actuarially reduced benefit which upon death shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(c) **Option III.** An injured worker selecting this option shall receive an actuarially reduced benefit and, upon death, one-half of the reduced benefit shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(2) The worker shall make the election in writing and the worker's spouse, if any, shall consent in writing as a prerequisite to the election of Option I.

(3) If the worker's nominated beneficiary is the worker's spouse, and the worker and spouse enter into a dissolution of marriage after the nomination has been made, the worker may apply to receive benefits as calculated under Option I. This change is effective the date of the decree of dissolution of marriage, but no more than one year prior to the date application for the change is received in the department, provided

the worker submits legally certified documentation of the decree of dissolution of marriage.

(4) If the worker's nominated beneficiary dies, the worker may apply to receive benefits as calculated under Option I. This change is effective the date of death, but no more than one year prior to the date application for the change is received in the department, provided the worker submits a certified copy of the death certificate.

(5) The change in benefits authorized by subsections (3) and (4) of this section is a one-time adjustment and will be permanent for the life of the worker.

(6) The department shall adopt such rules as may be necessary to implement this section. [2006 c 154 § 1; 1986 c 58 § 4.]

51.32.072 Additional payments for prior pensioners—Children—Remarriage—Attendant. Notwithstanding any other provision of law, every surviving spouse and every permanently totally disabled worker or temporarily totally disabled worker, if such worker was unmarried at the time of the worker's injury or was then married but the marriage was later terminated by judicial action, receiving a pension or compensation for temporary total disability under this title pursuant to compensation schedules in effect prior to July 1, 1971, shall after July 1, 1975, be paid fifty percent of the average monthly wage in the state as computed under RCW 51.08.018 per month and an amount equal to five percent of such average monthly wage per month to such totally disabled worker if married at the time of the worker's injury and the marriage was not later terminated by judicial action, and an additional two percent of such average monthly wage for each child of such totally disabled worker at the time of injury in the legal custody of such totally disabled worker or such surviving spouse up to a maximum of five such children. The monthly payments such surviving spouse or totally disabled worker are receiving pursuant to compensation schedules in effect prior to July 1, 1971 shall be deducted from the monthly payments above specified.

Where such a surviving spouse has remarried, or where any such child of such worker, whether living or deceased, is not in the legal custody of such worker or such surviving spouse there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under compensation schedules in effect prior to July 1, 1971 for the benefit of and on account of each such child. In the case of any child or children of a deceased worker not leaving a surviving spouse or where the surviving spouse has later died, there shall be paid for the benefit of and on account of each such child a sum equal to two percent of such average monthly wage up to a maximum of five such children in addition to any payments theretofore paid under such schedules for the benefit of and on account of each such child.

If the character of the injury or occupational disease is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of this title

except for care granted at the discretion of the supervisor pursuant to RCW 51.36.010: PROVIDED, That such payments shall not be considered compensation nor shall they be subject to any limitation upon total compensation payments.

No part of such additional payments shall be payable from the accident fund.

The director shall pay monthly from the supplemental pension fund such an amount as will, when added to the compensation theretofore paid under compensation schedules in effect prior to July 1, 1971, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid under this section shall be reduced by the amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve. [1987 c 185 § 34; 1975 1st ex.s. c 224 § 12.]

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

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.073 Additional payments for prior pensioners—Premium liability of worker and employer for additional payments. (1) Except as provided in subsection (2) of this section, each employer shall retain from the earnings of each worker that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. The money so retained shall be matched in an equal amount by each employer, and all such moneys shall be remitted to the department in such manner and at such intervals as the department directs and shall be placed in the supplemental pension fund: PROVIDED, That the state apprenticeship council shall pay the entire amount into the supplemental pension fund for registered apprentices or trainees during their participation in supplemental and related instruction classes. The moneys so collected shall be used exclusively for the additional payments from the supplemental pension fund prescribed in this title and for the amount of any increase payable under the provisions of RCW 51.32.075, as now or hereafter amended, and shall be no more than necessary to make such payments on a current basis. The department may require a self-insurer to make any additional payments which are payable from the supplemental pension fund and thereafter such self-insurer shall be reimbursed therefrom.

(2) None of the amount assessed for the supplemental pension fund under RCW 51.16.210 may be retained from the earnings of workers covered under RCW 51.16.210. [1989 c 385 § 4; 1980 c 14 § 9. Prior: 1977 ex.s. c 350 § 45; 1977 ex.s. c 323 § 15; 1977 ex.s. c 202 § 1; 1975-'76 2nd ex.s. c 19 § 1; prior: 1975 1st ex.s. c 286 § 1; 1975 1st ex.s. c 224 § 10; 1973 c 110 § 3; 1972 ex.s. c 43 § 24; 1971 ex.s. c 289 § 17.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.075 Adjustments in compensation or death benefits. The compensation or death benefits payable pursu-

ant to the provisions of this chapter for temporary total disability, permanent total disability, or death arising out of injuries or occupational diseases shall be adjusted as follows:

(1) On July 1, 1982, there shall be an adjustment for those whose right to compensation was established on or after July 1, 1971, and before July 1, 1982. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1982.

(2) In addition to the adjustment established by subsection (1) of this section, there shall be another adjustment on July 1, 1983, for those whose right to compensation was established on or after July 1, 1971, and before July 1983, which shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1, 1983.

(3) In addition to the adjustments under subsections (1) and (2) of this section, further adjustments shall be made beginning on July 1, 1984, and on each July 1st thereafter for those whose right to compensation was established on or after July 1, 1971. The adjustment shall be determined by multiplying the amount of compensation to which they are entitled by a fraction, the denominator of which shall be the average monthly wage in the state under RCW 51.08.018 for the fiscal year in which such person's right to compensation was established, and the numerator of which shall be the average monthly wage in the state under RCW 51.08.018 on July 1st of the year in which the adjustment is being made. The department or self-insurer shall adjust the resulting compensation rate to the nearest whole cent, not to exceed the average monthly wage in the state as computed under RCW 51.08.018. [1988 c 161 § 7; 1983 c 203 § 1; 1982 1st ex.s. c 20 § 1; 1979 c 108 § 1; 1977 ex.s. c 202 § 2; 1975 1st ex.s. c 286 § 2.]

Effective date—1982 1st ex.s. c 20: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1982." [1982 1st ex.s. c 20 § 4.]

51.32.080 Permanent partial disability—Specified—Unspecified, rules for classification—Injury after permanent partial disability. (1)(a) Until July 1, 1993, for the permanent partial disabilities here specifically described, the injured worker shall receive compensation as follows:

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium)	\$54,000.00
Of leg at or above knee joint with functional stump	48,600.00
Of leg below knee joint	43,200.00
Of leg at ankle (Syme)	37,800.00

Of foot at mid-metatarsals	18,900.00
Of great toe with resection of metatarsal bone	11,340.00
Of great toe at metatarsophalangeal joint	6,804.00
Of great toe at interphalangeal joint	3,600.00
Of lesser toe (2nd to 5th) with resection of metatarsal bone	4,140.00
Of lesser toe at metatarsophalangeal joint	2,016.00
Of lesser toe at proximal interphalangeal joint	1,494.00
Of lesser toe at distal interphalangeal joint	378.00
Of arm at or above the deltoid insertion or by disarticulation at the shoulder.	54,000.00
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon	51,300.00
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand	48,600.00
Of all fingers except the thumb at metacarpophalangeal joints	29,160.00
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone	19,440.00
Of thumb at interphalangeal joint.	9,720.00
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone	12,150.00
Of index finger at proximal interphalangeal joint	9,720.00
Of index finger at distal interphalangeal joint	5,346.00
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone	9,720.00
Of middle finger at proximal interphalangeal joint	7,776.00
Of middle finger at distal interphalangeal joint	4,374.00
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone	4,860.00
Of ring finger at proximal interphalangeal joint	3,888.00
Of ring finger at distal interphalangeal joint	2,430.00
Of little finger at metacarpophalangeal joint or with resection of metacarpal bone	2,430.00
Of little finger at proximal interphalangeal joint	1,944.00
Of little finger at distal interphalangeal joint	972.00
MISCELLANEOUS	
Loss of one eye by enucleation	21,600.00

Loss of central visual acuity in one eye	18,000.00
Complete loss of hearing in both ears	43,200.00
Complete loss of hearing in one ear	7,200.00

(b) Beginning on July 1, 1993, compensation under this subsection shall be computed as follows:

(i) Beginning on July 1, 1993, the compensation amounts for the specified disabilities listed in (a) of this subsection shall be increased by thirty-two percent; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the compensation amounts for the specified disabilities listed in (a) of this subsection, as adjusted under (b)(i) of this subsection, shall be readjusted to reflect the percentage change in the consumer price index, calculated as follows: The index for the calendar year preceding the year in which the July calculation is made, to be known as "calendar year A," is divided by the index for the calendar year preceding calendar year A, and the resulting ratio is multiplied by the compensation amount in effect on June 30 immediately preceding the July 1st on which the respective calculation is made. For the purposes of this subsection, "index" means the same as the definition in RCW 2.12.037(1).

(2) Compensation for amputation of a member or part thereof at a site other than those specified in subsection (1) of this section, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation shall be calculated based on the adjusted schedule of compensation in effect for the respective time period as prescribed in subsection (1) of this section.

(3)(a) Compensation for any other permanent partial disability not involving amputation shall be in the proportion which the extent of such other disability, called unspecified disability, shall bear to the disabilities specified in subsection (1) of this section, which most closely resembles and approximates in degree of disability such other disability, and compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment. To reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments.

(b) Until July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be deemed to be ninety thousand dollars. Beginning on July 1, 1993, for purposes of calculating monetary benefits under (a) of this subsection, the amount payable for total bodily impairment shall be adjusted as follows:

(i) Beginning on July 1, 1993, the amount payable for total bodily impairment under this section shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the amount payable for total bodily impairment pre-

scribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(c) Until July 1, 1993, the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ninety thousand dollars. Beginning on July 1, 1993, total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed a sum calculated as follows:

(i) Beginning on July 1, 1993, the sum shall be increased to one hundred eighteen thousand eight hundred dollars; and

(ii) Beginning on July 1, 1994, and each July 1 thereafter, the sum prescribed in (b)(i) of this subsection shall be adjusted as provided in subsection (1)(b)(ii) of this section.

(4) If permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured worker if permanent total disability compensation had been paid in the first instance shall be, at the choosing of the injured worker, either: (a) Deducted from the worker's monthly pension benefits in an amount not to exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is less; or (b) deducted from the pension reserve of such injured worker and his or her monthly compensation payments shall be reduced accordingly.

(5) Should a worker receive an injury to a member or part of his or her body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such worker, his or her compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(6) When the compensation provided for in subsections (1) through (3) of this section exceeds three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured worker in full, except that the first monthly payment shall be in an amount equal to three times the average monthly wage in the state as computed under the provisions of RCW 51.08.018, and interest shall be paid at the rate of eight percent on the unpaid balance of such compensation commencing with the second monthly payment. However, upon application of the injured worker or survivor the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured worker or survivor to the department and shall rest in the discretion of the department depending upon the merits of each individual application. Upon the death of a worker all unpaid installments accrued shall be paid according to the payment schedule established prior to the death of the worker to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

(7) Awards payable under this section are governed by the schedule in effect on the date of injury. [2007 c 172 § 1; 1993 c 520 § 1; 1988 c 161 § 6; 1986 c 58 § 2; 1982 1st ex.s. c 20 § 2; 1979 c 104 § 1; 1977 ex.s. c 350 § 46; 1972 ex.s. c 43 § 21; 1971 ex.s. c 289 § 10; 1965 ex.s. c 165 § 1; 1961 c 274 § 3; 1961 c 23 § 51.32.080. Prior: 1957 c 70 § 32; prior: 1951 c 115 § 4; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Application—2007 c 172: "This act applies to all pension orders issued on or after July 22, 2007." [2007 c 172 § 2.]

Effective date—1993 c 520: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]." [1993 c 520 § 2.]

Effective dates—1988 c 161: See note following RCW 51.32.050.

Effective date—1986 c 58 §§ 2 and 3: "Sections 2 and 3 of this act shall take effect on July 1, 1986." [1986 c 58 § 7.]

Effective date—1982 1st ex.s. c 20: See note following RCW 51.32.075.

51.32.090 Temporary total disability—Partial restoration of earning power—Return to available work—When employer continues wages—Limitations. (1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician or licensed advanced registered nurse practitioner.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick

leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(7) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (7)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section. [2007 c 284 § 3; 2007 c 190 § 1; 2004 c 65 § 9. Prior: 1993 c 521 § 3; 1993 c 299 § 1; 1993 c 271 § 1; 1988 c 161 § 4; prior: 1988 c 161 § 3; 1986 c 59 § 3; (1986 c 59 § 2 expired June 30, 1989); prior: 1985 c 462 § 6; 1980 c 129 § 1; 1977 ex.s. c 350 § 47; 1975 1st ex.s. c 235 § 1; 1972 ex.s. c 43 § 22; 1971 ex.s. c 289 § 11; 1965 ex.s. c 122 § 3; 1961 c 274 § 4; 1961 c 23 § 51.32.090; prior: 1957 c 70 § 33; 1955 c 74 § 8; prior: 1951 c 115 § 3; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Reviser's note: This section was amended by 2007 c 190 § 1 and by 2007 c 284 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2007 c 284: See note following RCW 51.32.050.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1993 c 521: See note following RCW 51.32.050.

Effective date—1993 c 299: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 299 § 2.]

Effective date—1993 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 271 § 2.]

Benefit increases—Application to certain retrospective rating agreements—Effective dates—1988 c 161: See notes following RCW 51.32.050.

Expiration date—1986 c 59 § 2; Effective dates—1986 c 59 §§ 3, 5: "Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986." [1986 c 59 § 6.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (Expires June 30, 2013.) (1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid shall be recovered according to the terms of that section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) For vocational plans approved prior to July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and

successfully undergoing a formal program of vocational rehabilitation.

(b) When the department has approved a vocational plan for a worker between July 1, 1999, through December 31, 2007, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section and RCW 51.32.099, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections (3) and (4) of this section.

For vocational plans approved for a worker between January 1, 2008, through June 30, 2013, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section shall be limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services shall conform to the requirements in RCW 51.32.099.

(6) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section and under RCW 51.32.099. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(7) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section and RCW 51.32.099.

(8) The benefits in this section and RCW 51.32.099 shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section and RCW 51.32.099 in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section or RCW 51.32.099, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(9) Except as otherwise provided in this section or RCW 51.32.099, the benefits provided for in this section and RCW 51.32.099 are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [2007 c 72 § 1; 2004 c 65 § 10; 1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

***Reviser's note:** RCW 51.60.060 expired June 30, 1999, pursuant to 1994 c 29 § 8.

Implementation—Effective date—Expiration date—2007 c 72: See notes following RCW 51.32.099.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1999 c 110 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 110 § 3.]

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Severability—1985 c 339: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 339 § 6.]

Severability—1983 c 70: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 70 § 5.]

Effective dates—Implementation—1982 c 63: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as

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are necessary to insure that this act is implemented on its effective dates." [1982 c 63 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.095 Vocational rehabilitation services—Benefits—Priorities—Allowable costs—Performance criteria. (Effective June 30, 2013.)

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) Beginning with vocational rehabilitation plans approved on or after July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's

designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period except as authorized by *RCW 51.60.060, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

(7) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(8) Except as otherwise provided in this section, the benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes. [2004 c 65 § 10; 1999 c 110 § 1. Prior: 1996 c 151 § 1; 1996 c 59 § 1; 1988 c 161 § 9; 1985 c 339 § 2; 1983 c 70 § 2; 1982 c 63 § 11; 1980 c 14 § 10. Prior: 1977 ex.s. c 350 § 48; 1977 ex.s. c 323 § 16; 1972 ex.s. c 43 § 23; 1971 ex.s. c 289 § 12.]

*Reviser's note: RCW 51.60.060 expired June 30, 1999, pursuant to 1994 c 29 § 8.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1999 c 110 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 110 § 3.]

Legislative finding—1985 c 339: "The legislature finds that the vocational rehabilitation program created by chapter 63, Laws of 1982, has failed to assist injured workers to return to suitable gainful employment without undue loss of time from work and has increased costs of industrial insurance for employers and employees alike. The legislature further finds that the administrative structure established within the industrial insurance division of the department of labor and industries to develop and oversee the provision of vocational rehabilitation services has not provided efficient delivery of vocational rehabilitation services. The legislature finds that restructuring the state's vocational rehabilitation program under the department of labor and industries is necessary." [1985 c 339 § 1.]

Severability—1985 c 339: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 339 § 6.]

Severability—1983 c 70: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 70 § 5.]

Effective dates—Implementation—1982 c 63: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]. All other sections of this act shall take effect on January 1, 1983. The director of the department of labor and industries is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective dates." [1982 c 63 § 26.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.098 Vocational rehabilitation services—Applicability. Nothing in RCW 51.32.095 or in the repeal of chapter 51.41 RCW by section 5, chapter 339, Laws of 1985 shall be construed as prohibiting the completion of vocational rehabilitation plans approved under this title prior to May 16, 1985. Injured workers referred for vocational rehabilitation services under this title, but for whom vocational rehabilitation plans have not been approved by the department under this title before May 16, 1985, may only be provided vocational rehabilitation services, if applicable, by the department according to the provisions of RCW 51.32.095. [1985 c 339 § 4.]

Legislative finding—Severability—1985 c 339: See notes following RCW 51.32.095.

51.32.099 Vocational rehabilitation pilot program—Vocational plans. (Expires June 30, 2013.) (1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through

legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, 2013. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

(c) In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high demand programs. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall pro-

vide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

(iv) The department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature and to the subcommittee by December 1, 2009, and annually thereafter with the final report due by December 1, 2012. The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed. The final report shall include the department's assessment and recommendations for further legislative action, in collaboration with the subcommittee.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services.

(b) When vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective [on] the starting date for the job without regard to whether the worker accepts the return-to-work offer. Following the fifteen-day period, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing

successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)(c)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. During vocational plan development the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of approval of the plan by the department, elect option 2.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under

RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits. The department shall thereafter close the claim.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will

allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section. [2007 c 72 § 2.]

Implementation—2007 c 72: "The department of labor and industries shall adopt rules necessary to implement this act." [2007 c 72 § 4.]

Effective date—2007 c 72: "This act takes effect January 1, 2008." [2007 c 72 § 5.]

Expiration date—2007 c 72: "This act expires June 30, 2013." [2007 c 72 § 6.]

51.32.0991 Vocational services and plans—Costs—Medical aid fund expenses. (Expires June 30, 2013.) (1) Costs paid for vocational services and plans shall be chargeable to the employer's cost experience or shall be paid by the self-insurer, as the case may be. For state fund vocational plans implemented on or after January 1, 2008, the costs may be paid from the medical aid fund at the sole discretion of the director under the following circumstances:

(a) The worker previously participated in a vocational plan or selected a worker option as described in RCW 51.32.099(4);

(b) The worker's prior vocational plan or selected option was based on an approved plan or option on or after January 1, 2008;

(c) For state fund employers, the date of injury or disease manifestation of the subsequent claim is within the period of time used to calculate their experience factor;

(d) The subsequent claim is for an injury or occupational disease that resulted from employment and work-related activities beyond the worker's documented restrictions.

(2) The vocational plan costs payable from the medical aid fund shall include the costs of temporary total disability benefits, except those payable from the supplemental pension fund, from the date the vocational plan is implemented to the date the worker completes the plan or ceases participation. The vocational costs paid from the medical aid fund shall not be charged to the state fund employer's cost experience.

(2008 Ed.)

(3) For the duration of the vocational pilot program, all expenses to the medical aid fund resulting from the director's discretionary decisions as provided in subsection (1) of this section shall be separately documented as a medical aid fund expenditure and reported to the vocational rehabilitation subcommittee and the legislature annually. This report shall include the number of claims for which relief to the state fund employer was provided and the average cost per claim. A report to the vocational rehabilitation subcommittee and the legislature shall also be made annually including the number of claims and average cost per claim reported by self-insured employers for claims meeting the requirements in subsection (1)(a), (b), and (d) of this section. [2007 c 72 § 3.]

Implementation—Effective date—Expiration date—2007 c 72: See notes following RCW 51.32.099.

51.32.100 Preexisting disease. If it is determined that an injured worker had, at the time of his or her injury, a preexisting disease and that such disease delays or prevents complete recovery from such injury, it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability which the injury would have caused were it not for the disease, and compensation shall be awarded only therefor. [1977 ex.s. c 350 § 49; 1971 ex.s. c 289 § 44; 1961 c 23 § 51.32.100. Prior: 1957 c 70 § 34; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.110 Medical examination—Refusal to submit—Traveling expenses—Pay for time lost. (1) Any worker entitled to receive any benefits or claiming such under this title shall, if requested by the department or self-insurer, submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the worker and as may be provided by the rules of the department. An injured worker, whether an alien or other injured worker, who is not residing in the United States at the time that a medical examination is requested may be required to submit to an examination at any location in the United States determined by the department or self-insurer.

(2) If the worker refuses to submit to medical examination, or obstructs the same, or, if any injured worker shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery or refuse or obstruct evaluation or examination for the purpose of vocational rehabilitation or does not cooperate in reasonable efforts at such rehabilitation, the department or the self-insurer upon approval by the department, with notice to the worker may suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation, or practice continues and reduce, suspend, or deny any compensation for such period: PROVIDED, That the department or the self-insurer shall not suspend any further action on any claim of a worker or reduce, suspend, or deny any compensation if a worker has

good cause for refusing to submit to or to obstruct any examination, evaluation, treatment or practice requested by the department or required under this section.

(3) If the worker necessarily incurs traveling expenses in attending the examination pursuant to the request of the department, such traveling expenses shall be repaid to him or her out of the accident fund upon proper voucher and audit or shall be repaid by the self-insurer, as the case may be.

(4)(a) If the medical examination required by this section causes the worker to be absent from his or her work without pay:

(i) In the case of a worker insured by the department, the worker shall be paid compensation out of the accident fund in an amount equal to his or her usual wages for the time lost from work while attending the medical examination; or

(ii) In the case of a worker of a self-insurer, the self-insurer shall pay the worker an amount equal to his or her usual wages for the time lost from work while attending the medical examination.

(b) This subsection (4) shall apply prospectively to all claims regardless of the date of injury. [1997 c 325 § 3; 1993 c 375 § 1; 1980 c 14 § 11. Prior: 1977 ex.s. c 350 § 50; 1977 ex.s. c 323 § 17; 1971 ex.s. c 289 § 13; 1961 c 23 § 51.32.110; prior: 1917 c 28 § 18; 1915 c 188 § 5; 1911 c 74 § 13; RRS § 7688.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.112 Medical examination—Standards and criteria—Special examinations by chiropractors—Compensation guidelines and reporting criteria. (1) The department shall develop standards for the conduct of special medical examinations to determine permanent disabilities, including, but not limited to:

(a) The qualifications of persons conducting the examinations;

(b) The criteria for conducting the examinations, including guidelines for the appropriate treatment of injured workers during the examination; and

(c) The content of examination reports.

(2) Within the appropriate scope of practice, chiropractors licensed under chapter 18.25 RCW may conduct special medical examinations to determine permanent disabilities in consultation with physicians licensed under chapter 18.57 or 18.71 RCW. The department, in its discretion, may request that a special medical examination be conducted by a single chiropractor if the department determines that the sole issues involved in the examination are within the scope of practice under chapter 18.25 RCW. However, nothing in this section authorizes the use as evidence before the board of a chiropractor's determination of the extent of a worker's permanent disability if the determination is not requested by the department.

(3) The department shall investigate the amount of examination fees received by persons conducting special medical examinations to determine permanent disabilities, including total compensation received for examinations of department and self-insured claimants, and establish compensation guidelines and compensation reporting criteria.

(4) The department shall investigate the level of compliance of self-insurers with the requirement of full reporting of claims information to the department, particularly with respect to medical examinations, and develop effective enforcement procedures or recommendations for legislation if needed. [1993 c 515 § 4; 1988 c 114 § 2.]

Intent—1988 c 114: "It is the intent of the legislature that medical examinations for determining permanent disabilities be conducted fairly and objectively by qualified examiners and with respect for the dignity of the injured worker." [1988 c 114 § 1.]

51.32.114 Medical examination—Department to monitor quality and objectivity. The department shall examine the credentials of persons conducting special medical examinations and shall monitor the quality and objectivity of examinations and reports for the department and self-insured claimants. The department shall adopt rules to ensure that examinations are performed only by qualified persons meeting department standards. [1988 c 114 § 3.]

Intent—1988 c 114: See note following RCW 51.32.112.

51.32.120 Further accident after lump sum payment. Should a further accident occur to a worker who has been previously the recipient of a lump sum payment under this title, his or her future compensation shall be adjusted according to the other provisions of this chapter and with regard to the combined effect of his or her injuries and his or her past receipt of money under this title. [1977 ex.s. c 350 § 51; 1961 c 23 § 51.32.120. Prior: 1957 c 70 § 35; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.130 Lump sum for death or permanent total disability. In case of death or permanent total disability, the monthly payment provided may be converted, in whole or in part, into a lump sum payment, not in any case to exceed eight thousand five hundred dollars, equal or proportionate, as the case may be, to the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made only upon written application (in case of minor children the application may be by either parent) to the department and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the department and applicant. In the event any payment shall be due to an alien residing in a foreign country, the department may settle the same by making a lump sum payment in such amount as may be agreed to by such alien, not to exceed fifty percent of the value of the annuity then remaining.

Nothing herein shall preclude the department from making, and authority is hereby given it to make, on its own motion, lump sum payments equal or proportionate, as the case may be, to the value of the annuity then remaining, in full satisfaction of claims due to dependents. [1961 c 23 § 51.32.130. Prior: 1957 c 70 § 45; prior: 1941 c 209 § 2; 1929 c 132 § 3; 1927 c 310 § 6(i); 1917 c 29 § 22; 1911 c 74 § 7; Rem. Supp. 1941 § 7681.]

51.32.135 Closing of claim in pension cases—Consent of spouse. In pension cases when a worker or beneficiary closes his or her claim by full conversion to a lump sum or in any other manner as provided in RCW 51.32.130 and 51.32.150, such action shall be conclusive and effective to bar any subsequent application or claim relative thereto by the worker or any beneficiary which would otherwise exist had such person not elected to close the claim: PROVIDED, The director may require the spouse of such worker to consent in writing as a prerequisite to conversion and/or the closing of such claim. [1977 ex.s. c 350 § 52; 1973 1st ex.s. c 154 § 98; 1961 c 23 § 51.32.135. Prior: 1953 c 143 § 1.]

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

51.32.140 Nonresident alien beneficiary. Except as otherwise provided by treaty or this title, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, the department or self-insurer, as the case may be, shall pay the compensation to which a resident beneficiary is entitled under this title. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he or she shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due. [1997 c 325 § 5; 1971 ex.s. c 289 § 45; 1961 c 23 § 51.32.140. Prior: 1957 c 70 § 36; prior: 1947 c 56 § 1, part; 1927 c 310 § 7, part; 1923 c 136 § 4, part; 1921 c 182 § 6, part; 1919 c 131 § 6, part; 1911 c 74 § 10, part; Rem. Supp. 1947 § 7684, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.150 Lump sum to beneficiary outside state. If a beneficiary shall reside or move out of the state, the department may, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the state insurance commissioner, but in no case to exceed the sum provided in RCW 51.32.130 as now or hereafter amended). [1977 ex.s. c 323 § 18; 1961 c 23 § 51.32.150. Prior: 1959 c 308 § 5; 1957 c 70 § 37; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.160 Aggravation, diminution, or termination. (1)(a) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the director may, upon application of the worker made at any time, pro-

vide proper and necessary medical and surgical services as authorized under RCW 51.36.010. The department shall promptly mail a copy of the application to the employer at the employer's last known address as shown by the records of the department.

(b) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, or examination.

(c) Applications for benefits where the claim has been closed without medical recommendation, advice, or examination are not subject to the seven year limitation of this section. The preceding sentence shall not apply to any closing order issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall, for the purposes of this section only, be deemed issued on July 1, 1985. The time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes.

(d) If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application shall be deemed granted. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

(2) If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for the disability without producing medical evidence that shows that a diminution of the disability has occurred.

(3) No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be grounds for such readjustment. [1995 c 253 § 2; 1988 c 161 § 11; 1986 c 59 § 4; 1973 1st ex.s. c 192 § 1; 1961 c 23 § 51.32.160. Prior: 1957 c 70 § 38; prior: 1951 c 115 § 5; 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.32.180 Occupational diseases—Limitation. Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title, except as follows: (a) This section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937; and (b) for claims filed on or after July 1, 1988, the rate of compensation for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim. [1988 c 161 § 5; 1977 ex.s. c 350 § 53; 1971 ex.s. c 289 § 49; 1961 c 23 § 51.32.180. Prior: 1959 c 308 § 19; prior: 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

Benefit increases—Application to certain retrospective rating agreements—1988 c 161: See notes following RCW 51.32.050.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.185 Occupational diseases—Presumption of occupational disease for firefighters—Limitations—Exception—Rules. (1) In the case of firefighters as defined in RCW 41.26.030(4) (a), (b), and (c) who are covered under Title 51 RCW and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, there shall exist a prima facie presumption that: (a) Respiratory disease; (b) any heart problems, experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; (c) cancer; and (d) infectious diseases are occupational diseases under RCW 51.08.140. This presumption of occupational disease may be rebutted by a preponderance of the evidence. Such evidence may include, but is not limited to, use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities.

(2) The presumptions established in subsection (1) of this section shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, but may not extend more than sixty months following the last date of employment.

(3) The presumption established in subsection (1)(c) of this section shall only apply to any active or former firefighter who has cancer that develops or manifests itself after the firefighter has served at least ten years and who was given a qualifying medical examination upon becoming a firefighter that showed no evidence of cancer. The presumption within subsection (1)(c) of this section shall only apply to prostate cancer diagnosed prior to the age of fifty, primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma, bladder cancer, ureter cancer, colorectal cancer, multiple myeloma, testicular cancer, and kidney cancer.

(4) The presumption established in subsection (1)(d) of this section shall be extended to any firefighter who has contracted any of the following infectious diseases: Human immunodeficiency virus/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, or mycobacterium tuberculosis.

(5) Beginning July 1, 2003, this section does not apply to a firefighter who develops a heart or lung condition and who is a regular user of tobacco products or who has a history of tobacco use. The department, using existing medical research, shall define in rule the extent of tobacco use that shall exclude a firefighter from the provisions of this section.

(6) For purposes of this section, "firefighting activities" means fire suppression, fire prevention, emergency medical services, rescue operations, hazardous materials response, aircraft rescue, and training and other assigned duties related to emergency response.

(7)(a) When a determination involving the presumption established in this section is appealed to the board of industrial insurance appeals and the final decision allows the claim

for benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

(b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

(c) When reasonable costs of the appeal must be paid by the department under this section in a state fund case, the costs shall be paid from the accident fund and charged to the costs of the claim. [2007 c 490 § 2; 2002 c 337 § 2; 1987 c 515 § 2.]

Legislative findings—1987 c 515: "The legislature finds that the employment of firefighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that firefighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be presumed to be occupationally related for industrial insurance purposes for firefighters." [1987 c 515 § 1.]

51.32.190 Self-insurers—Notice of denial of claim, reasons—Procedure—Powers and duties of director. (1) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the reasons therefor and that the director will rule on the matter shall be mailed or given to the claimant and the director within thirty days after the self-insurer has notice of the claim.

(2) Until such time as the department has entered an order in a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his or her rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(3) Upon making the first payment of income benefits, the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director. Upon request of the department on a form prescribed by the department, the self-insurer shall submit a record of the payment of income benefits including initial, termination or terminations, and change or changes to the benefits. Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at regular semimonthly or biweekly intervals.

(4) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the worker or his or her beneficiaries shall not be considered a binding determination of their rights under this title.

(5) The director: (a) May, upon his or her own initiative at any time in a case in which payments are being made without an award; and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is

controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such medical examinations to be made, hold such hearings, require the submission of further information, make such orders, decisions or awards, and take such further action as he or she considers will properly determine the matter and protect the rights of all parties.

(6) The director, upon his or her own initiative, may make such inquiry as circumstances require or is necessary to protect the rights of all the parties and he or she may enact rules and regulations providing for procedures to ensure fair and prompt handling by self-insurers of the claims of workers and beneficiaries. [1996 c 58 § 2; 1982 1st ex.s. c 20 § 3; 1977 ex.s. c 350 § 54; 1972 ex.s. c 43 § 25; 1971 ex.s. c 289 § 47.]

Effective date—1982 1st ex.s. c 20: See note following RCW 51.32.075.

51.32.195 Self-insurers—Information to department.

On any industrial injury claim where the self-insured employer or injured worker has requested a determination by the department, the self-insurer must submit all medical reports and any other specified information not previously submitted to the department. When the department requests information from a self-insurer by certified mail, the self-insurer shall submit all information in its possession concerning a claim within ten working days from the date of receipt of such certified notice. [1987 c 290 § 1.]

51.32.200 Self-insurers—Enforcement of compensation order against.

(1) If a self-insurer fails, refuses, or neglects to comply with a compensation order which has become final and is not subject to review or appeal, the director or any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which the self-insurer may be served with process.

(2) The court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1971 ex.s. c 289 § 48.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.32.210 Claims of injured workers, prompt action—Payment—Acceptance—Effect.

Claims of injured workers of employers who have secured the payment of compensation by insuring with the department shall be promptly acted upon by the department. Where temporary disability compensation is payable, the first payment thereof shall be mailed within fourteen days after receipt of the claim at the department's offices in Olympia and shall continue at regular semimonthly intervals. The payment of this or any

other benefits under this title, prior to the entry of an order by the department in accordance with RCW 51.52.050 as now or hereafter amended, shall be not considered a binding determination of the obligations of the department under this title. The acceptance of compensation by the worker or his or her beneficiaries prior to such order shall likewise not be considered a binding determination of their rights under this title. [1977 ex.s. c 350 § 55; 1972 ex.s. c 43 § 26.]

51.32.215 Payment of compensation after appeal—Enforcement of order—Penalty.

(1)(a) If the worker or beneficiary in a state fund claim prevails in an appeal by any party to the board or the court, the department shall comply with the board or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period specified in (a)(i) of this subsection, requested the filing by the worker or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person entitled to compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title. [1995 c 276 § 1.]

Application—1995 c 276: "This act applies to all appeals in state fund claims determined under Title 51 RCW on or after July 23, 1995, regardless of the date of filing of the claim." [1995 c 276 § 2.]

51.32.220 Reduction in total disability compensation—Limitations—Notice—Waiver—Adjustment for retroactive reduction in federal social security disability benefit—Restrictions.

(1) For persons receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this sec-

tion refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a worker for periods of temporary total, temporary partial, or total permanent disability for which the department or self-insurer also reduced the worker's benefit amounts under this section, the department or self-insurer, as the case may be, shall make adjustments in the calculation of benefits and pay the additional benefits to the worker as appropriate. However, the department or self-insurer shall not make changes in the calculation or pay additional benefits unless the worker submits a written request, along with doc-

umentation satisfactory to the director of an overpayment assessment by the social security administration, to the department or self-insurer, as the case may be.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the worker's claim under this title is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal. [2007 c 255 § 1; 2005 c 198 § 1; 2004 c 92 § 1; 1982 c 63 § 19; 1979 ex.s. c 231 § 1; 1979 ex.s. c 151 § 1; 1977 ex.s. c 323 § 19; 1975 1st ex.s. c 286 § 3.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Applicability—1979 ex.s. c 231: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after June 15, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 231 § 2.]

Severability—1979 ex.s. c 231: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 231 § 3.]

Applicability—1979 ex.s. c 151: "This 1979 act applies to all cases in which notification of the first reduction in compensation pursuant to RCW 51.32.220 is mailed after May 10, 1979, regardless of when the basis, authority, or cause for such reduction may have arisen. To such extent, this 1979 act applies retrospectively, but in all other respects it applies prospectively." [1979 ex.s. c 151 § 3.]

Severability—1979 ex.s. c 151: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 151 § 4.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.32.225 Reduction in total disability compensation—Offset for social security retirement benefits. (1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C. This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to July 1, 1986.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6) and with any other procedures established by the department to administer this section. For any worker whose entitlement to social security retirement benefits is immediately preceded by an entitlement to social security disability benefits, the offset shall be based on the formulas provided under 42 U.S.C. Sec. 424a. For all other workers entitled to social security retirement benefits, the offset shall be based on procedures established and determined by the department to most closely follow the intent of RCW 51.32.220.

(3) Any reduction in compensation made under chapter 58, Laws of 1986, shall be made before the reduction established in this section. [2006 c 163 § 1; 1986 c 59 § 5.]

Effective date—1986 c 59 § 5: See note following RCW 51.32.090.

51.32.230 Recovery of overpayments. Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of RCW 51.32.220 as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his discretion, may make restitution in those cases where an extraordinary hardship has been created. [1979 ex.s. c 151 § 2.]

Applicability—Severability—1979 ex.s. c 151: See notes following RCW 51.32.220.

51.32.240 Erroneous payments—Payments induced by willful misrepresentation—Adjustment for self-insurer's failure to pay benefits—Penalty—Appeal—Enforcement of orders. (*Effective until January 1, 2009.*)

(1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits

has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected

to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and

served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer. [2004 c 243 § 7; 2001 c 146 § 10. Prior: 1999 c 396 § 1; 1999 c 119 § 1; 1991 c 88 § 1; 1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

Application—2004 c 243 § 7: "Section 7 of this act applies to willful misrepresentation determinations issued on or after July 1, 2004." [2004 c 243 § 9.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.240 Erroneous payments—Payments induced by willful misrepresentation—Adjustment for self-insurer's failure to pay benefits—Recoupment of overpayments by self-insurer—Penalty—Appeal—Enforcement of orders. (Effective January 1, 2009.) (1)(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely

claim where the recovery would be against equity and good conscience.

(2) Whenever the department or self-insurer fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the state fund or by the self-insurer, as the case may be, subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of industrial insurance appeals within sixty days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever the department issues an order rejecting a claim for benefits paid pursuant to RCW 51.32.190 or 51.32.210, after payment for temporary disability benefits has been paid by a self-insurer pursuant to RCW 51.32.190(3) or by the department pursuant to RCW 51.32.210, the recipient thereof shall repay such benefits and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The director, under rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(4) Whenever any payment of benefits under this title has been made pursuant to an adjudication by the department or by order of the board or any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim whether state fund or self-insured.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience. However, if the director waives in whole or in part any such payments due a self-insurer, the self-insurer shall be reimbursed the amount waived from the self-insured employer overpayment reimbursement fund.

(b) The department shall collect information regarding self-insured claim overpayments resulting from final decisions of the board and the courts, and recoup such overpayments on behalf of the self-insurer from any open, new, or reopened state fund or self-insured claims. The department shall forward the amounts collected to the self-insurer to whom the payment is owed. The department may provide information as needed to any self-insurers from whom payments may be collected on behalf of the department or another self-insurer. Notwithstanding RCW 51.32.040, any

self-insurer requested by the department to forward payments to the department pursuant to this subsection shall pay the department directly. The department shall credit the amounts recovered to the appropriate fund, or forward amounts collected to the appropriate self-insurer, as the case may be.

(c) If a self-insurer is not fully reimbursed within twenty-four months of the first attempt at recovery through the collection process pursuant to this subsection and by means of processes pursuant to subsection (6) of this section, the self-insurer shall be reimbursed for the remainder of the amount due from the self-insured employer overpayment reimbursement fund.

(d) For purposes of this subsection, "recipient" does not include health service providers whose treatment or services were authorized by the department or self-insurer.

(e) The department or self-insurer shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the worker to the extent that the health insurance entity would have provided health insurance benefits but for workers' compensation coverage.

(5)(a) Whenever any payment of benefits under this title has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the state fund or self-insurer against whom the willful misrepresentation was committed, as the case may be, and the amount of such penalty shall be placed in the supplemental pension fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (5), it is willful misrepresentation for a person to obtain payments or other benefits under this title in an amount greater than that to which the person otherwise would be entitled. Willful misrepresentation includes:

- (i) Willful false statement; or
- (ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (5), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this title.

(d) For purposes of this subsection (5), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (5), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages pursuant to RCW 51.08.178(4).

(6) The worker, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (5) of this section, the director, director's designee, or self-insurer may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the worker, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the worker, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department or self-insurer in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the worker, beneficiary, or other person within three days of filing with the clerk.

The director, director's designee, or self-insurer may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any worker, beneficiary, or other person upon whom a warrant has been served for payments due the department or self-insurer. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director, director's designee, or self-insurer. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department or self-insurer, such property shall be delivered forthwith to the director, the director's authorized representative, or self-insurer upon

demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director, director's designee, or self-insurer in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991: PROVIDED, That this subsection shall apply retroactively to all orders assessing an overpayment resulting from fraud, civil or criminal.

(7) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department or self-insurer. [2008 c 280 § 2; 2004 c 243 § 7; 2001 c 146 § 10. Prior: 1999 c 396 § 1; 1999 c 119 § 1; 1991 c 88 § 1; 1986 c 54 § 1; 1975 1st ex.s. c 224 § 13.]

Effective date—2008 c 280: "Section 2 of this act takes effect January 1, 2009." [2008 c 280 § 6.]

Application—2008 c 280: See note following RCW 51.52.050.

Application—2004 c 243 § 7: "Section 7 of this act applies to willful misrepresentation determinations issued on or after July 1, 2004." [2004 c 243 § 9.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.32.242 Self-insured employer overpayment reimbursement fund—Withholding from worker earnings—Use of funds—Exception. (1) Except as provided in subsection (2) of this section, each self-insured employer shall retain from the earnings of each of its workers that amount as shall be fixed from time to time by the director, the basis for measuring said amount to be determined by the director. These moneys shall only be retained from employees and remitted to the department in such manner and at such intervals as the department directs and shall be placed in the self-insured employer overpayment reimbursement fund. The moneys so collected shall be used exclusively for reimbursement to the reserve fund and to self-insured employers for benefits overpaid during the pendency of board or court appeals in which the self-insured employer prevails and has not recovered, and shall be no more than necessary to make such payments on a current basis.

(2) None of the amount assessed for the employer overpayment reimbursement fund under this section may be retained from the earnings of workers covered under RCW 51.16.210. [2008 c 280 § 3.]

Application—2008 c 280: See note following RCW 51.52.050.

51.32.250 Payment of job modification costs. Modification of the injured worker's previous job or modification of a new job is recognized as a desirable method of returning the injured worker to gainful employment. In order to assist employers in meeting the costs of job modification, and to encourage employers to modify jobs to accommodate retain-

ing or hiring workers with disabilities resulting from work-related injury, the supervisor or the supervisor's designee, in his or her discretion, may pay job modification costs in an amount not to exceed five thousand dollars per worker per job modification. This payment is intended to be a cooperative participation with the employer and funds shall be taken from the appropriate account within the second injury fund.

The benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. [1988 c 161 § 10; 1983 c 70 § 3; 1982 c 63 § 13.]

Severability—1983 c 70: See note following RCW 51.32.095.

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.32.260 Compensation for loss or damage to personal effects. Workers otherwise entitled to compensation under this title may also claim compensation for loss of or damage to the worker's personal clothing, footwear or protective equipment resulting from the industrial accident or incurred in the course of emergency medical treatment for injuries. [1983 c 111 § 1.]

51.32.300 State employee vocational rehabilitation coordinator. The director shall appoint a state employee vocational rehabilitation coordinator who shall provide technical assistance and coordination of claims management to state agencies and institutions of higher education under the state return-to-work programs created by RCW 41.06.490 and *28B.16.300. [1990 c 204 § 5.]

*Reviser's note: RCW 28B.16.300 was repealed by 1993 c 281 § 68, effective July 1, 1993.

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.

51.32.350 Chemically related illness—Criteria and procedures for claims—Claims management. (1) By July 1, 1994, the department shall establish interim criteria and procedures for management of claims involving chemically related illness to ensure consistency and fairness in the adjudication of these claims. The criteria and procedures shall apply to employees covered by the state fund and employees of self-insured employers. The department shall adopt final criteria and procedures by December 31, 1994, and report the criteria and procedures as required under section 5, chapter 265, Laws of 1994.

(2) The special procedures developed by the department shall include procedures to determine which claims involving chemically related illness require expert management. The department shall assign claims managers with special training or expertise to manage these claims. [1994 c 265 § 1.]

51.32.360 Chemically related illness—Centers for research and clinical assessment. The department shall work with the department of health to establish one or more centers for research and clinical assessment of chemically related illness. [1994 c 265 § 3.]

51.32.370 Chemically related illness—Research projects—Implementation plan—Funding—Deductions from employees' pay. (1) The department shall conduct

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research on chemically related illnesses, which shall include contracting with recognized medical research institutions. The department shall develop an implementation plan for research based on sound scientific research criteria, such as double blind studies, and shall include adequate provisions for peer review, and submit the plan to the worker's [workers'] compensation advisory committee for review and approval. Following approval of the plan, all specific proposals for projects under the plan shall be submitted for review to a scientific advisory committee, established to provide scientific oversight of research projects, and to the workers' compensation advisory committee. The department shall include a research project that encourages regional cooperation in addressing chemically related illness.

(2) Expenditures for research projects shall be within legislative appropriations from the medical aid fund, with self-insured employers and the state fund each paying a pro rata share, based on the number of worker hours, of the authorized expenditures. For the purposes of this subsection only, self-insured employers may deduct from the pay of each of their employees one-half of the share charged to the employer for the expenditures from the medical aid fund. [1994 c 265 § 4.]

51.32.380 Injured offenders—Benefits sent in the care of the department of corrections—Exception—Liability. If the department of labor and industries has received notice that an injured worker entitled to benefits payable under this chapter is in the custody of the department of corrections pursuant to a conviction and sentence, the department shall send all such benefits to the worker in care of the department of corrections, except those benefits payable to a beneficiary as provided in RCW 51.32.040 (3)(c) and (4). Failure of the department to send such benefits to the department of corrections shall not result in liability to any party for either department. [2003 c 379 § 26.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

**Chapter 51.36 RCW
MEDICAL AID**

Sections	
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51.36.010 Extent and duration. Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced registered nurse practitioner of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury. The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed. In all accepted claims, treatment shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease. [2007 c 134 § 1; 2004 c 65 § 11; 1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010.

Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Report to legislature—2007 c 134: "By December 1, 2009, the department of labor and industries must report to the senate labor, commerce, research and development committee and the house of representatives commerce and labor committee, or successor committees, on the implementation of this act." [2007 c 134 § 2.]

Effective date—2007 c 134: "This act takes effect January 1, 2008." [2007 c 134 § 3.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.015 Chiropractic care and evaluation. Subject to the other provisions of this title, the health services that are available to an injured worker under RCW 51.36.010 include chiropractic care and evaluation. For the purposes of assisting the department in making claims determinations, an injured worker may be required by the department to undergo examination by a chiropractor licensed under chapter 18.25 RCW. [1994 c 94 § 1.]

51.36.017 Licensed advanced registered nurse practitioners. Licensed advanced registered nurse practitioners are recognized as independent practitioners and, subject to the provisions of this title, the health services available to an injured worker under RCW 51.36.010 include health services provided by licensed advanced registered nurse practitioners within their scope of practice. [2004 c 65 § 16.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

51.36.020 Transportation to treatment—Artificial substitutes and mechanical aids—Modifications to residences or motor vehicles. (1) When the injury to any worker is so serious as to require his or her being taken from the place of injury to a place of treatment, his or her employer shall, at the expense of the medical aid fund, or self-insurer, as the case may be, furnish transportation to the nearest place of proper treatment.

(2) Every worker whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes and every worker, who suffers an injury to an eye producing an error of refraction, shall be once provided proper and properly equipped lenses to correct such error of refraction and his or her disability rating shall be based upon the loss of sight before correction.

(3) Every worker whose accident results in damage to or destruction of an artificial limb, eye, or tooth, shall have same repaired or replaced.

(4) Every worker whose hearing aid or eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced. The department or self-insurer shall be liable only for the cost of restoring damaged hearing aids or eyeglasses to their condition at the time of the accident.

(5)(a) All mechanical appliances necessary in the treatment of an injured worker, such as braces, belts, casts, and crutches, shall be provided and all mechanical appliances required as permanent equipment after treatment has been

completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed, notwithstanding any other provision of law.

(b) Injured workers shall be reimbursed for reasonable travel expenses when travel is required in order to repair, replace, or otherwise alter prosthetics, orthotics, or similar permanent mechanical appliances after closure of the claim. This subsection (5)(b) does not include travel for the repair or replacement of hearing aid devices.

(6) A worker, whose injury is of such short duration as to bring him or her within the time limit provisions of RCW 51.32.090, shall nevertheless receive during the omitted period medical, surgical, and hospital care and service and transportation under the provisions of this chapter.

(7) Whenever in the sole discretion of the supervisor it is reasonable and necessary to provide residence modifications necessary to meet the needs and requirements of the worker who has sustained catastrophic injury, the department or self-insurer may be ordered to pay an amount not to exceed the state's average annual wage for one year as determined under RCW 50.04.355, as now existing or hereafter amended, toward the cost of such modifications or construction. Such payment shall only be made for the construction or modification of a residence in which the injured worker resides. Only one residence of any worker may be modified or constructed under this subsection, although the supervisor may order more than one payment for any one home, up to the maximum amount permitted by this section.

(8)(a) Whenever in the sole discretion of the supervisor it is reasonable and necessary to modify a motor vehicle owned by a worker who has become an amputee or becomes paralyzed because of an industrial injury, the supervisor may order up to fifty percent of the state's average annual wage for one year, as determined under RCW 50.04.355, to be paid by the department or self-insurer toward the costs thereof.

(b) In the sole discretion of the supervisor after his or her review, the amount paid under this subsection may be increased by no more than four thousand dollars by written order of the supervisor.

(9) The benefits provided by subsections (7) and (8) of this section are available to any otherwise eligible worker regardless of the date of industrial injury. [2008 c 54 § 1; 1999 c 395 § 1; 1982 c 63 § 12; 1977 ex.s. c 350 § 57; 1975 1st ex.s. c 224 § 14; 1971 ex.s. c 289 § 51; 1965 ex.s. c 166 § 3; 1961 c 23 § 51.36.020. Prior: 1959 c 256 § 3; prior: 1951 c 236 § 6; 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.022 Residence modification assistance—Rules—Report to legislature. (1) The legislature finds that there is a need to clarify the process and standards under which the department provides residence modification assistance to workers who have sustained catastrophic injury.

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(2) The director shall adopt rules that take effect no later than nine months after July 24, 2005, to establish guidelines and processes for residence modification pursuant to RCW 51.36.020(7).

(3) In developing rules under this section, the director shall consult with interested persons, including persons with expertise in the rehabilitation of catastrophically disabled individuals and modifications for adaptive housing.

(4) These rules must address at least the following:

(a) The process for a catastrophically injured worker to access the residence modification benefits provided by RCW 51.36.020; and

(b) How the department may address the needs and preferences of the individual worker on a case-by-case basis taking into account information provided by the injured worker. For purposes of determining the needs and requirements of the worker under RCW 51.36.020, including whether a modification is medically necessary, the department must consider all available information regarding the medical condition and physical restrictions of the injured worker, including the opinion of the worker's attending health services provider.

(5) The rules should be based upon nationally accepted guidelines and publications addressing adaptive residential housing. The department must consider the guidelines established by the United States department of veterans affairs in their publication entitled "Handbook for Design: Specially Adapted Housing," and the recommendations published in "The Accessible Housing Design File" by Barrier Free Environments, Inc.

(6) In developing rules under this section, the director shall consult with other persons with an interest in improving standards for adaptive housing.

(7) The director shall report by December 2007 to the appropriate committees of the legislature on the rules adopted under this section. [2005 c 411 § 1.]

51.36.030 First aid. Every employer, who employs workers, shall keep as required by the department's rules a first aid kit or kits equipped as required by such rules with materials for first aid to his or her injured workers. Every employer who employs fifty or more workers, shall keep one first aid station equipped as required by the department's rules with materials for first aid to his or her injured workers, and shall cooperate with the department in training one or more employees in first aid to the injured. The maintenance of such first aid kits and stations shall be deemed to be a part of any safety and health standards established under Title 49 RCW. [1980 c 14 § 12. Prior: 1977 ex.s. c 350 § 58; 1977 ex.s. c 323 § 20; 1961 c 23 § 51.36.030; prior: 1959 c 256 § 4; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.36.040 Time and place of coverage—Lunch period. The benefits of Title 51 RCW shall be provided to each worker receiving an injury, as defined therein, during the course of his or her employment and also during his or her lunch period as established by the employer while on the job-

[Title 51 RCW—page 69]

site. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business of work process in which the employer is then engaged: PROVIDED, That if a worker by reason of his or her employment leaves such jobsite under the direction, control or request of the employer and if such worker is injured during his or her lunch period while so away from the jobsite, the worker shall receive the benefits as provided herein: AND PROVIDED FURTHER, That the employer need not consider the lunch period in worker hours for the purpose of reporting to the department unless the worker is actually paid for such period of time. [1977 ex.s. c 350 § 59; 1961 c 107 § 2.]

51.36.050 Rehabilitation center—Contracts with self-insurers and others. The department may operate and control a rehabilitation center and may contract with self-insurers, and any other persons who may be interested, for use of any such center on such terms as the director deems reasonable. [1979 ex.s. c 42 § 1; 1971 ex.s. c 289 § 52.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.060 Duties of attending physician or licensed advanced registered nurse practitioner—Medical information. Physicians or licensed advanced registered nurse practitioners examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information. [2004 c 65 § 12; 1991 c 89 § 3; 1989 c 12 § 17; 1975 1st ex.s. c 224 § 15; 1971 ex.s. c 289 § 53.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.070 Medical examination—Reports—Costs. Whenever the director or the self-insurer deems it necessary in order to resolve any medical issue, a worker shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department or self-insurer shall provide the physician performing an examination with all relevant medical records from the worker's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the worker of reasonable expenses connected

therewith. [2001 c 152 § 2; 1977 ex.s. c 350 § 60; 1971 ex.s. c 289 § 54.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.080 Payment of fees and medical charges by department—Interest—Cost-effective payment methods—Audits. (1) All fees and medical charges under this title shall conform to the fee schedule established by the director and shall be paid within sixty days of receipt by the department of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the department prior to final adjudication of claim allowance. The department shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges.

Beginning in fiscal year 1987, interest payments under this subsection may be paid only from funds appropriated to the department for administrative purposes.

Nothing in this section may be construed to require the payment of interest on any billing, fee, or charge if the industrial insurance claim on which the billing, fee, or charge is predicated is ultimately rejected or the billing, fee, or charge is otherwise not allowable.

In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner without unduly restricting access to necessary care by persons entitled to the care. With respect to workers admitted as hospital inpatients on or after July 1, 1987, the director shall pay for inpatient hospital services on the basis of diagnosis-related groups, contracting for services, or other prudent, cost-effective payment method, which the director shall establish by rules adopted in accordance with chapter 34.05 RCW.

(2) The director may establish procedures for selectively or randomly auditing the accuracy of fees and medical billings submitted to the department under this title. [1998 c 245 § 104; 1993 c 159 § 2; 1987 c 470 § 1; 1985 c 368 § 2; 1985 c 338 § 1; 1971 ex.s. c 289 § 55.]

Effective date—1987 c 470 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 470 § 4.]

Effective date—1985 c 368 § 2: "Section 2 of this act shall take effect July 1, 1987." [1985 c 368 § 7.]

Legislative findings—1985 c 368: "The legislature finds that:

(1) The governor's steering committee on the six-year state health care purchasing plan has estimated that health care expenditures by the department of labor and industries will rise from \$172.5 million in fiscal year 1985 to \$581.5 million in fiscal year 1991, an increase of two hundred thirty-seven percent in six years, while the number of persons receiving the care will rise only fifteen percent in the same period;

(2) The growing cost of health care for covered workers is a major cause of recent industrial insurance premium increases, adversely affecting both employers and employees;

(3) The department of labor and industries has not developed adequate means of controlling the costs of health care services to which covered workers are entitled by law;

(4) There is a need for all agencies of the state to act as prudent buyers in purchasing health care." [1985 c 368 § 1.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.36.085 Payment of fees and medical charges by self-insurers—Interest. All fees and medical charges under this title shall conform to regulations promulgated, and the fee schedule established by the director and shall be paid within sixty days of receipt by the self-insured of a proper billing in the form prescribed by department rule or sixty days after the claim is allowed by final order or judgment, if an otherwise proper billing is received by the self-insured prior to final adjudication of claim allowance. The self-insured shall pay interest at the rate of one percent per month, but at least one dollar per month, whenever the payment period exceeds the applicable sixty-day period on all proper fees and medical charges. [1993 c 159 § 3; 1987 c 316 § 4.]

51.36.090 Review of billings—Investigation of unauthorized services. An employer may request review of billings for any medical and surgical services received by a worker by submitting written notice to the department. The department shall investigate the billings and determine whether the worker received services authorized under this title. Whenever such medical or surgical services are determined to be unauthorized, the department shall not charge the costs of such services to the employer's account. [1985 c 337 § 3.]

51.36.100 Audits of health care providers authorized. The legislature finds and declares it to be in the public interest of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of medical, chiropractic, dental, vocational, and other health services to industrially injured workers pursuant to Title 51 RCW. In order to effectively accomplish such purpose and to assure that the industrially injured worker receives such services as are paid for by the state of Washington, the acceptance by the industrially injured worker of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department of labor and industries or the director's authorized representative to inspect and audit all records in connection with the provision of such services. [1993 c 515 § 5; 1986 c 200 § 1.]

51.36.110 Audits of health care providers—Powers of department. The director of the department of labor and industries or the director's authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical, chiropractic, dental, vocational, and other health services furnished to industrially injured workers pursuant to Title 51 RCW. In the conduct of such audits or investigations, the director or the director's authorized representatives may examine all records, or portions thereof, including patient records, for which services were rendered by a health services provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health services provider, and that the disclosure of any records or information obtained under authority of this section by the department of labor and industries is prohibited and constitutes a violation of RCW

42.52.050, unless such disclosure is directly connected to the official duties of the department: AND PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health services provider to any liability for breach of any confidential relationships between the provider and the patient: AND PROVIDED FURTHER, That the director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW;

(3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and

(4) Pursue collection of unpaid overpayments and/or penalties plus interest accrued from health care providers pursuant to RCW 51.32.240(6). [2004 c 243 § 6; 2004 c 65 § 13; 1994 c 154 § 312; 1993 c 515 § 6; 1986 c 200 § 2.]

Reviser's note: This section was amended by 2004 c 65 § 13 and by 2004 c 243 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

51.36.120 Confidential information. When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.56 RCW. [2005 c 274 § 325; 1989 c 189 § 2.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

51.36.130 False, misleading, or deceptive advertising or representations. In addition to other authority granted under this chapter, the department may deny applications of health care providers to participate as a provider of services to injured workers under this title, or terminate or suspend providers' eligibility to participate, if the provider uses or causes or promotes the use of, advertising matter, promotional materials, or other representation, however disseminated or published, that is false, misleading, or deceptive with respect to the industrial insurance system or benefits for injured workers under this title. [1997 c 336 § 2.]

51.36.140 Industrial insurance medical advisory committee—Duties—Membership. (1) The department shall establish an industrial insurance medical advisory committee. The industrial insurance medical advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective treatments for injured workers, including but not limited to the development of practice guidelines and coverage criteria, review of coverage decisions and technology assessments, review of medical

programs, and review of rules pertaining to health care issues. The industrial insurance medical advisory committee may provide peer review and advise and assist the department in the resolution of controversies, disputes, and problems between the department and the providers of medical care. The industrial insurance medical advisory committee must consider the best available scientific evidence and expert opinion of committee members. The department may hire any expert or service or create an ad hoc committee, group, or subcommittee it deems necessary to fulfill the purposes of the industrial insurance medical advisory committee. In addition, the industrial insurance medical advisory committee may consult nationally recognized experts in evidence-based health care on particularly controversial issues.

(2) The industrial insurance medical advisory committee is composed of up to fourteen members appointed by the director. The members must not include any department employees. The director shall select twelve members from the nominations provided by statewide clinical groups, specialties, and associations, including but not limited to the following: Family or general practice, orthopedics, neurology, neurosurgery, general surgery, physical medicine and rehabilitation, psychiatry, internal medicine, osteopathic, pain management, and occupational medicine. At least two members must be physicians who are recognized for expertise in evidence-based medicine. The director may choose up to two additional members, not necessarily from the nominations submitted, who have expertise in occupational medicine.

(3) The industrial insurance medical advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance medical advisory committee, including hired experts and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance medical advisory committee; and (b) may be compensated for participation in the work of the industrial insurance medical advisory committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance medical advisory committee.

(5) The members of the industrial insurance medical advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance medical advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance medical advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

(7) The industrial insurance medical advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology assessment program and those

of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance medical advisory committee under Title 51 RCW.

(8) Neither the industrial insurance medical advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance medical advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance medical advisory committee review a medical issue related to industrial insurance and provide a written report to the house of representatives commerce and labor committee and the senate labor, commerce, research and development committee, or successor committees. The industrial insurance medical advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance medical advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance medical advisory committee is not required to act on the request. [2007 c 282 § 1.]

Report to legislature—2007 c 282: "The director, the industrial insurance medical advisory committee, and the industrial insurance chiropractic advisory committee shall report to the appropriate committees of the legislature on the following:

(1) A summary of the types of issues reviewed by the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee and decisions in each matter;

(2) Whether the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee became involved in the resolution of any disputes or controversies and the results of those disputes or controversies as a result of the involvement of the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee;

(3) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee conducted any peer reviews and the results of those reviews;

(4) The extent of any practice guidelines or coverage criteria developed by the industrial insurance medical advisory committee or the industrial insurance chiropractic advisory committee and the success of those developments; and

(5) The extent to which the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee provided advice on coverage decisions and technology assessments.

The report is due no later than June 30, 2011, and must contain a recommendation about whether the industrial insurance medical advisory committee and the industrial insurance chiropractic advisory committee should continue as originally configured or whether any changes are needed." [2007 c 282 § 3.]

51.36.150 Industrial insurance chiropractic advisory committee—Duties—Membership. (1) The department shall establish an industrial insurance chiropractic advisory committee. The industrial insurance chiropractic advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective chiropractic treatments for injured workers. The industrial insurance chiropractic advisory committee may provide peer review and advise and assist the department in the resolution of con-

troveries, disputes, and problems between the department and the providers of chiropractic care.

(2) The industrial insurance chiropractic advisory committee is composed of up to nine members appointed by the director. The members must not include any department employees. The director must consider nominations from recognized statewide chiropractic groups such as the Washington state chiropractic association. At least two members must be chiropractors who are recognized for expertise in evidence-based practice or occupational health.

(3) The industrial insurance chiropractic advisory committee shall choose its chair from among its membership.

(4) The members of the industrial insurance chiropractic advisory committee and any ad hoc group or subcommittee: (a) Are immune from civil liability for any official acts performed in good faith to further the purposes of the industrial insurance chiropractic advisory committee; and (b) may be compensated for participation in the work of the industrial insurance chiropractic advisory committee in accordance with a personal services contract to be executed after appointment and before commencement of activities related to the work of the industrial insurance chiropractic advisory committee.

(5) The members of the industrial insurance chiropractic advisory committee shall disclose all potential financial conflicts of interest including contracts with or employment by a manufacturer, provider, or vendor of health technologies, drugs, medical devices, diagnostic tools, or other medical services during their term or for eighteen months before their appointment. As a condition of appointment, each person must agree to the terms and conditions regarding conflicts of interest as determined by the director.

(6) The industrial insurance chiropractic advisory committee shall meet at the times and places designated by the director and hold meetings during the year as necessary to provide advice to the director. Meetings of the industrial insurance chiropractic advisory committee are subject to chapter 42.30 RCW, the open public meetings act.

(7) The industrial insurance chiropractic advisory committee shall coordinate with the state health technology assessment program and state prescription drug program as necessary. As provided by RCW 70.14.100 and 70.14.050, the decisions of the state health technology assessment program and those of the state prescription drug program hold greater weight than decisions made by the department's industrial insurance chiropractic advisory committee under Title 51 RCW.

(8) Neither the industrial insurance chiropractic advisory committee nor any group is an agency for purposes of chapter 34.05 RCW.

(9) The department shall provide administrative support to the industrial insurance chiropractic advisory committee and adopt rules to carry out the purposes of this section.

(10) The chair and ranking minority member of the house of representatives commerce and labor committee or the chair and ranking minority member of the senate labor, commerce, research and development committee, or successor committees, may request that the industrial insurance chiropractic advisory committee review a medical issue related to industrial insurance and provide a written report to the house of representatives commerce and labor committee and

the senate labor, commerce, research and development committee, or successor committees. The industrial insurance chiropractic advisory committee is not required to act on the request.

(11) The workers' compensation advisory committee may request that the industrial insurance chiropractic advisory committee consider specific medical issues that have arisen multiple times during the work of the workers' compensation advisory committee. The industrial insurance chiropractic advisory committee is not required to act on the request. [2007 c 282 § 2.]

Report to legislature—2007 c 282: See note following RCW 51.36.140.

Chapter 51.44 RCW

FUNDS

Sections

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51.44.010 Accident fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "accident fund." [1961 c 23 § 51.44.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

51.44.020 Medical aid fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "medical aid fund." [1961 c 23 § 51.44.020. Prior: 1923 c 136 § 8, part; 1919 c 129 § 1, part; 1917 c 28 § 4, part; RRS § 7713, part.]

51.44.030 Reserve fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "reserve fund." [1961 c 23 § 51.44.030. Prior: 1957 c 70 § 39; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.033 Supplemental pension fund. There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. The fund shall be used for the sole purposes of making the additional payments therefrom prescribed in this title and the loans therefrom authorized in RCW 49.86.190. [2007 c 357 § 23; 1975 1st ex.s. c 224 § 16; 1971 ex.s. c 289 § 18.]

Joint legislative task force—2007 c 357: See note following RCW 49.86.005.

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.040 Second injury fund. (*Contingent expiration date.*) (1) There shall be in the office of the state treasurer, a fund to be known and designated as the "second injury fund", which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120 and 51.32.250. The fund shall be administered by the director. The state treasurer shall be the custodian of the second injury fund and shall be authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund shall be made pursuant to rules adopted by the director.

(3)(a) Assessments for the second injury fund shall be imposed on self-insurers pursuant to rules adopted by the director. Such rules shall provide for at least the following:

(i) Except as provided in (a)(ii) of this subsection, the amount assessed each self-insurer must be in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund.

(ii) Except as provided in section 2, chapter 475, Laws of 2005, beginning with assessments imposed on or after July 1, 2009, the department shall experience rate the amount assessed each self-insurer as long as the aggregate amount assessed is in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund. The experience rating factor must provide equal weight to the ratio between expenditures made by the second injury fund for claims of the self-insurer to the total expenditures made by the second injury fund for claims of all self-insurers for the prior three fiscal years and the ratio of workers' compensation claim payments under this title made by the self-insurer to the total worker's compensation claim payments made by all self-insurers under this title for the prior three fiscal years. The weighted average of these two ratios must be divided by the latter ratio to arrive at the experience factor.

(b) For purposes of this subsection, "expenditures made by the second injury fund" mean the costs and charges described under RCW 51.32.250 and 51.16.120 (3) and (4), and the amounts assessed to the second injury fund as described under RCW 51.16.120(1). Under no circumstances does "expenditures made by the second injury fund" include any subsequent payments, assessments, or adjustments for pensions, where the applicable second injury fund entitlement was established outside of the three fiscal years. [2005 c 475 § 1; 1982 c 63 § 14; 1977 ex.s. c 323 § 21; 1972

ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

Contingent expiration date—Outcome study—Report—2005 c 475: "(1) If the outcome study conducted by the department of labor and industries under subsection (2)(a)(i) or (ii) of this section shows a negative impact of fifteen percent or more to workers following claim closure among non-pension self-insured claimants, section 1, chapter 475, Laws of 2005 expires June 30, 2013.

(2) The department shall conduct an outcome study of the experience rating system established in section 1, chapter 475, Laws of 2005. In conducting the study, the department must:

(a) Compare the outcomes for workers of self-insured employers whose industrial insurance claims with temporary total disability benefits for more than thirty days are closed between July 1, 2002, and June 30, 2004, with similar claims of workers of self-insured employers closed between July 1, 2009, and June 30, 2011. For the purposes of subsection (1) of this section, the department must provide two separate comparisons of such workers as follows: (i) The first comparison includes the aggregate preinjury wages for all nonpension injured workers compared with their aggregate wages at claim closure in each of the two study groups; and (ii) the second comparison includes the proportion of all nonpension injured workers who are found able to work but have not returned to work, as reported by self-insurers in the eligibility assessment reports submitted to the department on the claims in the first study group, compared with the proportion of such workers who are found able to work but have not returned to work, as reported in the eligibility assessment reports submitted on claims in the second study group;

(b) Study whether the workers potentially impacted by the experience rating program have improved return-to-work outcomes, whether the number of impacted workers found to be employable increases, whether there is a change in long-term disability outcomes among the impacted workers, and whether the number of permanent total disability pensions among impacted workers is affected and, if so, the nature of the impact; and

(c) Develop, in consultation with representatives of the impacted workers and the self-insured community, a study methodology that must be provided to the workers' compensation advisory committee for review and comment. The study methodology must include appropriate controls to account for economic fluctuation, wage inflation, and other independent variables.

(3) The department must report to the appropriate committees of the legislature by December 1, 2012, on the results of the study." [2005 c 475 § 2.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.44.040 Second injury fund. (*Contingent effective date.*) (1) There shall be in the office of the state treasurer, a fund to be known and designated as the "second injury fund", which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120 and 51.32.250, as now or hereafter amended. Said fund shall be administered by the director. The state treasurer shall be the custodian of the second injury fund and shall be authorized to disburse moneys from it only upon written order of the director.

(2) Payments to the second injury fund from the accident fund shall be made pursuant to rules and regulations promulgated by the director.

(3) Assessments for the second injury fund shall be imposed on self-insurers pursuant to rules and regulations promulgated by the director to ensure that self-insurers shall pay to such fund in the proportion that the payments made from such fund on account of claims made against self-insurers bears to the total sum of payments from such fund. [1982 c 63 § 14; 1977 ex.s. c 323 § 21; 1972 ex.s. c 43 § 27; 1961 c 23 § 51.44.040. Prior: 1959 c 308 § 17; 1947 c 183 § 1; 1945 c 219 § 2; Rem. Supp. 1947 § 7676-1b.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.44.050 Catastrophe injury account. There shall be a special account within the accident fund to be known as the "catastrophe injury account" which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.130. [1961 c 23 § 51.44.050. Prior: 1959 c 308 § 6; 1957 c 70 § 40; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.060 Charge to accident fund for the catastrophe injury account. The charge to the accident fund to defray charges against the catastrophe injury account shall be made pursuant to rules and regulations promulgated by the director. [1972 ex.s. c 43 § 28; 1961 c 23 § 51.44.060. Prior: 1959 c 308 § 7; 1957 c 70 § 41; prior: 1947 c 247 § 1(4f), part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

51.44.070 Transfer from accident fund, accounts to reserve fund—Annuity values—Self-insurers—Penalty for delay or refusal of reimbursement. (1) For every case resulting in death or permanent total disability the department shall transfer on its books from the accident fund of the proper class and/or appropriate account to the "reserve fund" a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this title provided to be made for the case. Such annuity values shall be based upon rates of mortality, disability, remarriage, and interest as determined by the department, taking into account the experience of the reserve fund in such respects.

Similarly, a self-insurer in these circumstances shall pay into the reserve fund a sum of money computed in the same manner, and the disbursements therefrom shall be made as in other cases.

(2) As an alternative to payment procedures otherwise provided under law, in the event of death or permanent total disability to workers of self-insured employers, a self-insured employer may upon establishment of such obligation file with the department a bond, an assignment of account from a federally or state chartered commercial banking institution authorized to conduct business in the state of Washington, or purchase an annuity, in an amount deemed by the department to be reasonably sufficient to insure payment of the pension benefits provided by law. Any purchase of an annuity shall be from an institution meeting the following minimum requirements: (a) The institution must be rated no less than "A+" by A.M. Best, and no less than "AA" by Moody's and by Standard & Poor's; (b) the value of the assets of the institution must not be less than ten billion dollars; (c) not more than ten percent of the institution's assets may include bonds that are rated less than "BBB" by Moody's and Standard & Poor's; (d) not more than five percent of the assets may be held as equity in real estate; and (e) not more than twenty-five percent of the assets may be first mortgages, and not more than five percent may be second mortgages. The department shall adopt rules governing assignments of account and annuities.

(2008 Ed.)

Such rules shall ensure that the funds are available if needed, even in the case of failure of the banking institution, the institution authorized to provide annuities, or the employer's business.

The annuity value for every such case shall be determined by the department based upon the department's experience as to rates of mortality, disability, remarriage, and interest. The amount of the required bond, assignment of account, or annuity may be reviewed and adjusted periodically by the department, based upon periodic redeterminations by the department as to the outstanding annuity value for the case.

Under such alternative, the department shall administer the payment of this obligation to the beneficiary or beneficiaries. The department shall be reimbursed for all such payments from the self-insured employer through periodic charges not less than quarterly in a manner to be determined by the director. The self-insured employer shall additionally pay to the department a deposit equal to the first three months' payments otherwise required under RCW 51.32.050 and 51.32.060. Such deposit shall be placed in the reserve fund in accordance with RCW 51.44.140 and shall be returned to the respective self-insured employer when monthly payments are no longer required for such particular obligation.

If a self-insurer delays or refuses to reimburse the department beyond fifteen days after the reimbursement charges become due, there shall be a penalty paid by the self-insurer upon order of the director of an additional amount equal to twenty-five percent of the amount then due which shall be paid into the pension reserve fund. Such an order shall conform to the requirements of RCW 51.52.050. [1992 c 124 § 1; 1989 c 190 § 1; 1983 c 312 § 1; 1981 c 325 § 1; 1971 ex.s. c 289 § 56; 1961 c 274 § 5; 1961 c 23 § 51.44.070. Prior: 1959 c 308 § 8; 1957 c 70 § 42; prior: 1951 c 236 § 7; 1941 c 169 § 1; Rem. Supp. 1941 § 7705-2; prior: 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.080 Reserve fund—Transfers from state fund—Surplus—Deficiency. The department shall notify the state treasurer from time to time, of such transfers as a whole from the state fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. As soon as possible after June 30th of each year the department shall expert the reserve fund to ascertain its standing as of June 30th of that year and the relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to the fund. The department shall promptly report the result of the examination to the state treasurer in writing not later than September 30th following. If the report shows that there was on said June 30th, in the reserve fund in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations, the surplus shall be forthwith turned over to the state fund but, if the report shows the contrary condition of the reserve fund, the deficiency shall be forthwith made good out of the state fund. [1989 c 190 § 2; 1988 c 161 § 8; 1972 ex.s. c 43 § 29; 1971

ex.s. c 289 § 57; 1961 c 23 § 51.44.080. Prior: 1957 c 70 § 43; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.090 Reserve fund record and maintenance by state treasurer. The state treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve fund shall at all times, as nearly as may be, be properly and fully invested and, to meet current demands for pension or lump sum payments, may, if necessary, make temporary loans to the reserve fund out of the accident fund, repaying the same from the earnings of the reserve fund or from collections of its investments or, if necessary, sales of the same. [1972 ex.s. c 43 § 31; 1961 c 23 § 51.44.090. Prior: 1957 c 70 § 44; prior: 1949 c 219 § 1, part; 1947 c 246 § 1, part; 1929 c 132 § 2, part; 1927 c 310 § 4, part; 1923 c 136 § 2, part; 1919 c 131 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 § 5, part; Rem. Supp. 1949 § 7679, part.]

51.44.100 Investment of accident, medical aid, reserve, supplemental pension funds. Whenever, in the judgment of the state investment board, there shall be in the accident fund, medical aid fund, reserve fund, or the supplemental pension fund, funds in excess of that amount deemed by the state investment board to be sufficient to meet the current expenditures properly payable therefrom, the state investment board may invest and reinvest such excess funds in the manner prescribed by RCW 43.84.150, and not otherwise.

The state investment board may give consideration to the investment of excess funds in federally insured student loans made to persons in vocational training or retraining or reeducation programs. The state investment board may make such investments by purchasing from savings and loan associations, commercial banks, mutual savings banks, credit unions and other institutions authorized to be lenders under the federally insured student loan act, organized under federal or state law and operating in this state loans made by such institutions to residents of the state of Washington particularly for the purpose of vocational training or reeducation: PROVIDED, That the state investment board shall purchase only that portion of any loan which is guaranteed or insured by the United States of America, or by any agency or instrumentality of the United States of America: PROVIDED FURTHER, That the state investment board is authorized to enter into contracts with such savings and loan associations, commercial banks, mutual savings banks, credit unions, and other institutions authorized to be lenders under the federally insured student loan act to service loans purchased pursuant to this section at an agreed upon contract price. [1990 c 80 § 1; 1981 c 3 § 41; 1973 1st ex.s. c 103 § 6; 1972 ex.s. c 92 § 2; 1965 ex.s. c 41 § 1; 1961 c 281 § 10; 1961 c 23 § 51.44.100. Prior: 1959 c 244 § 1; 1935 c 90 § 1; RRS § 7705-1.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1973 1st ex.s. c 103: See note following RCW 2.10.080.

Legislative finding—Purpose—1972 ex.s. c 92: "The legislature finds that the accident fund, medical aid fund and reserve funds could be invested

in such a manner as to promote vocational training and retraining or reeducation among the workers of this state. The legislature recognizes that federally insured student loans are already available to students at institutions of higher education. The legislature declares that the purpose of this 1972 amendatory act is to encourage the state finance committee to consider making some investment funds available for investment in federally insured student loans made to persons enrolled in vocational training and retraining or reeducation programs." [1972 ex.s. c 92 § 1.]

Motor vehicle fund warrants for state highway acquisition: RCW 47.12.180 through 47.12.240.

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

Student loans: RCW 28B.10.280.

Uniform Minor Student Capacity to Borrow Act: Chapter 26.30 RCW.

51.44.110 Disbursements of funds. Disbursement out of the several funds shall be made only upon warrants drawn by the department. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant is drawn wherewith to pay the same, the employer on account of whose worker it was that the warrant was drawn shall pay the same, and he or she shall be credited upon his or her next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable and, if the amount of the credit shall exceed the amount of the contribution, he or she shall have a warrant upon the same fund for the excess and, if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. [1977 ex.s. c 350 § 68; 1973 c 106 § 30; 1961 c 23 § 51.44.110. Prior: 1911 c 74 § 26, part; RRS § 7705, part.]

51.44.115 Financial statements and information—Annual audit and report. (1) The department shall:

(a) Prepare financial statements on the state fund in accordance with generally accepted accounting principles, including but not limited to financial statements on the accident fund, the medical aid fund, the supplemental pension fund, and the second injury fund. Statements must be presented separately by fund and in the aggregate; and

(b) Prepare financial information for the accident fund, medical aid fund, and pension reserve fund based on statutory accounting practices and principles promulgated by the national association of insurance commissioners for the purpose of maintaining actuarial solvency of these funds.

(2) Beginning in 2006, and, to avoid duplication, coordinated with any audit that may be conducted under RCW 43.09.310, the state auditor shall conduct annual audits of the state fund. As part of the audits required under this section, the state auditor may contract with firms qualified to perform all or part of the financial audit, as necessary.

(a) The firm or firms conducting the reviews shall be familiar with the accounting standards applicable to the accounts under review and shall have experience in workers' compensation reserving, discounting, and rate making.

(b) The scope of the financial audit shall include, but is not limited to:

(i) An opinion on whether the financial statements were prepared in accordance with generally accepted accounting principles;

(ii) An assessment of the financial impact of the proposed rate level on the actuarial solvency of the accident, medical aid, and pension reserve funds, taking into consideration the risks inherent with insurance and the effects of the actuarial assumptions, discount rates, reserving, retrospective rating program, refunds, and individual employer rate classes, as well as the standard accounting principles used for insurance underwriting purposes; and

(iii) A statement of actuarial opinion on whether the loss and loss adjustment expense reserves for the accident, medical aid, and pension reserve funds were prepared in accordance with generally accepted actuarial principles.

(c) The department shall cooperate with the state auditor in all respects and shall permit the state auditor full access to all information deemed necessary for a true and complete review.

(d) The cost of the audit shall be paid by the state fund under separate contract.

(3) The state auditor shall issue an annual report to the governor, the leaders of the majority and minority caucuses in the senate and the house of representatives, the director of the office of financial management, and the director of the department, on the results of the financial audit and reviews, within six months of the end of the fiscal year. The report may include recommendations.

(4) The audit report shall be available for public inspection.

(5) Within ninety days after the state auditor completes and delivers to the appropriate authority an audit under subsection (2) of this section, the director of the department shall notify the state auditor in writing of the measures taken and proposed to be taken, if any, to respond to the recommendations of the audit report. The state auditor may extend the ninety-day period for good cause. [2005 c 387 § 1.]

51.44.120 Liability of state treasurer. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the several funds, but all of the provisions of law relating to state depositaries and to the deposit of state moneys therein shall apply to the several funds and securities. [1961 c 23 § 51.44.120. Prior: (i) 1911 c 74 § 26, part; RRS § 7705, part. (ii) 1917 c 28 § 14; RRS § 7723.]

51.44.140 Self-insurer deposits into reserve fund—Accounts within fund—Surpluses and deficits. Each self-insurer shall make such deposits, into the reserve fund, as the department shall require pursuant to RCW 51.44.070, as are necessary to guarantee the payments of the pensions established pursuant to RCW 51.32.050 and 51.32.060.

Each self-insurer shall have an account within the reserve fund. Each such account shall be credited with its proportionate share of interest or other earnings as determined in RCW 51.44.080.

Each such account in the reserve fund shall be expensed by the insurance commissioner as required in RCW 51.44.080. Any surpluses shall be forthwith returned to the respective self-insurers, and each deficit shall forthwith be made good to the reserve fund by the self-insurer. [1972 ex.s. c 43 § 30; 1971 ex.s. c 289 § 58.]

(2008 Ed.)

51.44.142 Self-insured employer overpayment reimbursement fund. The self-insured employer overpayment reimbursement fund is created in the custody of the state treasurer. Expenditures from the account may be used only for reimbursing the reserve fund and self-insured employers for benefits overpaid during the pendency of board or court appeals in which the self-insured employer prevails and has not recovered. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2008 c 280 § 4.]

Application—2008 c 280: See note following RCW 51.52.050.

51.44.150 Assessments upon self-insurers for administration costs. The director shall impose and collect assessments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year. These assessments shall also include the assessments for the ombudsman's office provided for in RCW 51.14.390. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.05 RCW. [2007 c 281 § 11; 1971 ex.s. c 289 § 59.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.160 Interfund loans between reserve and supplemental pension funds—Audit. The director is authorized to make periodic temporary interfund transfers between the reserve and supplemental pension funds as may be necessary to provide for payments from the supplemental pension fund as prescribed in this title. At least once annually, the director shall cause an audit to be made of all pension funds administered by the department to insure that proper crediting of funds has been made, and further to direct transfers between the funds for any interfund loans which may have been made in the preceding year and not fully reimbursed. [1975 1st ex.s. c 224 § 17; 1971 ex.s. c 289 § 60.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.44.170 Industrial insurance premium refund account. The industrial insurance premium refund account is created in the custody of the state treasurer. All industrial insurance refunds earned by state agencies or institutions of higher education under the state fund retrospective rating program shall be deposited into the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account. Only the executive head of the agency or institution of higher education, or designee, may authorize expenditures from the account. No agency or institution of higher education may make an expenditure from the account for an amount greater than the refund earned by the agency. If the agency or institution of higher education has staff dedicated to workers' compensation claims management, expenditures from the account must be used to pay for that staff, but addi-

tional expenditure from the account may be used for any program within an agency or institution of higher education that promotes or provides incentives for employee workplace safety and health and early, appropriate return-to-work for injured employees. During the 2003-2005 fiscal biennium, the legislature may transfer from the industrial insurance premium refund account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 926; 2002 c 371 § 916; 1997 c 327 § 1; 1991 sp.s. c 13 § 29; 1990 c 204 § 2.]

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

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

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

Findings—Purpose—1990 c 204: "The legislature finds that workplace safety in state employment is of paramount importance in maintaining a productive and committed state workforce. The legislature also finds that recognition in state agencies and institutions of higher education of industrial insurance programs that provide safe working environments and promote early return-to-work for injured employees will encourage agencies and institutions of higher education to develop these programs. A purpose of this act is to provide incentives for agencies and institutions of higher education to participate in industrial insurance safety programs and return-to-work programs by authorizing use of the industrial insurance premium refunds earned by agencies or institutions of higher education participating in industrial insurance retrospective rating programs. Since agency and institution of higher education retrospective rating refunds are generated from safety performance and cannot be set at predictable levels determined by the budget process, the incentive awards should not impact an agency's or institution of higher education's legislatively approved budget." [1997 c 327 § 2; 1990 c 204 § 1.]

Effective date—1990 c 204 § 2: "Section 2 of this act shall take effect July 1, 1990." [1990 c 204 § 6.]

Chapter 51.48 RCW PENALTIES

Sections

- 51.48.010 Employer's liability for penalties, injury or disease occurring before payment of compensation secured.
- 51.48.017 Self-insurer delaying or refusing to pay benefits.
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- 51.48.280 Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions.
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51.48.010 Employer's liability for penalties, injury or disease occurring before payment of compensation secured. Every employer shall be liable for the penalties described in this title and may also be liable if an injury or occupational disease has been sustained by a worker prior to the time he or she has secured the payment of such compensation to a penalty in a sum not less than fifty percent nor more than one hundred percent of the cost for such injury or occupational disease. Any employer who has failed to secure payment of compensation for his or her workers covered under this title may also be liable to a maximum penalty in a sum of five hundred dollars or in a sum double the amount of premiums incurred prior to securing payment of compensation under this title, whichever is greater, for the benefit of the medical aid fund. [1985 c 347 § 2; 1982 c 63 § 20; 1977 ex.s. c 350 § 69; 1971 ex.s. c 289 § 61; 1961 c 23 § 51.48.010. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.017 Self-insurer delaying or refusing to pay benefits. If a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to five hundred dollars or twenty-five percent of the amount then due, whichever is greater, which shall accrue for the benefit of the claimant and shall be paid to him with the benefits which may be assessed under this title. The director shall issue an order determining whether there was an unreasonable delay or refusal to pay benefits within thirty days upon the request of the claimant. Such an order shall conform to the requirements of RCW 51.52.050. [1985 c 347 § 3; 1971 ex.s. c 289 § 66.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.020 Employer's false reporting or failure to secure payment of compensation—False information by claimants—Unlawful actions—Penalties. (1)(a) Any

employer, who knowingly misrepresents to the department the amount of his or her payroll or employee hours upon which the premium under this title is based, shall be liable to the state for up to ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(b) An employer is guilty of a class C felony, if:

(i) The employer, with intent to evade determination and payment of the correct amount of the premiums, knowingly makes misrepresentations regarding payroll or employee hours; or

(ii) The employer engages in employment covered under this title and, with intent to evade determination and payment of the correct amount of the premiums, knowingly fails to secure payment of compensation under this title or knowingly fails to report the payroll or employee hours related to that employment.

(c) Upon conviction under (b) of this subsection, the employer shall be ordered by the court to pay the premium due and owing, a penalty in the amount of one hundred percent of the premium due and owing, and interest on the premium and penalty from the time the premium was due until the date of payment. The court shall:

(i) Collect the premium and interest and transmit it to the department of labor and industries; and

(ii) Collect the penalty and disburse it pro rata as follows: One-third to the investigative agencies involved; one-third to the prosecuting authority; and one-third to the general fund of the county in which the matter was prosecuted.

Payments collected under this subsection must be applied until satisfaction of the obligation in the following order: Premium payments; penalty; and interest.

(d) An employer found to have violated this subsection shall, in addition to any other penalties, be subject to the penalties in RCW 39.12.055.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. [2008 c 120 § 9; 1997 c 324 § 1; 1995 c 160 § 4; 1987 c 221 § 1; 1977 ex.s. c 323 § 22; 1971 ex.s. c 289 § 63; 1961 c 23 § 51.48.020. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.025 Retaliation by employer prohibited—Investigation—Remedies. (1) No employer may discharge or in any manner discriminate against any employee because such employee has filed or communicated to the employer an intent to file a claim for compensation or exercises any rights provided under this title. However, nothing in this section prevents an employer from taking any action against a worker for other reasons including, but not limited to, the worker's failure to observe health or safety standards adopted

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by the employer, or the frequency or nature of the worker's job-related accidents.

(2) Any employee who believes that he or she has been discharged or otherwise discriminated against by an employer in violation of this section may file a complaint with the director alleging discrimination within ninety days of the date of the alleged violation. Upon receipt of such complaint, the director shall cause an investigation to be made as the director deems appropriate. Within ninety days of the receipt of a complaint filed under this section, the director shall notify the complainant of his or her determination. If upon such investigation, it is determined that this section has been violated, the director shall bring an action in the superior court of the county in which the violation is alleged to have occurred.

(3) If the director determines that this section has not been violated, the employee may institute the action on his or her own behalf.

(4) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (1) of this section and to order all appropriate relief including rehiring or reinstatement of the employee with back pay. [1985 c 347 § 8.]

51.48.030 Failure to keep records and make reports.

Every employer who fails to keep and preserve the records required by this title or fails to make the reports provided in this title shall be subject to a penalty determined by the director but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each such offense, whichever is greater. Any employer who fails to keep and preserve the records adequate to determine taxes due shall be forever barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department based on any period for which such records have not been kept and preserved. [1986 c 9 § 8; 1985 c 347 § 4; 1982 c 63 § 21; 1971 ex.s. c 289 § 64; 1961 c 23 § 51.48.030. Prior: 1947 c 247 § 1(4d), part; Rem. Supp. 1947 § 7676d, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.040 Inspection of employer's records. (1) The books, records and payrolls of the employer pertinent to the administration of this title shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the payroll, the persons employed, and such other information as may be necessary for the department and its management under this title.

(2) Refusal on the part of the employer to submit his or her books, records and payrolls for such inspection to the department, or any assistant presenting written authority from the director, shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense and the individual who personally gives such refusal is guilty of a misdemeanor.

(3) Any employer who fails to allow adequate inspection in accordance with the requirements of this section is subject

to having its certificate of coverage revoked by order of the department and is forever barred from questioning in any proceeding in front of the board of industrial insurance appeals or any court, the correctness of any assessment by the department based on any period for which such records have not been produced for inspection. [2003 c 53 § 282; 1986 c 9 § 9; 1985 c 347 § 5; 1961 c 23 § 51.48.040. Prior: 1911 c 74 § 15, part; RRS § 7690, part.]

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

51.48.050 Liability for illegal collections for medical aid. It shall be unlawful for any employer to directly or indirectly demand or collect from any of his or her workers any sum of money whatsoever for or on account of medical, surgical, hospital, or other treatment or transportation of injured workers, other than as specified in RCW 51.16.140, and any employer who directly or indirectly violates the foregoing provisions of this section shall be liable to the state for the benefit of the medical aid fund in ten times the amount so demanded or collected, and such employer and every officer, agent, or servant of such employer knowingly participating therein shall also be guilty of a misdemeanor. [1980 c 14 § 13. Prior: 1977 ex.s. c 350 § 70; 1977 ex.s. c 323 § 23; 1961 c 23 § 51.48.050; prior: 1917 c 28 § 17; RRS § 7726.]

Severability—Effective date—1977 ex.s. c 323: See notes following RCW 51.04.040.

51.48.055 Termination, dissolution, or abandonment of business—Personal liability for unpaid premiums. (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of payment and/or reporting of industrial insurance, or who is charged with the responsibility for the filing of returns, is personally liable for any unpaid premiums and interest and penalties on those premiums if such officer or other person willfully fails to pay or to cause to be paid any premiums due the department under chapter 51.16 RCW.

For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member, manager, or other person is liable only for premiums that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those premiums.

(3) The officer, member, manager, or other person is not liable if that person is not exempt from mandatory coverage under RCW 51.12.020 and was directed not to pay the employer's premiums by someone who is exempt.

(4) The officer, member, manager, or other person is not liable if all of the assets of the corporation or limited liability company have been applied to its debts through bankruptcy or receivership.

(5) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 51.48.131.

(6) This section does not relieve the corporation or limited liability company of its liabilities under Title 51 RCW or

otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section. [2004 c 243 § 3.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.48.060 Physician or licensed advanced registered nurse practitioner—Failure to report or comply. Any physician or licensed advanced registered nurse practitioner who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured worker at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars. [2004 c 65 § 14; 1985 c 347 § 6; 1977 ex.s. c 350 § 71; 1971 ex.s. c 289 § 20; 1961 c 23 § 51.48.060. Prior: 1927 c 310 § 6(e), part; 1921 c 182 § 7, part; 1911 c 74 § 12, part; RRS § 7686(e), part.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.075 Information and training on premium liability. The department shall, working with business associations and other employer and employee groups when practical, publish information and provide training to promote understanding of the premium liability that may be incurred under this chapter. [2004 c 243 § 5.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.48.080 Violation of rules. Every person, firm or corporation who violates or fails to obey, observe or comply with any rule of the department promulgated under authority of this title, shall be subject to a penalty of not to exceed five hundred dollars. [1985 c 347 § 7; 1961 c 23 § 51.48.080. Prior: 1915 c 188 § 8; RRS § 7704.]

51.48.090 Collection. Civil penalties to the state under this title shall be collected by civil action in the name of the state and paid into the accident fund unless a different fund is designated. [1961 c 23 § 51.48.090. Prior: (i) 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part. (ii) 1911 c 74 § 15, part; RRS § 7690, part. (iii) 1917 c 28 § 17, part; RRS § 7726, part.]

51.48.100 Waiver—Penalty-free periods. (1) The director may waive the whole or any part of any penalty charged under this title.

(2) Until June 30, 1986: (a) The director may, at his or her discretion, declare a penalty-free period of no more than three months only for employers who have never previously registered under RCW 51.16.110 for eligible employees under Title 51 RCW; and (b) such employers may qualify once for penalty-free status upon payment of up to one year's past due premium in full and satisfaction of the requirements

of RCW 51.16.110. Such employers shall be subject to all penalties for any subsequent failure to comply with the requirements of this title. [1985 c 227 § 1; 1961 c 23 § 51.48.100. Prior: 1947 c 247 § 1, part; Rem. Supp. 1947 § 7676d, part.]

Effective date—1985 c 227: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 227 § 2.]

51.48.103 Engaging in business without certificate of coverage—Unlawful actions—Penalties. (1) It is a gross misdemeanor:

(a) For any employer to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title;

(b) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title without having obtained a certificate of coverage as provided for in this title.

(2) It is a class C felony punishable according to chapter 9A.20 RCW:

(a) For any employer to engage in business subject to this title after the employer's certificate of coverage has been revoked by order of the department;

(b) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business subject to this title after revocation of a certificate of coverage.

(3) An employer found to have violated this section shall, in addition to any other penalties, be subject to the penalties in RCW 39.12.055. [2008 c 120 § 8; 2003 c 53 § 283; 1986 c 9 § 12.]

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

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

51.48.105 Failure to apply for coverage of employees—Not applicable, when. The penalties provided under this title for failure to apply for coverage for employees as required by the provisions of Title 51 RCW, the worker's compensation law, shall not be applicable prior to March 1, 1972, as to any employer whose work first became subject to this title on or after January 1, 1972. [1977 ex.s. c 350 § 73; 1972 ex.s. c 78 § 1.]

51.48.110 Decedent having no beneficiaries—Payment into supplemental pension fund. Where death results from the injury or occupational disease and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of ten thousand dollars, less any amount that the self-insurer paid under RCW 51.32.040(2) as payment due for the period of time before the worker's death. [1999 c 185 § 2; 1986 c 56 § 1; 1971 ex.s. c 289 § 65.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.48.120 Notice of assessment for default in payments by employer—Issuance—Service—Contents. If

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any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by certified mail to the employer's last known address or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries. [1995 c 160 § 5; 1986 c 9 § 10; 1985 c 315 § 6; 1972 ex.s. c 43 § 32.]

51.48.131 Notice of assessment for default in payments by employer—Appeal. A notice of assessment becomes final thirty days from the date the notice of assessment was served upon the employer unless: (1) A written request for reconsideration is filed with the department of labor and industries, or (2) an appeal is filed with the board of industrial insurance appeals and sent to the director of labor and industries by mail or delivered in person. The appeal shall not be denied solely on the basis that it was not filed with both the board and the director if it was filed with either the board or the director. The appeal shall set forth with particularity the reason for the employer's appeal and the amounts, if any, that the employer admits are due.

The department, within thirty days after receiving a notice of appeal, may modify, reverse, or change any notice of assessment, or may hold any such notice of assessment in abeyance pending further investigation, and the board shall thereupon deny the appeal, without prejudice to the employer's right to appeal from any subsequent determinative notice of assessment issued by the department.

The burden of proof rests upon the employer in an appeal to prove that the taxes and penalties assessed upon the employer in the notice of assessment are incorrect. The department shall promptly transmit its original record, or a legible copy thereof, produced by mechanical, photographic, or electronic means, in such matter to the board. RCW 51.52.080 through 51.52.106 govern appeals under this section. Further appeals taken from a final decision of the board under this section are governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.05.510 through 34.05.598, and the department has the same right of review from the board's decisions as do employers. [1989 c 175 § 120; 1987 c 316 § 3; 1985 c 315 § 7.]

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

51.48.140 Notice of assessment for employer's default in payments—When amount becomes final—Warrant—Execution—Garnishment—Fees. If a notice of appeal is not served on the director and the board of industrial insurance appeals pursuant to RCW 51.48.131 within thirty days from the date of service of the notice of assessment, or if a final decision and order of the board of industrial insurance appeals in favor of the department is not appealed to superior court in the manner specified in RCW 34.05.510

through 34.05.598, or if a final decision of any court in favor of the department is not appealed within the time allowed by law, then the amount of the unappealed assessment, or such amount of the assessment as is found due by the final decision and order of the board of industrial insurance appeals or final decision of the court shall be deemed final and the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the notice of assessment. The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such employer mentioned in the warrant, the amount of the taxes and penalties due thereon, and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the employer within three days of filing with the clerk. [2001 c 146 § 11; 1989 c 175 § 121; 1985 c 315 § 8; 1972 ex.s. c 43 § 34.]

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

51.48.150 Notice of assessment for employer's default in payments—Notice to withhold and deliver property due employer. The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled. [1995 c 160 § 6; 1987 c 442 § 1119; 1986 c 9 § 11; 1972 ex.s. c 43 § 35.]

51.48.160 Revocation of certificate of coverage for failure to pay warrants or taxes. If any warrant issued under this title is not paid within thirty days after it has been filed with the clerk of the superior court, or if any employer is delinquent, for three consecutive reporting periods, in the transmission to the department of taxes due, the department may, by order issued under its official seal, revoke the certificate of coverage of the employer against whom the warrant was issued; and if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the employer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of coverage be issued to the employer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the department have been entered, and until the taxpayer has deposited with the department such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department may require, but the amount of the security shall not be greater than one-half the estimated average annual taxes of the employer. [1986 c 9 § 13.]

51.48.170 Emergency assessment and collection of taxes. If the director or the director's designee has reason to believe that an employer is insolvent or about to cease business, leave the state, or remove or dissipate assets out of which taxes or penalties might be satisfied, and the collection of any taxes accrued will be jeopardized by delaying collection, the director or the director's designee may make an immediate assessment thereof and may proceed to enforce collection immediately under the terms of RCW 51.48.180 and 51.48.190, but interest and penalties shall not begin to accrue upon any taxes until the date when such taxes would normally have become delinquent. [1986 c 9 § 14.]

51.48.180 Emergency assessment and collection of taxes—Distraint and sale of property. If the amount of taxes, interest, or penalties assessed by the director or the director's designee by order and notice of assessment pursuant to RCW 51.48.170 is not paid within ten days after the service or mailing of the order and notice of assessment, the director or the director's designee may collect the amount stated in said assessment by the distraint, seizure, and sale of the property, goods, chattels, and effects of the delinquent employer. There shall be exempt from distraint and sale under this section such goods and property as are exempt from execution under the laws of this state. [1986 c 9 § 15.]

51.48.190 Emergency assessment and collection of taxes—Conduct of sale. The director or the director's designee, upon making a distraint pursuant to RCW 51.48.170 and 51.48.180, shall seize the property and shall make an inventory of the property distrained, a copy of which shall be mailed to the owner of such property or personally delivered to the owner, and shall specify the time and place when the property shall be sold. A notice specifying the property to be sold and the time and place of sale shall be posted in at least two public places in the county wherein the seizure has been made. The time of sale shall be not less than twenty days from the date of posting of such notices. The sale may be adjourned from time to time at the discretion of the director or the director's designee, but not for a time to exceed in all sixty days. No sale shall take place if an appeal is pending. The sale shall be conducted by the director or the director's designee who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the minimum price so fixed, the director or the director's designee may declare such property to be purchased by the department for such minimum price. In such event the delinquent account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the director or the director's designee at public or private sale, and the amount realized shall be placed in the state of Washington industrial insurance fund.

In all cases of sale, as aforesaid, the director or the director's designee shall issue a bill of sale or a deed to the purchaser and the bill of sale or deed shall be prima facie evidence of the right of the director or the director's designee to make such sale and conclusive evidence of the regularity of the proceeding in making the sale, and shall transfer to the

purchaser all right, title, and interest of the delinquent employer in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the director or the director's designee in satisfaction of the delinquent account, and out of any sum received in excess of the amount of delinquent taxes, interest, and penalties the industrial insurance fund shall be reimbursed for the costs of distraint and sale. Any excess which shall thereafter remain in the hands of the director or the director's designee shall be refunded to the delinquent employer. Sums so refundable to a delinquent employer may be subject to seizure or distraint in the hands of the director or the director's designee by any other taxing authority of the state or its political subdivisions. [1986 c 9 § 16.]

51.48.200 Search and seizure of property to satisfy tax warrant or assessment—Issuance and execution of search warrant. (1) When there is probable cause to believe that there is property within this state not otherwise exempt from process or execution in the possession or control of any employer against whom a tax warrant issued under RCW 51.48.140 has been filed which remains unsatisfied, or an assessment issued pursuant to RCW 51.48.170, any judge of the superior court or district court in the county in which such property is located may, upon the request of the sheriff or agent of the department authorized to collect taxes, issue a warrant directed to the officers commanding the search for and seizure of the property described in the request for warrant.

(2) The procedure for the issuance, and execution and return of the warrant authorized by this section and for return of any property seized shall be the criminal rules of the superior court and the district court.

(3) The sheriff or agent of the department shall levy execution upon property seized under this section as provided in RCW 51.48.220 and 51.48.230.

(4) This section does not require the application for or issuance of any warrant not otherwise required by law. [1986 c 9 § 17.]

51.48.210 Delinquent taxes. If payment of any tax due is not received by the department by the due date, there shall be assessed a penalty of five percent of the amount of the tax for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the tax for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the tax for the third month or part thereof of delinquency. No penalty so added may be less than ten dollars. If a warrant is issued by the department for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of five percent of the amount of the tax, but not less than five dollars nor greater than one hundred dollars. In addition, delinquent taxes shall bear interest at the rate of one percent of the delinquent amount per month or fraction thereof from and after the due date until payment, increases, and penalties are received by the department. [1987 c 111 § 8; 1986 c 9 § 18.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

51.48.220 Order of execution upon property—Procedure—Sale. The department may issue an order of execution, pursuant to a filed warrant, under its official seal directed to the sheriff of the county in which the warrant has been filed, commanding the sheriff to levy upon and sell the real and/or personal property of the taxpayer found within the county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

The sheriff shall be entitled to fees as provided by law for services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee as provided by law, which shall be added to the amount of the warrant.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant. [1986 c 9 § 21.]

51.48.230 Order of execution upon property—Enforcement. In the discretion of the department, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant. [1986 c 9 § 22.]

51.48.240 Agents and employees of department not personally liable—Conditions. When recovery is had in any suit or proceeding against an officer, agent, or employee of the department for any act done by that person or for the recovery of any money exacted by or paid to that person and by that person paid over to the department, in the performance of the person's official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he or she acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [1986 c 9 § 23.]

51.48.250 Liability of persons wilfully obtaining erroneous payments—Civil penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health service, shall, on behalf of himself or oth-

ers, obtain or attempt to obtain payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A wilful false statement;
- (b) Wilful misrepresentation, or by concealment of any material facts; or
- (c) Other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were not furnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person, firm, corporation, partnership, association, agency, institution, or other legal entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess payments received, plus interest on the amount of the excess benefits or payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The director of the department of labor and industries may assess civil penalties in an amount not to exceed the greater of one thousand dollars or three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to April 1, 1986.

(3) A criminal action need not be brought against a person, firm, corporation, partnership, association, agency, institution, or other legal entity for that person or entity to be civilly liable under this section.

(4) Civil penalties shall be deposited in the general fund upon their receipt. [1986 c 200 § 4.]

51.48.260 Liability of persons unintentionally obtaining erroneous payments. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrially injured recipient of health services, that, without intent to violate this chapter, obtains payments under Title 51 RCW to which such person or entity is not entitled, shall be liable for: (1) Any excess payments received; and (2) interest on the amount of excess payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state. [1986 c 200 § 3.]

51.48.270 Criminal liability of persons making false statements or concealing information. Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an injured worker or beneficiary, that:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under this title; or

(2) At any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment; or

(3) Having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he or she has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized; shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1987 c 470 § 2; 1986 c 200 § 5.]

51.48.280 Kickbacks, bribes, and rebates—Representation fees—Criminal liability—Exceptions. (1) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind:

(a) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter; or

(b) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(2) It is a class C felony for any person, firm, corporation, partnership, association, agency, institution, or other legal entity to offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(a) To refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter; or

(b) To purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter.

(3) A health services provider who (a) provides a health care service to a claimant, while acting as the claimant's representative for the purpose of obtaining authorization for the services, and (b) charges a percentage of the claimant's benefits or other fee for acting as the claimant's representative under this title is guilty of a gross misdemeanor.

(4) Any fine imposed as a result of a violation of subsection (1), (2), or (3) of this section shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(5) Subsections (1) and (2) of this section shall not apply to:

(a) A discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter; and

(b) Any amount paid by an employer to an employee (who has a bona fide employment relationship with such

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employer) for employment in the provision of covered items or services.

(6) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [2003 c 53 § 284; 1997 c 336 § 1; 1986 c 200 § 6.]

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

51.48.290 Written verification by health services providers. The director of the department of labor and industries may by rule require that any application, statement, or form filled out by any health services provider under this title shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [1986 c 200 § 7.]

Chapter 51.52 RCW

APPEALS

Sections

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51.52.010 Board of industrial insurance appeals. There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative

of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician or licensed advanced registered nurse practitioner, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or licensed advanced registered nurse practitioner or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized. [2004 c 65 § 15; 2003 c 224 § 1; 1999 c 149 § 1; 1981 c 338 § 10; 1977 ex.s. c 350 § 74; 1975-'76 2nd ex.s. c 34 § 151; 1971 ex.s. c 289 § 68; 1965 ex.s. c 165 § 3; 1961 c 307 § 8; 1961 c 23 § 51.52.010. Prior: 1951 c 225 § 1; prior: 1949 c 219 § 2; Rem. Supp. 1949 § 10837-1.]

Report to legislature—Effective date—Severability—2004 c 65: See notes following RCW 51.04.030.

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

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.020 Board—Rule-making power. The board may make rules and regulations concerning its functions and procedure, which shall have the force and effect of law until altered, repealed, or set aside by the board: PROVIDED, That the board may not delegate to any other person its duties of interpreting the testimony and making the final decision and order on appeal cases. All rules and regulations adopted by the board shall be printed and copies thereof shall be readily available to the public. [1961 c 23 § 51.52.020. Prior: 1951 c 225 § 2; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.030 Board—Expenses. The board may incur such expenses as are reasonably necessary to carry out its duties hereunder, which expenses shall be paid, one-half from the accident fund and one-half from the medical aid fund upon vouchers approved by the board. [1961 c 23 § 51.52.030. Prior: 1951 c 225 § 3; prior: 1949 c 219 § 3, part; Rem. Supp. 1949 § 10837-2, part.]

51.52.040 Board—Removal of member. Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit the original of such written charges to the chief justice of the supreme court and a copy thereof to the member accused. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review. [1961 c 23 § 51.52.040. Prior: 1951 c 225 § 4; prior: 1949 c 219 § 4; Rem. Supp. 1949 § 10837-3.]

51.52.050 Service of departmental action—Demand for repayment—Orders amending benefits—Reconsideration or appeal. (1) Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his or her last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured

worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2)(a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self-insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b)(ii)(A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [2008 c 280 § 1; 2004 c 243 § 8; 1987 c 151 § 1; 1986 c 200 § 10; 1985 c 315 § 9; 1982 c 109 § 4; 1977 ex.s. c 350 § 75; 1975 1st ex.s. c 58 § 1; 1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 § 11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

Application—2008 c 280: "This act applies to orders issued on or after June 12, 2008." [2008 c 280 § 7.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.

51.52.060 Notice of appeal—Time—Cross-appeal—Departmental options. (1)(a) Except as otherwise specifically provided in this section, a worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which a copy of the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

(2) Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties to the appeal of the receipt of the appeal and shall forward a copy of the notice of appeal to the other interested parties. Within twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken.

(3) If within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department directs the submission of further evidence or the investigation of any further fact, the time for filing the notice of appeal shall not commence to run until the person has been advised in writing of the final decision of the department in the matter. In the event the department directs the submission of further evidence or the investigation of any further fact, as provided in this section, the department shall render a final order, decision, or award within ninety days from the date further submission of evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days.

(4) The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may:

(a) Modify, reverse, or change any order, decision, or award; or

(b)(i) Except as provided in (b)(ii) of this subsection, hold an order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal; or

(ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

For purposes of this subsection, good cause includes delay that results from conduct of the claimant that is subject to sanction under RCW 51.32.110.

The board shall deny the appeal upon the issuance of an order under (b)(i) or (ii) of this subsection holding an earlier order, decision, or award in abeyance, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department.

This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160.

(5) An employer shall have the right to appeal an application deemed granted under RCW 51.32.160 on the same basis as any other application adjudicated pursuant to that section.

(6) A provision of this section shall not be deemed to change, alter, or modify the practice or procedure of the department for the payment of awards pending appeal. [1995 c 253 § 1; 1995 c 199 § 7; 1986 c 200 § 11; 1977 ex.s. c 350 § 76; 1975 1st ex.s. c 58 § 2; 1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949 c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4, part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 § 1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem Supp. 1949 §§ 7679, part, 7697, part.]

Reviser's note: This section was amended by 1995 c 199 § 7 and by 1995 c 253 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1995 c 199: See note following RCW 51.12.120.

51.52.070 Contents of notice—Transmittal of record.

The notice of appeal to the board shall set forth in full detail the grounds upon which the person appealing considers such order, decision, or award is unjust or unlawful, and shall include every issue to be considered by the board, and it must contain a detailed statement of facts upon which such worker, beneficiary, employer, or other person relies in support thereof. The worker, beneficiary, employer, or other person shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in such notice of appeal or appearing in the records of the department. The department shall promptly transmit its original record, or a legible copy thereof produced by mechanical, photographic, or electronic means, in such matter to the board. [1977 ex.s. c 350 § 77; 1975 1st ex.s. c 224 § 18; 1975 1st ex.s. c 58 § 3; 1961 c 23 § 51.52.070. Prior: 1957 c 70 § 57; 1951 c 225 § 7; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective date—1975 1st ex.s. c 224: See note following RCW 51.04.110.

51.52.075 Appeal from order terminating provider's authority to provide services—Department petition for order immediately suspending provider's eligibility to participate.

When a provider files with the board an appeal from an order terminating the provider's authority to provide services related to the treatment of industrially injured workers, the department may petition the board for an order immediately suspending the provider's eligibility to participate as a provider of services to industrially injured workers under this title pending the final disposition of the appeal by the board. The board shall grant the petition if it determines that there is good cause to believe that workers covered under this title may suffer serious physical or mental harm if the petition is not granted. The board shall expedite the hearing of the department's petition under this section. [2004 c 259 § 1.]

51.52.080 Appeal to board denied, when. If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal. [1971 ex.s. c 289 § 69; 1963 c 148 § 2; 1961 c 23 § 51.52.080. Prior: 1957 c 70 § 58; 1951 c 225 § 8; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.090 Appeal to board deemed granted, when. If the appeal is not denied within thirty days after the notice is filed with the board, the appeal shall be deemed to have been granted: PROVIDED, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days. [1971 ex.s. c 289 § 70; 1961 c 23 § 51.52.090.]

Prior: 1957 c 70 § 59; 1951 c 225 § 9; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.095 Conference for disposal of matters involved in appeal—Mediation of disputes. (1) The board, upon request of the worker, beneficiary, or employer, or upon its own motion, may direct all parties interested in an appeal, together with their attorneys, if any, to appear before it, a member of the board, or an authorized industrial appeals judge, for a conference for the purpose of determining the feasibility of settlement, the simplification of issues of law and fact, the necessity of amendments to the notice of appeal or other pleadings, the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, the limitation of the number of expert witnesses, and such other matters as may aid in the disposition of the appeal. Such conference may be held prior to the hearing, or it may be held during the hearing, at the discretion of the board member or industrial appeals judge conducting the same, in which case the hearing will be recessed for such conference. Following the conference, the board member or industrial appeals judge conducting the same, shall state on the record the results of such conference, and the parties present or their representatives shall state their concurrence on the record. Such agreement as stated on the record shall control the subsequent course of the proceedings, unless modified at a subsequent hearing to prevent manifest injustice. If agreement concerning final disposition of the appeal is reached by the parties present at the conference, or by the employer and worker or beneficiary, the board may enter a final decision and order in accordance therewith, providing the board finds such agreement is in conformity with the law and the facts.

(2) In order to carry out subsection (1) of this section, the board shall develop expertise to mediate disputes informally. Where possible, industrial appeals judges with a demonstrated history of successfully resolving disputes or who have received training in dispute resolution techniques shall be appointed to perform mediation functions. No industrial appeals judge who mediates in a particular appeal may, without the consent of the parties, participate in writing the proposed decision and order in the appeal: PROVIDED, That this shall not prevent an industrial appeals judge from issuing a proposed decision and order responsive to a motion for summary disposition or similar motion. This section shall not operate to prevent the board from developing additional methods and procedures to encourage resolution of disputes by agreement or otherwise making efforts to reduce adjudication time. [1986 c 10 § 1; 1985 c 209 § 2; 1982 c 109 § 7; 1977 ex.s. c 350 § 78; 1963 c 148 § 3; 1963 c 6 § 1; 1961 c 23 § 51.52.095. Prior: 1951 c 225 § 10.]

51.52.100 Proceedings before board—Contempt. Hearings shall be held in the county of the residence of the worker or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing shall be de novo and summary, but no witness' testimony shall be received unless he or she shall first have been sworn

to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his or her testimony shall have been taken by deposition according to the statutes and rules relating to superior courts of this state. The department shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed, the same, with all depositions, shall be filed in, and remain a part of, the record on the appeal. Such hearings on appeal to the board may be conducted by one or more of its members, or a duly authorized industrial appeals judge, and depositions may be taken by a person duly commissioned for the purpose by the board.

Members of the board, its duly authorized industrial appeals judges, and all persons duly commissioned by it for the purpose of taking depositions, shall have power to administer oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of, witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and it shall be their duty so to do to examine witnesses; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his or her office.

If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the board or any member or duly authorized industrial appeals judge may certify the facts to the superior court having jurisdiction in the place in which said board or member or industrial appeals judge is sitting; the court shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court. [1982 c 109 § 8; 1977 ex.s. c 350 § 79; 1963 c 148 § 4; 1961 c 23 § 51.52.100. Prior: 1957 c 70 § 60; 1951 c 225 § 11; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

51.52.102 Hearing the appeal—Dismissal—Evidence—Continuances. At the time and place fixed for hearing each party shall present all his evidence with respect to the issues raised in the notice of appeal, and if any party fails so to do, the board may determine the issues upon such evidence as may be presented to it at said hearing, or if an appealing party who has the burden of going forward with the evidence fails to present any evidence, the board may dismiss the appeal: PROVIDED, That for good cause shown in the record to prevent hardship, the board may grant continuances upon application of any party, but such continuances, when

granted, shall be to a time and place certain within the county where the initial hearing was held unless it shall appear that a continuance elsewhere is required in justice to interested parties: AND PROVIDED FURTHER, That the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence. [1963 c 148 § 5; 1961 c 23 § 51.52.102. Prior: 1951 c 225 § 12.]

51.52.104 Industrial appeals judge—Recommended decision and order—Petition for review—Finality of order. After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be an active or judicial member of the Washington state bar association, the industrial appeals judge shall enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such further time as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's offices in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of the industrial appeals judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts. [2003 c 224 § 2; 1985 c 314 § 1; 1982 c 109 § 5; 1971 ex.s. c 289 § 22; 1963 c 148 § 6.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.106 Review of decision and order. After the filing of a petition or petitions for review as provided for in RCW 51.52.104, the proposed decision and order of the industrial appeals judge, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days

after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial: PROVIDED, That if a petition for review is not denied within said twenty days it shall be deemed to have been granted. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chairman may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. The board shall, in all cases, render a final decision and order within one hundred and eighty days from the date a petition for review is filed. A copy of the decision and order, including the findings and conclusions, shall be mailed to each party to the appeal and to his attorney of record. [1982 c 109 § 9; 1975 1st ex.s. c 58 § 4; 1971 ex.s. c 289 § 23; 1965 ex.s. c 165 § 4; 1963 c 148 § 7; 1961 c 23 § 51.52.106. Prior: 1951 c 225 § 13.]

Effective dates—Severability—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

51.52.110 Court appeal—Taking the appeal. Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such worker, beneficiary, employer or other person, or within thirty days after the appeal is denied as herein provided, such worker, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court. If such worker, beneficiary, employer, or other person fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board to deny the petition or petitions for review or the final decision and order of the board shall become final.

In cases involving injured workers, an appeal to the superior court shall be to the superior court of the county of residence of the worker or beneficiary, as shown by the department's records, or to the superior court of the county wherein the injury occurred or where neither the county of residence nor the county wherein the injury occurred are in the state of Washington then the appeal may be directed to the superior court for Thurston county. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer. The department shall, in all cases not involving a self-insurer, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. If the case is one involving a self-insurer, such self-insurer shall, within twenty days after

receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed to be at issue. In such cases the department may appear and take part in any proceedings. The board shall serve upon the appealing party, the director, the self-insurer if the case involves a self-insurer, and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on review by the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under *RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: PROVIDED, HOWEVER, That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court. [1988 c 202 § 49; 1982 c 109 § 6; 1977 ex.s. c 350 § 80; 1973 c 40 § 1. Prior: 1972 ex.s. c 50 § 1; 1972 ex.s. c 43 § 36; 1971 ex.s. c 289 § 24; 1971 c 81 § 122; 1961 c 23 § 51.52.110; prior: 1957 c 70 § 61; 1951 c 225 § 14; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: Cf. Title 8 RAP, RAP 18.22.

*Reviser's note: RCW 51.48.070 was repealed by 1996 c 60 § 2.

Severability—1988 c 202: See note following RCW 2.24.050.

51.52.112 Court appeal—Payment of taxes, penalties, and interest required. All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest unless the court determines that there would be an undue hardship to the employer. In the event an employer prevails in a court action, the employer shall be allowed interest on all taxes, penalties, and interest paid by the employer but determined by a final order of the court to not be due, from the date such taxes, penalties, and interest were paid. Interest shall be at the rate allowed by law as prejudgment interest. [1986 c 9 § 19.]

51.52.113 Collection of tax or penalty may not be enjoined. No restraining order or injunction may be granted or issued by any court to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1986 c 9 § 20.]

51.52.115 Court appeal—Procedure at trial—Burden of proof. Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evi-

dence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: PROVIDED, That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court. [1961 c 23 § 51.52.115. Prior: 1957 c 70 § 62; 1951 c 225 § 15; prior: (i) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (ii) 1949 c 219 § 6; 1939 c 184 § 1; Rem. Supp. 1949 § 7697-2.]

51.52.120 Attorney's fee before department or board—Unlawful attorney's fees. (1) It shall be unlawful for an attorney engaged in the representation of any worker or beneficiary to charge for services in the department any fee in excess of a reasonable fee, of not more than thirty percent of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the director or the director's designee for services performed by an attorney for such worker or beneficiary, if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the department is communicated to the party making the application.

(2) If, on appeal to the board, the order, decision, or award of the department is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained by the board, the board shall fix a reasonable fee for the services of his or her attorney in proceedings before the board if written application therefor is made by the attorney, worker, or beneficiary within one year from the date the final decision and order of the board is communicated to the party making the application. In fixing the amount of such attorney's fee, the board shall take into consideration the fee allowed, if any, by the director, for services before the department, and the board may review the fee fixed by the director. Any attorney's fee set by the department or the board may be reviewed by the superior court upon application of such attorney, worker, or beneficiary. The department or self-insured employer, as the case may be, shall be served

a copy of the application and shall be entitled to appear and take part in the proceedings. Where the board, pursuant to this section, fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee for services before the board in excess of that fee fixed by the board.

(3) In an appeal to the board involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185.

(4) Any person who violates this section is guilty of a misdemeanor. [2007 c 490 § 3; 2003 c 53 § 285; 1990 c 15 § 1; 1982 c 63 § 22; 1977 ex.s. c 350 § 81; 1965 ex.s. c 63 § 1; 1961 c 23 § 51.52.120. Prior: 1951 c 225 § 16; prior: 1947 c 246 § 3; Rem. Supp. 1947 § 7679-3.]

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

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.52.130 Attorney and witness fees in court appeal.

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185. [2007 c 490 § 4; 1993 c 122 § 1; 1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § 51.52.130. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Effective dates—Implementation—1982 c 63: See note following RCW 51.32.095.

51.52.132 Unlawful attorney's fees. Where the department, the board or the court, pursuant to RCW 51.52.120 or 51.52.130 fixes the attorney's fee, it shall be unlawful for an attorney to charge or receive any fee in excess of that fixed by the department, board or the court. Any person who violates any provision of this section shall be guilty of a misdemeanor. [1965 ex.s. c 63 § 2; 1961 c 23 § 51.52.132. Prior: 1951 c 225 § 18.]

51.52.135 Worker or beneficiary entitled to interest on award—Rate.

(1) When a worker or beneficiary prevails in an appeal by the employer to the board or in an appeal by the employer to the court from the decision and order of the board, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(2) When a worker or beneficiary prevails in an appeal by the worker or beneficiary to the board or the court regarding a claim for temporary total disability, the worker or beneficiary shall be entitled to interest at the rate of twelve percent per annum on the unpaid amount of the award after deducting the amount of attorney fees.

(3) The interest provided for in subsections (1) and (2) of this section shall accrue from the date of the department's order granting the award or denying payment of the award. The interest shall be paid by the party having the obligation to pay the award. The amount of interest to be paid shall be fixed by the board or court, as the case may be. [1983 c 301 § 1.]

51.52.140 Rules of practice—Duties of attorney general—Supreme court appeal.

Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal advisor of the department and the board. [1961 c 23 § 51.52.140. Prior: 1957 c 70 § 64; 1951 c 225 § 19; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.]

Rules of court: *Method of appellate review superseded by RAP 2.1, 2.2.*

51.52.150 Costs on appeals. All expenses and costs incurred by the department for board and court appeals, including fees for medical and other witnesses, court reporter costs and attorney's fees, and all costs taxed against the department, shall be paid one-half out of the medical aid fund and one-half out of the accident fund. [1961 c 23 § 51.52.150. Prior: 1951 c 225 § 20; prior: 1931 c 116 § 1; RRS § 7697-1.]

51.52.160 Publication and indexing of significant decisions.

The board shall publish and index its significant decisions and make them available to the public at reasonable cost. [1985 c 209 § 1.]

51.52.200 Exception—Employers as parties to actions relating to compensation or assistance for victims of crimes. This chapter shall not apply to matters concerning employers as parties to any settlement, appeal, or other action in accordance with chapter 7.68 RCW. [1997 c 102 § 2.]

51.52.800 Workers' compensation study. (1) The department shall study appeals of workers' compensation cases and collect information on the impacts of chapter 280, Laws of 2008 on state fund and self-insured workers and employers. The study shall consider the types of benefits that may be paid pending an appeal, and shall include, but not be limited to:

- (a) The frequency and outcomes of appeals;
- (b) The duration of appeals and any procedural or process changes made by the board to implement chapter 280, Laws of 2008 and expedite the process;
- (c) The number of and amount of overpayments resulting from decisions of the board or court; and
- (d) The processes used and efforts made to recoup overpayments and the results of those efforts.

(2) State fund and self-insured employers shall provide the information requested by the department to conduct the study.

(3) The department shall report to the workers' compensation advisory committee by July 1, 2009, on the preliminary results of the study. By December 1, 2009, and annually thereafter, with the final report due by December 1, 2011, the department shall report to the workers' compensation advisory committee and the appropriate committees of the legislature on the results of the study. The workers' compensation advisory committee shall provide its recommendations for addressing overpayments resulting from chapter 280, Laws of 2008, including the need for and ability to fund a permanent method to reimburse employer and state fund overpayment costs. [2008 c 280 § 5.]

Application—2008 c 280: See note following RCW 51.52.050.

Chapter 51.98 RCW CONSTRUCTION

Sections

51.98.010	Continuation of existing law.
51.98.020	Title, chapter, section headings not part of law.
51.98.030	Invalidity of part of title not to affect remainder.
51.98.040	Repeals and saving.
51.98.050	Emergency—1961 c 23.
51.98.060	Effective dates—1971 ex.s. c 289.
51.98.070	Severability—1971 ex.s. c 289.
51.98.080	Severability—1972 ex.s. c 43.

Construction—1947 c 246: "The increased benefits and compensation authorized by this act shall not be applicable to a case of death, or injury or aggravation thereof, occurring prior to the effective date of this act." [1947 c 246 § 2.]

Construction—1923 c 136: "For all cases of injuries to workmen which occurred and for all claims or actions pending or causes of action existing before this act shall go into effect, Sections 7673 to 7796 of Remington's Compiled Statutes of Washington shall continue in force as they were prior to and they shall be unaffected by the passage of this amendatory act." [1923 c 136 § 20.] The internal references refer to the entire industrial insurance act as it existed in 1923.

Construction—1919 c 131: "For all cases of injuries to workmen which occurred before this act shall be into effect Sections 6604-3, 6604-5, 6604-6, and 6604-10 shall continue in force as they were prior to and they (2008 Ed.)

shall be unaffected by the passage of this amendatory act. The amendatory provisions of sections 2, 4, 5, and 6 of this act shall apply only to injuries occurring after they shall go into effect." [1919 c 131 § 9.] The internal references to prior compilations refer to such sections as amended in the 1919 act by sections 2, 4, 5, and 6 as repeated in the last sentence of the above quotation. Such sections are scattered throughout chapters 51.16, 51.20, 51.32, and 51.48 RCW.

51.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 23 § 51.98.010.]

51.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 23 § 51.98.020.]

51.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1961 c 23 § 51.98.030.]

51.98.040 Repeals and saving. See 1961 c 23 § 51.98.040.

51.98.050 Emergency—1961 c 23. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 23 § 51.98.050.]

51.98.060 Effective dates—1971 ex.s. c 289. The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1971: PROVIDED, That RCW 51.08.070 as amended by section 1 of this 1971 amendatory act, RCW 51.12.010 as amended in section 2 of this 1971 amendatory act, RCW 51.12.020 as amended in section 3 of this 1971 amendatory act and RCW 51.16.110 as amended in section 4 of this 1971 amendatory act shall take effect and become operative without any further action of the legislature on January 1, 1972. [1971 ex.s. c 289 § 90.]

51.98.070 Severability—1971 ex.s. c 289. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090. [1971 ex.s. c 289 § 91.]

51.98.080 Severability—1972 ex.s. c 43. If any provision of this 1972 amendatory act, or its application to any per-

son or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1972 ex.s. c 43 § 38.]

Title 52

FIRE PROTECTION DISTRICTS

Chapters

- 52.02 Formation.**
- 52.04 Annexation.**
- 52.06 Merger.**
- 52.08 Withdrawal.**
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Annexation of district territory to cities and towns: Chapter 35.13 RCW.

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Credit card use by local governments: RCW 43.09.2855.

Fire department vehicles; lighting, plates: RCW 46.37.184 through 46.37.188.

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Firefighters' relief and pensions: Chapters 41.16, 41.18, and 41.24 RCW.

Forest protection: Chapter 76.04 RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.

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Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Retirement—Law enforcement officers' and firefighters' retirement system: Chapter 41.26 RCW.

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Chapter 52.02 RCW

FORMATION

Sections

- 52.02.001 Actions subject to review by boundary review board.
- 52.02.020 Districts authorized—Health clinic services.
- 52.02.030 Petition—Certification.
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- 52.02.040 Petition—Public hearing.
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- 52.02.080 Election.
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(2008 Ed.)

52.02.001 Actions subject to review by boundary review board. Actions taken under chapter 52.02 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 41.]

52.02.020 Districts authorized—Health clinic services. (1) Fire protection districts for the provision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property in areas outside of cities and towns, except where the cities and towns have been annexed into a fire protection district or where the district is continuing service pursuant to RCW 35.02.202, are authorized to be established as provided in this title.

(2) In addition to other services authorized under this section, fire protection districts that share a common border with Canada and are surrounded on three sides by water or are bounded on the north by Bremerton, on the west by Mason county, on the south by Pierce county, and on the east by the Puget Sound, may also establish or participate in the provision of health clinic services. [2005 c 281 § 1; 2003 c 309 § 1; 1991 c 360 § 10; 1984 c 230 § 1; 1979 ex.s. c 179 § 5; 1959 c 237 § 1; 1947 c 254 § 1; 1945 c 162 § 1; 1943 c 121 § 1; 1941 c 70 § 1; 1939 c 34 § 1; Rem. Supp. 5654-101. Formerly RCW 52.04.020.]

Construction—Severability—1939 c 34: "The provisions of this act and proceedings thereunder shall be liberally construed with a view to effect their objects. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid or unconstitutional." [1939 c 34 § 51.]

Validating—Saving—1939 c 34: "Any petition heretofore drawn, signed and filed with the county auditor in compliance with the provisions of section 1 to section 6, inclusive, of the Laws of 1933, Extraordinary Session, shall be valid and the various steps required by this act for the creation of a fire-protection district may be continued, if the further steps to be taken are begun within ninety (90) days after the taking effect of this act [March 1, 1939], and it shall not be necessary to prepare, sign and file with the county auditor a new petition, and any district so created shall not be invalid by reason of the failure to draw, sign and file a new petition under the provisions of this act." [1939 c 34 § 49.]

52.02.030 Petition—Certification. (1) For the purpose of the formation of a fire protection district, a petition designating the boundaries of the proposed district, by metes and bounds, or by describing the lands to be included in the proposed district by United States townships, ranges and legal subdivisions, signed by not less than ten percent of the registered voters who reside within the boundaries of the proposed district who voted in the last general municipal election, and setting forth the object for the creation of the proposed district and alleging that the establishment of the proposed district will be conducive to the public safety, welfare, and convenience, and will be a benefit to the property included in the proposed district, shall be filed with the county auditor of the county in which all, or the largest portion of, the proposed

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district is located, accompanied by an obligation signed by two or more petitioners, agreeing to pay the cost of the publication of the notice required by this title. The organization of any fire protection district previously formed is hereby approved and confirmed as a legally organized fire protection district in the state of Washington.

(2) The county auditor shall, within thirty days from the date of filing the petition, examine the signatures and certify to the sufficiency or insufficiency of the signatures. If the proposed fire protection district is located in more than one county, the auditor of the county in which the largest portion of the proposed fire protection district is located shall be the lead auditor and shall transmit a copy of the petition to the auditor or auditors of the other county or counties within which the proposed fire protection district is located. Each of these other auditors shall certify to the lead auditor both the total number of registered voters residing in that portion of the proposed fire protection district that is located in the county and the number of valid signatures of such voters who have signed the petition. The lead auditor shall certify the sufficiency or insufficiency of the signatures. The books and records of the auditor shall be prima facie evidence of the truth of the certificate. No person having signed the petition is allowed to withdraw his or her name after the filing of the petition with the county auditor.

(3) If the petition is found to contain a sufficient number of signatures of registered voters residing within the proposed district, the county auditor shall transmit the petition, together with the auditor's certificate of sufficiency, to the county legislative authority or authorities of the county or counties in which the proposed fire protection district is located. [1990 c 259 § 12; 1989 c 63 § 1; 1984 c 230 § 2; 1963 ex.s. c 13 § 1; 1947 c 254 § 2; 1939 c 34 § 2; Rem. Supp. 1947 § 5654-102. Prior: 1933 c 60 § 2. Formerly RCW 52.04.030.]

52.02.035 Petition—Notice of sufficiency. The county auditor who certifies the sufficiency of the petition shall notify the person or persons who submitted the petition of its sufficiency or insufficiency within five days of when the determination of sufficiency or insufficiency is made. Notice shall be by certified mail and additionally may be made by telephone. If a boundary review board exists in the county or counties in which the proposed fire protection district is located and the petition has been certified as being sufficient, the petitioners shall file notice of the proposed incorporation with the boundary review board or boards. [1989 c 63 § 2.]

52.02.040 Petition—Public hearing. (1) A public hearing on the petition shall be held by the county legislative authority of the county in which the proposed fire protection district is located if: (a) No boundary review board exists in the county; (b) jurisdiction by the boundary review board over the proposal has not been invoked; or (c) the boundary review board fails to take action on the proposal over which its jurisdiction has been invoked within the time period that the board must act or a proposal is deemed to have been approved. If such a public hearing is held by the county legislative authority, the hearing shall be held not less than twenty nor more than forty days from the date of receipt of

the petition with the certificate of sufficiency from the county auditor if there is no boundary review board in the county, or not more than one hundred days from when the notice of the proposal was submitted to the boundary review board if the jurisdiction of the boundary review board was not invoked, or not less than forty days after the date that the boundary review board that has had its jurisdiction invoked over the proposal must act if the proposal is deemed to have been approved. The hearing by the county legislative authority may be completed at the scheduled time or may be adjourned from time to time as may be necessary for a determination of the petition, but such adjournment or adjournments shall not extend the time for considering the petition more than twenty days from the date of the initial hearing on the petition.

(2) If the proposed fire protection district is located in more than one county, a public hearing shall be held in each of the counties by the county legislative authority or boundary review board. Joint public hearings may be held by two or more county legislative authorities, or two or more boundary review boards, on the proposal. [1989 c 63 § 3; 1984 c 230 § 3; 1939 c 34 § 3; RRS § 5654-103. Prior: 1933 c 60 § 2. Formerly RCW 52.04.040.]

52.02.050 Public hearing—Notice—Publication and posting. Notice of the public hearing by the county legislative authority on such a proposal shall be published for three consecutive weeks in the official paper of the county prior to the date set for the hearing and shall be posted for not less than fifteen days prior to the date of the hearing in each of three public places within the boundaries of the proposed district. The notices shall contain the time, date, and place of the public hearing. [1989 c 63 § 4; 1984 c 230 § 4; 1939 c 34 § 4; RRS § 5654-104. Prior: 1933 c 60 § 2. Formerly RCW 52.04.050.]

52.02.060 Hearing—Inclusion and exclusion of land. At the time and place of the hearing on the petition or at any adjournment thereof, the county legislative authority shall consider the petition and shall receive evidence as it deems material in favor of or opposed to the formation of the district or to the inclusion or exclusion of any lands. No lands outside of the boundaries of the proposed district as described in the petition may be included within the district without a written petition describing the land, executed by all persons having an interest of record in the lands, and filed with the proceedings on the petition. No land within the boundaries described in the petition, except that land which the county legislative authority finds will receive no benefits from the proposed district, may be excluded from the district. [1984 c 230 § 5; 1947 c 254 § 3; 1939 c 34 § 5; Rem. Supp. 1947 § 5654-105. Prior: 1933 c 60 § 3. Formerly RCW 52.04.060.]

52.02.070 Action on petition—Resolution—Election—District name when located in more than one county. The county legislative authority has the authority to consider the petition and, if it finds that the lands or any portion of the lands described in the petition, and any lands added thereto by petition of those interested, will be benefited and that the formation of the district will be conducive to the public safety, welfare, and convenience, it shall make a find-

ing by resolution; otherwise it shall deny the petition. The county legislative authority shall consider only those areas located within the county when considering the petition. If the county legislative authority approves the petition, it shall designate the name and number of the district, fix the boundaries of the district that are located within the county, and direct that an election be held within the proposed district for the purpose of determining whether the district shall be organized under this title and for the purpose of the election of its first fire commissioners.

Where a proposed fire protection district is located in more than a single county, the fire protection district shall be identified by the name of each county in which the proposed fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. An election on a proposed fire protection district that is located in more than one county shall not be held unless the proposed district has been approved by the county legislative authorities, or boundary review boards, of each county within which the proposed district is located. [1989 c 63 § 5; 1984 c 230 § 6; 1939 c 34 § 6; RRS § 5654-106. Prior: 1933 c 60 § 3. Formerly RCW 52.04.070.]

52.02.080 Election. The election on the formation of the district and to elect the initial fire commissioners shall be conducted by the election officials of the county or counties in which the proposed district is located in accordance with the general election laws of the state. This election shall be held at the next general election date according to RCW 29A.04.321 and 29A.04.330, that occurs after the date of the action by the boundary review board, or county legislative authority or authorities, approving the proposal. [2006 c 344 § 32; 1989 c 63 § 6; 1984 c 230 § 7; 1939 c 34 § 7; RRS § 5654-107. Formerly RCW 52.04.080.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Elections: Title 29A RCW.

52.02.110 Declaration of election results—Resolution. If three-fifths of all the votes cast at the election were cast in favor of the ballot proposition to create the proposed fire protection district, the county legislative authority of the county in which all, or the largest portion of, the proposed district is located shall by resolution declare the territory organized as a fire protection district under the name designated and shall declare the candidate for each fire commissioner position who receives the highest number of votes for that position to be an initial fire commissioner of the district. [1989 c 63 § 7; 1984 c 230 § 10; 1941 c 70 § 2; 1939 c 34 § 10; Rem. Supp. 1941 § 5654-110. Formerly RCW 52.04.110.]

52.02.140 Appeal. Any person or entity having a substantial interest and feeling aggrieved by any finding, determination, or resolution of the county legislative authority in the proceedings for the organization of a fire protection district under this title, may appeal within five days after the action of the county legislative authority to the superior court

of the county, in the same manner as provided by law for appeals from the orders and determinations of the county legislative authority. [1984 c 230 § 13; 1939 c 34 § 13; RRS § 5654-113. Formerly RCW 52.04.140.]

Appeal from board's action: RCW 36.32.330.

52.02.150 Organization conclusive. After the expiration of five days from the approval of the resolution of the county legislative authority declaring the district to be organized, and the filing of the certified copies of the resolution of the county legislative authority with the county auditor and the county assessor, the creation of the district is complete and its legal existence cannot thereafter be questioned by any person by reason of a defect in the proceedings for the organization of the district. [1984 c 230 § 14; 1939 c 34 § 14; RRS § 5654-114. Formerly RCW 52.04.150.]

Chapter 52.04 RCW

ANNEXATION

Sections

52.04.001	Actions subject to review by boundary review board.
52.04.011	Annexation of territory by election method—Procedure—Indebtedness—Election dispensed with, when.
52.04.021	Annexation by petition method—Alternative to election method.
52.04.031	Annexation by petition method—Petition—Signers—Content.
52.04.041	Annexation by petition method—Hearing—Notice.
52.04.051	Annexation by petition method—Resolution providing for annexation.
52.04.056	Withdrawal or reannexation of areas.
52.04.061	Annexation of adjacent city or town—Procedure.
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52.04.091	Additional territory annexed by city to be part of district.
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52.04.121	Annexation of city or town—Transfer of employees—Rights and benefits.
52.04.131	Annexation of city or town—Transfer of employees—Notice—Time limitation.
52.04.141	Annexation of contiguous territory not in same county.
52.04.151	Annexation of territory not in same county—District name.
52.04.161	Newly incorporated city or town deemed annexed by district—Withdrawal.

Merger of part of district with adjacent district: RCW 52.06.090.

52.04.001 Actions subject to review by boundary review board. Actions taken under chapter 52.04 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 42.]

52.04.011 Annexation of territory by election method—Procedure—Indebtedness—Election dispensed with, when. (1) A territory adjacent to a fire protection district and not within the boundaries of a city, town, or other fire protection district may be annexed to the fire protection district by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such territory may be located in a county or counties other than the county or counties within which the fire protection district is located. The petition shall be filed with the fire commissioners of the fire protection district and if the fire commissioners concur in the petition they shall file the petition with the county auditor of the county within which the territory is located. If this territory is located in more than

one county, the original petition shall be filed with the auditor of the county within which the largest portion of the territory is located, who shall be designated as the lead auditor, and a copy shall be filed with the auditor of each other county within which such territory is located. Within thirty days after the date of the filing of the petition the auditor shall examine the signatures on the petition and certify to the sufficiency or insufficiency of the signatures. If this territory is located in more than one county, the auditor of each other county who receives a copy of the petition shall examine the signatures and certify to the lead auditor the number of valid signatures and the number of registered voters residing in that portion of the territory that is located within the county. The lead auditor shall certify the sufficiency or insufficiency of the signatures.

After the county auditor has certified the sufficiency of the petition, the county legislative authority or authorities, or the boundary review board or boards, of the county or counties in which such territory is located shall consider the proposal under the same basis that a proposed incorporation of a fire protection district is considered, with the same authority to act on the proposal as in a proposed incorporation, as provided under chapter 52.02 RCW. If the proposed annexation is approved by the county legislative authority or boundary review board, the board of fire commissioners shall adopt a resolution requesting the county auditor to call a special election, as specified under *RCW 29.13.020, at which the ballot proposition is to be submitted. No annexation shall occur when the territory proposed to be annexed is located in more than one county unless the county legislative authority or boundary review board of each county approves the proposed annexation.

(2) The county legislative authority or authorities of the county or counties within which such territory is located have the authority and duty to determine on an equitable basis, the amount of any obligation which the territory to be annexed to the district shall assume to place the property owners of the existing district on a fair and equitable relationship with the property owners of the territory to be annexed as a result of the benefits of annexing to a district previously supported by the property owners of the existing district. If a boundary review board has had its jurisdiction invoked on the proposal and approves the proposal, the county legislative authority of the county within which such territory is located may exercise the authority granted in this subsection and require such an assumption of indebtedness. This obligation may be paid to the district in yearly benefit charge installments to be fixed by the county legislative authority. This benefit charge shall be collected with the annual tax levies against the property in the annexed territory until fully paid. The amount of the obligation and the plan of payment established by the county legislative authority shall be described in general terms in the notice of election for annexation and shall be described in the ballot proposition on the proposed annexation that is presented to the voters for their approval or rejection. Such benefit charge shall be limited to an amount not to exceed a total of fifty cents per thousand dollars of assessed valuation: PROVIDED, HOWEVER, That the special election on the proposed annexation shall be held only within the boundaries of the territory proposed to be annexed to the fire protection district.

(3) On the entry of the order of the county legislative authority incorporating the territory into the existing fire protection district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district. If the petition is signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and if the board of fire commissioners concur, an election in the territory and a hearing on the petition shall be dispensed with and the county legislative authority shall enter its order incorporating the territory into the existing fire protection district. [1999 c 105 § 1; 1989 c 63 § 8; 1984 c 230 § 22; 1973 1st ex.s. c 195 § 49; 1965 ex.s. c 18 § 1; 1959 c 237 § 3; 1947 c 254 § 5; 1945 c 162 § 2; 1941 c 70 § 3; Rem. Supp. 1947 § 5654-116a. Formerly RCW 52.08.060.]

*Reviser's note: RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

52.04.021 Annexation by petition method—Alternative to election method. The method of annexation provided for in RCW 52.04.031, 52.04.041, and 52.04.051 shall be an alternate method to that specified in RCW 52.04.011. [1984 c 230 § 23; 1965 c 59 § 1. Formerly RCW 52.08.065.]

52.04.031 Annexation by petition method—Petition—Signers—Content. A petition for annexation of an area adjacent to a fire district shall be in writing, addressed to and filed with the board of fire commissioners of the district to which annexation is desired. Such territory may be located in a county or counties other than the county or counties within which the fire protection district is located. It must be signed by the owners, according to the records of the county auditor or auditors, of not less than sixty percent of the area of land included in the annexation petition, shall set forth a legal description of the property and shall be accompanied by a plat which outlines the boundaries of the property to be annexed. The petition shall state the financial obligation, if any, to be assumed by the area to be annexed. [1999 c 105 § 2; 1989 c 63 § 9; 1984 c 230 § 24; 1965 c 59 § 2. Formerly RCW 52.08.066.]

52.04.041 Annexation by petition method—Hearing—Notice. If the petition for annexation filed with the board of commissioners complies with the requirements of law, the board may accept the petition, fix a date for public hearing, and publish notice of the hearing in a newspaper of general circulation in the area proposed to be annexed and also post the notice in three public places within the area proposed for annexation. The notice shall specify the time and place of the hearing and invite interested persons to attend. The expense of publication of the notice shall be paid by the district. [1984 c 230 § 25; 1965 c 59 § 3. Formerly RCW 52.08.067.]

52.04.051 Annexation by petition method—Resolution providing for annexation. After the hearing, the board of fire commissioners shall determine by resolution whether the area shall be annexed. It may annex all or any portion of the proposed area but may not include in the annexation property not described in the petition. The proposed annexation

shall be subject to action by the county legislative authority, as provided under RCW 52.04.011, to the same extent as if the annexation were done under the election method of annexation. If the area proposed to be annexed under this procedure is reduced, the annexation shall occur only if the owners of not less than sixty percent of the remaining area have signed the petition. After adoption of the resolution a copy shall be filed with the county legislative authority or authorities within which the territory is located. [1989 c 63 § 10; 1984 c 230 § 26; 1965 c 59 § 4. Formerly RCW 52.08.068.]

52.04.056 Withdrawal or reannexation of areas. (1)

As provided in this section, a fire protection district may withdraw areas from its boundaries, or reannex areas into the fire protection district that previously had been withdrawn from the fire protection district under this section.

(2) The withdrawal of an area shall be authorized upon:

(a) Adoption of a resolution by the board of fire commissioners requesting the withdrawal and finding that, in the opinion of the board, inclusion of this area within the fire protection district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The authority of an area to be withdrawn from a fire protection district as provided under this section is in addition, and not subject, to the provisions of RCW 52.04.101.

The withdrawal of an area from the boundaries of a fire protection district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the fire protection district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a fire protection district under this section may be reannexed into the fire protection district upon: (a) Adoption of a resolution by the board of fire commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority or authorities of the county or counties within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority or authorities, within a thirty-day period after the adoption of the sec-

ond resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date according to RCW 29A.04.330. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [2006 c 344 § 33; 1989 c 63 § 11; 1987 c 138 § 3.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

52.04.061 Annexation of adjacent city or town—Procedure.

A city or town lying adjacent to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is 100,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated. [1999 c 105 § 3; 1985 c 313 § 1; 1979 ex.s. c 179 § 1. Formerly RCW 52.04.170.]

52.04.071 Annexation of adjacent city or town—Election.

The county legislative authority or authorities shall by resolution call a special election to be held in the city or town and in the fire protection district at the next date according to RCW 29A.04.321, and shall cause notice of the election to be given as provided for in RCW 29A.52.351.

The election on the annexation of the city or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city or town of be annexed to and be a part of fire protection district?"

YES
NO "

If a majority of the persons voting on the proposition in the city or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city or town shall be annexed and shall be a part of the fire protection district. [2006 c 344 § 34; 1984 c 230 § 16; 1979 ex.s. c 179 § 2. Formerly RCW 52.04.180.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Elections: Title 29A RCW.

52.04.081 Annexation of adjacent city or town—Annual tax levies—Limitations. The annual tax levies authorized by chapter 52.16 RCW shall be imposed throughout the fire protection district, including any city or town annexed thereto. Any city or town annexed to a fire protection district is entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by the fire protection district or by a library district under RCW 27.12.390 in the incorporated area: PROVIDED, That the limitations upon regular property taxes imposed by chapter 84.55 RCW apply. [1984 c 230 § 17; 1979 ex.s. c 179 § 4. Formerly RCW 52.04.190.]

52.04.091 Additional territory annexed by city to be part of district. When any city, code city, or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, thereafter, any territory annexed by the city shall also be annexed and be a part of the fire protection district. [1989 c 76 § 1.]

52.04.101 Withdrawal by annexed city or town—Election. The legislative body of such a city or town which has annexed to such a fire protection district, may, by resolution, present to the voters of such city or town a proposition to withdraw from said fire protection district at any general election held at least three years following the annexation to the fire protection district. If the voters approve such a proposition to withdraw from said fire protection district, the city or town shall have a vested right in the capital assets of the district proportionate to the taxes levied within the corporate boundaries of the city or town and utilized by the fire district to acquire such assets. [1979 ex.s. c 179 § 3. Formerly RCW 52.04.200.]

52.04.111 Annexation of city or town—Transfer of employees. When any city, code city or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, any employee of the fire department of such city, code city or town who (1) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire protection district (2) will, as a direct consequence of annexation, be separated from the employ of the city, code city or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer his employment to the fire protection district as provided in this section and RCW 52.04.121 and 52.04.131.

For purposes of this section and RCW 52.04.121 and 52.04.131, employee means an individual whose employment with a city, code city or town has been terminated because the city, code city or town was annexed by a fire protection district for purposes of fire protection. [1986 c 254 § 10.]

52.04.121 Annexation of city or town—Transfer of employees—Rights and benefits. (1) An eligible employee

may transfer into the fire protection district civil service system, if any, or if none, then may request transfer of employment under this section by filing a written request with the board of fire commissioners of the fire protection district and by giving written notice to the legislative authority of the city, code city, or town. Upon receipt of such request by the board of fire commissioners the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the fire protection district in the position filled, but if the transferring employee has already completed a probationary period as a firefighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the fire protection district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have all the rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district from the beginning of employment with the city, code city, or town fire department: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The city, code city, or town shall, upon receipt of such notice, transmit to the board of fire commissioners a record of the employee's service with the city, code city, or town which shall be credited to such employee as a part of the period of employment in the fire protection district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the fire protection district as the district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.04.111 and 52.04.131 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire protection district when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. [1994 c 73 § 4; 1986 c 254 § 11.]

Effective date—1994 c 73: See note following RCW 35.10.365.

52.04.131 Annexation of city or town—Transfer of employees—Notice—Time limitation. When a city, code city or town is annexed to a fire protection district and as a

result any employee is laid off who is eligible to transfer to the fire protection district pursuant to this section and RCW 52.04.111 and 52.04.121, the city, code city or town shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the fire protection district. [1986 c 254 § 12.]

52.04.141 Annexation of contiguous territory not in same county. Any attempted annexation in 1987 and thereafter by a fire protection district of contiguous territory, that is located in a county other than the county in which the fire protection district was located, is validated where the annexation would have occurred if the territory had been located in the same county as the fire protection district. The effective date of such annexations occurring in 1987 shall be February 1, 1988, for purposes of establishing the boundaries of taxing districts for purposes of imposing property taxes as provided in RCW 84.09.030.

Any reference to a county official of the county in which a fire protection district is located or proposed to be located shall be deemed to refer to the appropriate county official of each county in which the fire protection district is located or proposed to be located. [1988 c 274 § 12.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

52.04.151 Annexation of territory not in same county—District name. Any fire protection district located in a single county that annexes territory in another county shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. [1989 c 63 § 12.]

52.04.161 Newly incorporated city or town deemed annexed by district—Withdrawal. If the area of a newly incorporated city or town is located in one or more fire protection districts, the city or town is deemed to have been annexed by the fire protection district or districts effective immediately on the city's or town's official date of incorporation, unless the city or town council adopts a resolution during the interim transition period precluding the annexation of the newly incorporated city or town by the fire protection district or districts. The newly incorporated city or town shall remain annexed to the fire protection district or districts for the remainder of the year of the city's or town's official date of incorporation, or through the following year if such extension is approved by resolution adopted by the city or town council and by the board or boards of fire commissioners, and shall be withdrawn from the fire protection district or districts at the end of this period, unless a ballot proposition is adopted by the voters providing for annexation of the city or town to one fire protection district or providing for the fire protection district or districts to annex only that area of the city or town located within the district. Such election shall be held pursuant to RCW 52.04.071 where possible, provided that in annexations to more than one fire protection district, the qualified elector shall reside within the boundaries of the appro-

priate fire protection district or in that area of the city located within the district.

If the city or town is withdrawn from the fire protection district or districts, the maximum rate of the first property tax levy that is imposed by the city or town after the withdrawal is calculated as if the city or town never had been annexed by the fire protection district or districts. [2003 c 253 § 1; 1993 c 262 § 1.]

Chapter 52.06 RCW MERGER

Sections

52.06.001	Actions subject to review by boundary review board.
52.06.010	Merger of districts authorized—Review.
52.06.020	Petition—Contents.
52.06.030	Action on petition—Special election.
52.06.050	Vote required—Status after favorable vote.
52.06.060	Merger by petition.
52.06.070	Obligations of merged districts.
52.06.080	Delivery of property and funds.
52.06.085	Board membership upon merger of districts—Subsequent boards—Creation of commissioner districts.
52.06.090	Merger of part of district with adjacent district.
52.06.100	Merger of part of district with adjacent district—When election unnecessary.
52.06.110	Transfer of employees.
52.06.120	Transfer of employees—Rights and benefits.
52.06.130	Transfer of employees—Notice—Time limitation.
52.06.140	Merger of districts located in different counties—District name.
52.06.150	Merger of districts located in same county—District name.

52.06.001 Actions subject to review by boundary review board. Actions taken under chapter 52.06 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 43.]

52.06.010 Merger of districts authorized—Review. A fire protection district may merge with another adjacent fire protection district, on such terms and conditions as they agree upon, in the manner provided in this title. The fire protection districts may be located in different counties. The district desiring to merge with another district, or the district from which it is proposed that a portion of the district be merged with another district, shall be called the "merging district." The district into which the merger is to be made shall be called the "merger district." The merger of any districts under chapter 52.06 RCW is subject to potential review by the boundary review board or boards of the county in which the merging district, or the portion of the merging district that is proposed to be merged with another district, is located. [1989 c 63 § 13; 1984 c 230 § 57; 1947 c 254 § 12; Rem. Supp. 1947 § 5654-151a. Formerly RCW 52.24.010.]

52.06.020 Petition—Contents. To effect such a merger, a petition to merge shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition on their own initiative, and they shall file a petition when it is signed by ten percent of the registered voters resident in the merging district who voted in the last general municipal election and presented to the board of commissioners. The petition shall state the reasons for the merger, state the terms and conditions under which the merger is proposed,

and request the merger. [1990 c 259 § 13; 1984 c 230 § 58; 1947 c 254 § 13; Rem. Supp. 1947 § 5654-151b. Formerly RCW 52.24.020.]

52.06.030 Action on petition—Special election. The board of the merger district may, by resolution, reject or approve the petition as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution to the merging district.

If the petition is approved as presented or as modified, the board of the merging district shall send an elector-signed petition, if there is one, to the auditor or auditors of the county or counties in which the merging district is located, who shall within thirty days examine the signatures and certify to the sufficiency or insufficiency of the signatures. If the merging district is located in more than one county, the auditor of the county within which the largest portion of the merging district is located shall be the lead auditor. Each other auditor shall certify to the lead auditor the number of valid signatures and the number of registered voters of the merging district who reside in the county. The lead auditor shall certify as to the sufficiency or insufficiency of the signatures. No signatures may be withdrawn from the petition after the filing. A certificate of sufficiency shall be provided to the board of the merging district, which shall adopt a resolution requesting the county auditor or auditors to call a special election, as provided in *RCW 29.13.020, for the purpose of presenting the question of merging the districts to the voters of the merging district.

If there is no elector-signed petition, the merging district board shall adopt a resolution requesting the county auditor or auditors to call a special election in the merging district, as specified under *RCW 29.13.020, for the purpose of presenting the question of the merger to the electors. [1989 c 63 § 14; 1984 c 230 § 59; 1947 c 254 § 14; Rem. Supp. 1947 § 5654-151c. Formerly RCW 52.24.030.]

***Reviser's note:** RCW 29.13.020 was recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

52.06.050 Vote required—Status after favorable vote. The board of the merging district shall notify the board of the merger district of the results of the election. If a majority of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1995 c 79 § 1; 1947 c 254 § 16; Rem. Supp. 1947 § 5654-151e. Formerly RCW 52.24.050.]

52.06.060 Merger by petition. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary and the auditor, or lead auditor if the merging district is

located in more than a single county, shall return the petition, together with a certificate of sufficiency to the board of the merging district. The boards of the respective districts shall then adopt resolutions declaring the districts merged in the same manner and to the same effect as if the merger had been authorized by an election. [1989 c 63 § 15; 1984 c 230 § 61; 1947 c 254 § 17; Rem. Supp. 1947 § 5654-151f. Formerly RCW 52.24.060.]

52.06.070 Obligations of merged districts. None of the obligations of the merged districts or of a local improvement district located in the merged districts may be affected by the merger and dissolution, and all land liable to be assessed to pay any of the indebtedness shall remain liable to the same extent as if the districts had not been merged and any assessments previously levied against the land shall remain unimpaired and shall be collected in the same manner as if the districts had not merged. The commissioners of the merged district shall have all the powers of the two districts to levy, assess, and cause to be collected all assessments against any land in both districts that may be necessary to pay for the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: PROVIDED, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments previously levied, in accordance with the terms and conditions of the merger, so that the lands in the respective districts bear their fair and proportionate share of the indebtedness. [1984 c 230 § 62; 1947 c 254 § 18; Rem. Supp. 1947 § 5654-151g. Formerly RCW 52.24.070.]

52.06.080 Delivery of property and funds. The commissioners of the merging district shall, upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments previously levied. [1984 c 230 § 63; 1947 c 254 § 19; Rem. Supp. 1947 § 5654-151h. Formerly RCW 52.24.080.]

52.06.085 Board membership upon merger of districts—Subsequent boards—Creation of commissioner districts. (1) Whenever two or more fire protection districts merge, the board of fire commissioners of the merged fire protection district shall consist of all of the fire commissioners of the districts that are merging, including a person who is elected as a fire commissioner of one of the merging districts at that same election that the ballot proposition was approved authorizing the merger, who shall retain the same terms of office they would possess as if the merger had not been approved. The number of members on the board of the merged district shall be reduced to either three or five members as provided in subsections (2) and (3) of this section, depending on whether the district has chosen to eventually have either a three-member or a five-member board under RCW 52.14.020.

(2) The number of members on the board of the merged district shall be reduced by one whenever a fire commissioner resigns from office or a vacancy otherwise occurs on

the board, until the number of remaining members is reduced to the number of members that is chosen for the board eventually to have. The reduction of membership on the board shall not be considered to be a vacancy that is to be filled until the number of remaining members is less than the number of members on the board that is chosen for the board eventually to have.

(3) At the next three district general elections after the merger is approved, the number of fire commissioners for the merged district that are elected shall be as follows, notwithstanding the number of fire commissioners whose terms expire:

(a) In the first election after the merger, only one position shall be filled, whether the new fire protection district be a three-member district or a five-member district.

(b) In each of the two subsequent elections, one position shall be filled if the new fire protection district is a three-member district and two positions shall be filled if the new fire protection district is a five-member district.

Thereafter, the fire commissioners shall be elected in the same manner as prescribed for such fire protection districts of the state.

(4) A ballot proposition to create commissioner districts may be submitted to the voters of the fire protection districts proposed to be merged at the same election the ballot proposition is submitted authorizing the merging of the fire protection districts. The procedure to create commissioner districts shall conform with RCW 52.14.013, except that: (a) Resolutions proposing the creation of commissioner districts must be adopted by unanimous vote of the boards of fire commissioners of each of the fire protection districts that are proposed to be merged; and (b) commissioner districts will be authorized only if the ballot propositions to authorize the merger and to create commissioner districts are both approved. A ballot proposition authorizing the creation of commissioner districts is approved if it is approved by a simple majority vote of the combined voters of all the fire protection districts proposed to be merged. The commissioner districts shall not be drawn until the number of commissioners in the fire protection district has been reduced under subsections (1) through (3) of this section to either three or five commissioners. After this reduction of fire commissioners has occurred the commissioner districts shall be drawn and used for the election of the successor fire commissioners. [1994 c 14 § 1; 1992 c 74 § 1; 1985 c 7 § 118; 1977 ex.s. c 121 § 1; 1971 c 55 § 1. Formerly RCW 52.24.085.]

52.06.090 Merger of part of district with adjacent district. A part of one district may be transferred and merged with an adjacent district if the area can be better served by the merged district. To effect such a merger, a petition, signed by a majority of the commissioners of the merging district or signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district, if signed by electors, or with the commissioners of the merger district if signed by commissioners of the merging district. If the commissioners of the merging district approve the petition, the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district approve the petition, an election shall be called in the area to be merged.

In the event that either board of fire district commissioners does not approve the petition, the petition may be approved by the boundary review board of the county or the county legislative authority of the county in which the area to be merged is situated, and may approve the merger if it decides the area can be better served by a merger. If the part of the merging district that is proposed to merge with the merger district is located in more than one county, the approval must be by the boundary review board or county legislative authority of each county. If there is an affirmative decision, an election shall be called in the area to be merged.

A majority of the votes cast is necessary to approve the transfer. [1989 c 63 § 16; 1984 c 230 § 64; 1965 ex.s. c 18 § 2; 1963 c 42 § 1; 1953 c 176 § 5. Formerly RCW 52.24.090.]

52.06.100 Merger of part of district with adjacent district—When election unnecessary. If three-fifths of the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor or lead auditor shall return the petition, together with a certificate of sufficiency, to the board of the merger district. The board of the merger district shall then adopt a resolution declaring the portion of the district merged in the same manner and to the same effect as if the same had been authorized by an election. [1989 c 63 § 17; 1984 c 230 § 65; 1953 c 176 § 6. Formerly RCW 52.24.100.]

52.06.110 Transfer of employees. When any portion of a fire protection district merges with another fire protection district, any employee of the merging district who (1) was at the time of merger employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the merger district (2) will, as a direct consequence of the merger, be separated from the employ of the merging district, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the merger district as provided in this section and RCW 52.06.120 and 52.06.130.

For purposes of this section and RCW 52.06.120 and 52.06.130, employee means an individual whose employment with a fire protection district has been terminated because the fire protection district merged with another fire protection district for purposes of fire protection. [1986 c 254 § 13.]

52.06.120 Transfer of employees—Rights and benefits. (1) An eligible employee may transfer into the merger district by filing a written request with the board of fire commissioners of the merger district and by giving written notice to the board of fire commissioners of the merging district. Upon receipt of such request by the board of the merger district the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the merger district in the position filled, but if the transferring employee has already completed a probationary period as a firefighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned

duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the merger district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have, all the rights, benefits, and privileges to which he or she would have been entitled to as an employee of the merger district from the beginning of employment with the merging district: PROVIDED, That for purposes of layoffs by the merger fire agency, only the time of service accrued with the merger agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the merging and merger fire agencies and the merging and merger fire agencies. The board of the merging district shall, upon receipt of such notice, transmit to the board of the merger district a record of the employee's service with the merging district which shall be credited to such employee as a part of the period of employment in the merger district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the merger district as the merger district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.06.110 and 52.06.130 shall head the list for employment in order of their seniority, to the end that they shall be the first to be reemployed in the merger district when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the merging and merged fire agencies and the merging and merged fire agencies. [1994 c 73 § 5; 1986 c 254 § 14.]

Effective date—1994 c 73: See note following RCW 35.10.365.

52.06.130 Transfer of employees—Notice—Time limitation. If, as a result of merging of districts any employee is laid off who is eligible to transfer to the merger district under this section and RCW 52.06.110 and 52.06.120, the merging district shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the merger district. [1986 c 254 § 15.]

52.06.140 Merger of districts located in different counties—District name. A merger fire protection district located in a single county, that merged with a merging fire protection district located in another county or counties, shall be identified by the name of each county in which the fire protection district is located, listed alphabetically, followed by a number that is the next highest number available for a fire protection district in the one of these counties that has the greatest number of fire protection districts. [1989 c 63 § 18.]

52.06.150 Merger of districts located in same county—District name. A fire protection district resulting from the merger of two or more fire protection districts located in the same county shall be identified by the name of the county and the number of the merger fire protection district. However, the fire protection district resulting from such a merger shall be identified by the number of the merging district or one of the merging districts if a resolution providing for this number change is adopted by the board of fire commissioners of the district resulting from the merger or if resolutions providing for this number change are adopted by each of the boards of fire commissioners of the districts proposed to be merged. [1992 c 74 § 3.]

Chapter 52.08 RCW WITHDRAWAL

Sections

52.08.001	Actions subject to review by boundary review board.
52.08.011	Withdrawal authorized.
52.08.021	Withdrawal by incorporation of part of district.
52.08.025	City may not be included within district—Exceptions—Withdrawal of city.
52.08.032	Levy for emergency medical care and services.
52.08.035	City withdrawn to determine fire and emergency medical protection methods—Contracts—Joint operations—Sale, lease, etc., of property.
52.08.041	Taxes and assessments unaffected.
52.08.051	Commissioners residing in territory withdrawn—Vacancy created.

Special purpose districts, expenditures to recruit job candidates: RCW 42.24.170.

52.08.001 Actions subject to review by boundary review board. Actions taken under chapter 52.08 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 44.]

52.08.011 Withdrawal authorized. Territory within a fire protection district may be withdrawn from the district in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW. [1999 c 153 § 61; 1984 c 230 § 54; 1955 c 111 § 1. Formerly RCW 52.22.010.]

Part headings not law—1999 c 153: See note following RCW 57.04.050.

Withdrawal or reannexation of areas: RCW 52.04.056.

52.08.021 Withdrawal by incorporation of part of district. The incorporation of any previously unincorporated land lying within a fire protection district shall operate to automatically withdraw such lands from the fire protection district. [1959 c 237 § 5; 1955 c 111 § 2. Formerly RCW 52.22.020.]

52.08.025 City may not be included within district—Exceptions—Withdrawal of city. Effective January 1, 1960, every city or town, or portion thereof, which is situated within the boundaries of a fire protection district shall become automatically removed from such fire protection district, and no fire protection district shall thereafter include any city or town, or portion thereof, within its boundaries

except as provided for in RCW 52.02.020, 52.04.061, 52.04.071, 52.04.081, 52.04.101, and 52.04.161.

However, if the area which incorporates or is annexed includes all of a fire protection district, the fire protection district, for purposes of imposing regular property taxes, shall continue in existence: (1)(a) Until the first day of January in the year in which the initial property tax collections of the newly incorporated city or town will be made, if a resolution is adopted under RCW 52.04.161 precluding annexation of the city or town to the district; (b) until the city or town is withdrawn from the fire protection district, if no such resolution is adopted and no ballot proposition under RCW 52.04.161 is approved; or (c) indefinitely, if such a ballot proposition is approved; or (2) until the first day of January in the year the annexing city or town will collect its property taxes imposed on the newly annexed area. The members of the city or town council or commission shall act as the board of commissioners to impose, receive, and expend these property taxes. [1993 c 262 § 2; 1986 c 234 § 35; 1985 c 7 § 119; 1979 ex.s. c 179 § 6; 1959 c 237 § 6. Formerly RCW 52.22.030.]

52.08.032 Levy for emergency medical care and services. See RCW 84.52.069.

52.08.035 City withdrawn to determine fire and emergency medical protection methods—Contracts—Joint operations—Sale, lease, etc., of property. A city or town encompassing territory withdrawn under chapter 52.08 RCW shall determine the most effective and feasible fire protection and emergency medical protection for the withdrawn territory, or any part thereof, and the legislative authority of the city or town and the commissioners of the fire protection district may, without limitation of any other powers provided by law:

(1) Enter into contracts to the same extent as fire protection districts and cities and towns may enter into contracts under authority of RCW 52.12.031(3), and

(2) Sell, purchase, rent, lease, or exchange property of every nature. [1984 c 230 § 55; 1959 c 237 § 8. Formerly RCW 52.22.040.]

52.08.041 Taxes and assessments unaffected. The provisions of RCW 57.28.110 shall apply to territory withdrawn from a fire protection district under the provision of chapter 52.08 RCW. [1985 c 7 § 120; 1959 c 237 § 7. Formerly RCW 52.22.050.]

52.08.051 Commissioners residing in territory withdrawn—Vacancy created. Fire protection district commissioners residing in territory withdrawn from a fire protection district shall be replaced in the manner provided for the filling of vacancies in RCW 52.14.050. [1984 c 230 § 56; 1959 c 237 § 9. Formerly RCW 52.22.060.]

**Chapter 52.10 RCW
DISSOLUTION**

Sections

- 52.10.001 Actions subject to review by boundary review board.
- 52.10.010 Dissolution—Election method.

(2008 Ed.)

- 52.10.020 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.

52.10.001 Actions subject to review by boundary review board. Actions taken under chapter 52.10 RCW may be subject to potential review by a boundary review board under chapter 36.93 RCW. [1989 c 84 § 45.]

52.10.010 Dissolution—Election method. Fire protection districts may be dissolved by a majority vote of the registered electors of the district at an election conducted by the election officials of the county or counties in which the district is located in accordance with the general election laws of the state. The proceedings for dissolution may be initiated by the adoption of a resolution by the board of commissioners of the district calling for the dissolution. The dissolution of the district shall not cancel outstanding obligations of the district or of a local improvement district within the district, and the county legislative authority or authorities of the county or counties in which the district was located may make annual levies against the lands within the district until the obligations of the districts are paid. When the obligations are fully paid, all moneys in district funds and all collections of unpaid district taxes shall be transferred to the expense fund of the county. Where the fire protection district that was dissolved was located in more than one county, the amount of money transferred to the expense fund of each county shall be in direct proportion to the amount of assessed valuation of the fire protection district that was located in each county at the time of its dissolution. [1989 c 63 § 19; 1984 c 230 § 15; 1939 c 34 § 46; RRS § 5654-146. Formerly RCW 52.04.155.]

Dissolution of special purpose districts: Chapters 36.96 and 53.48 RCW.

52.10.020 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

**Chapter 52.12 RCW
POWERS—BURNING PERMITS**

Sections

- 52.12.011 Status.
- 52.12.021 General powers.
- 52.12.031 Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations.
- 52.12.036 Community revitalization financing—Public improvements.
- 52.12.041 Eminent domain.
- 52.12.051 Condemnation proceedings.
- 52.12.061 Contracts, promissory notes, deeds of trust, and mortgages for purchase of property—Limit on indebtedness—Election, when.
- 52.12.071 Liability insurance for officials and employees.
- 52.12.101 Burning permits authorized—Resolution.
- 52.12.102 Burning permits—Resolution to be published and posted.
- 52.12.103 Burning permits—Issuance—Contents.
- 52.12.104 Burning permits—Duties of permittee.
- 52.12.105 Burning permits—Penalty.
- 52.12.106 Burning permits—Penalty.
- 52.12.108 Burning permits—Liability for fire suppression costs.
- 52.12.111 Use of equipment and personnel beyond district boundaries—Governmental function.
- 52.12.121 Use of equipment and personnel outside district—Duty of firefighter deemed duty for district—Benefits not impaired.
- 52.12.125 Reimbursement for fire suppression costs on state lands—Limitations.

- 52.12.131 Emergency medical services—Establishment and collection of charges.
 52.12.135 Interlocal agreements for ambulance services.
 52.12.140 Hazardous materials response teams.
 52.12.150 Setting fires for firefighter instruction—When burning permit not required—Notice, inspection required.

Association of fire commissioners to furnish information to legislature and governor: RCW 44.04.170.

52.12.011 Status. Fire protection districts created under this title are political subdivisions of the state and shall be held to be municipal corporations within the laws and Constitution of the state of Washington. A fire protection district shall constitute a body corporate and possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by law. [1984 c 230 § 18; 1967 c 164 § 5; 1939 c 34 § 15; RRS § 5654-115. Formerly RCW 52.08.010.]

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

Tortious conduct of political subdivisions, municipal corporations, and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

52.12.021 General powers. Fire protection districts have full authority to carry out their purposes and to that end may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property, or any interest therein, to enter into and to perform any and all necessary contracts, to appoint and employ the necessary officers, agents, and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of assessments and special taxes in the manner and subject to the limitations provided in this title against the lands within the district for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this title. [1984 c 230 § 19; 1939 c 34 § 16; RRS § 5654-116. Formerly RCW 52.08.020.]

52.12.031 Specific powers—Acquisition or lease of property or equipment—Contracts—Association of districts—Group life insurance—Building inspections—Fire investigations. Any fire protection district organized under this title may:

(1) Lease, acquire, own, maintain, operate, and provide fire and emergency medical apparatus and all other necessary or proper facilities, machinery, and equipment for the prevention and suppression of fires, the providing of emergency medical services and the protection of life and property;

(2) Lease, acquire, own, maintain, and operate real property, improvements, and fixtures for housing, repairing, and maintaining the apparatus, facilities, machinery, and equipment described in subsection (1) of this section;

(3) Contract with any governmental entity under chapter 39.34 RCW or private person or entity to consolidate, provide, or cooperate for fire prevention protection, fire suppression, investigation, and emergency medical purposes. In so contracting, the district or governmental entity is deemed for all purposes to be acting within its governmental capacity. This contracting authority includes the furnishing of fire prevention, fire suppression, investigation, emergency medical services, facilities, and equipment to or by the district, governmental entity, or private person or entity;

(4) Encourage uniformity and coordination of fire protection district operations. The fire commissioners of fire protection districts may form an association to secure information of value in suppressing and preventing fires and other district purposes, to hold and attend meetings, and to promote more economical and efficient operation of the associated fire protection districts. The commissioners of fire protection districts in the association shall adopt articles of association or articles of incorporation for a nonprofit corporation, select a chairman, secretary, and other officers as they may determine, and may employ and discharge agents and employees as the officers deem convenient to carry out the purposes of the association. The expenses of the association may be paid from funds paid into the association by fire protection districts: PROVIDED, That the aggregate contributions made to the association by a district in a calendar year shall not exceed two and one-half cents per thousand dollars of assessed valuation;

(5) Enter into contracts to provide group life insurance for the benefit of the personnel of the fire districts;

(6) Perform building and property inspections that the district deems necessary to provide fire prevention services and pre-fire planning within the district and any area that the district serves by contract in accordance with RCW 19.27.110: PROVIDED, That codes used by the district for building and property inspections shall be limited to the applicable codes adopted by the state, county, city, or town that has jurisdiction over the area in which the property is located. A copy of inspection reports prepared by the district shall be furnished by the district to the appropriate state, county, city, or town that has jurisdiction over the area in which the property is located: PROVIDED, That nothing in this subsection shall be construed to grant code enforcement authority to a district. This subsection shall not be construed as imposing liability on any governmental jurisdiction;

(7) Determine the origin and cause of fires occurring within the district and any area the district serves by contract. In exercising the authority conferred by this subsection, the fire protection district and its authorized representatives shall comply with the provisions of *RCW 48.48.060;

(8) Perform acts consistent with this title and not otherwise prohibited by law. [1995 c 369 § 65; 1986 c 311 § 1; 1984 c 238 § 1; 1973 1st ex.s. c 195 § 48; 1963 c 101 § 1; 1959 c 237 § 2; 1947 c 254 § 6; 1941 c 70 § 4; 1939 c 34 § 20; Rem. Supp. 1947 § 5654-120. Formerly RCW 52.08.030.]

*Reviser's note: RCW 48.48.060 was recodified as RCW 43.44.050 pursuant to 2006 c 25 § 13.

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

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Use of city fire apparatus beyond city limits: RCW 35.84.040.

52.12.036 Community revitalization financing—Public improvements. In addition to other authority that a fire protection district possesses, a fire protection district may provide any public improvement as defined under RCW 39.89.020, but this additional authority is limited to participating in the financing of the public improvements as provided under RCW 39.89.050.

This section does not limit the authority of a fire protection district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 17.]

Severability—2001 c 212: See RCW 39.89.902.

52.12.041 Eminent domain. The taking and damaging of property or property rights by a fire protection district to carry out the purposes of its organization are declared to be for a public use. A district organized under this title may exercise the power of eminent domain to acquire property or property rights either inside or outside the district, for the use of the district. A district exercising the power of eminent domain shall proceed in the name of the district in the manner provided by law for the appropriation of real property or of real property rights by private corporations. [1984 c 230 § 20; 1939 c 34 § 18; RRS § 5654-118. Formerly RCW 52.08.040.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9); chapter 8.20 RCW.

52.12.051 Condemnation proceedings. A fire protection district may unite in a single action, proceedings to condemn property which is held by separate owners. Two or more condemnation suits instituted separately may also, in the discretion of the court, upon a motion of an interested party, be consolidated into a single action. In these cases, the jury shall render separate verdicts for each tract of land in different ownership. A finding of the jury or decree of the court as to damages shall not in any manner be construed to abridge or destroy the right of the district to levy and collect taxes for district purposes against the uncondemned land situated within the district. The title acquired by a fire protection district in condemnation proceedings shall be the fee simple title or a lesser estate as designated in the decree of appropriation. [1984 c 230 § 21; 1939 c 34 § 19; RRS § 5654-119. Formerly RCW 52.08.050.]

52.12.061 Contracts, promissory notes, deeds of trust, and mortgages for purchase of property—Limit on indebtedness—Election, when. Fire protection districts may execute executory conditional sales contracts, installment promissory notes secured by a deed of trust, or mortgages with a governmental entity or a private party for the purchase or sale of any real or personal property, or property rights: PROVIDED, That the purchase price specified in a contract or promissory note to purchase property does not result in a total indebtedness in excess of three-eighths of one percent of the value of the taxable property in the fire protection district: PROVIDED FURTHER, That if a proposed purchase contract or promissory note would result in a total indebtedness in excess of that amount, a proposition to determine whether that contract or promissory note may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters: AND PROVIDED FURTHER, That a fire protection district may jointly execute contracts, promissory notes, deeds of trust, or mortgages authorized by this section with any governmental entity.

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The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1984 c 230 § 27; 1970 ex.s. c 42 § 29; 1965 c 21 § 1. Formerly RCW 52.08.080.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

52.12.071 Liability insurance for officials and employees. The board of commissioners of each fire district may purchase liability insurance with limits it deems reasonable for the purpose of protecting its officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1984 c 230 § 28; 1973 c 125 § 3. Formerly RCW 52.08.090.]

52.12.101 Burning permits authorized—Resolution. In any district in which the commissioners have adopted and published a resolution assuming the authority of issuing burning permits, a person, firm, or corporation shall not start, permit, or cause to be started or permitted an open fire on any land within a fire protection district, without a written permit issued by the district under terms and conditions as the district establishes by resolution. A fire district shall not assume authority to issue a burning permit for a fire on any forest or cut over land, except as otherwise provided by law. A fire district shall have the authority to revoke a permit issued by the district for the protection of life or property or to prevent or abate the nuisances caused by such burning. [1987 c 21 § 1; 1984 c 229 § 1; 1947 c 254 § 20; Rem. Supp. 1947 § 5654-151i. Formerly RCW 52.28.010.]

52.12.102 Burning permits—Resolution to be published and posted. The commissioners of a district may adopt a resolution authorizing the district to issue fire permits and establishing the terms and conditions under which the permit shall be issued. Notice of the resolution shall be published once a week for three consecutive weeks in a newspaper published in the county and of general circulation in the district and post it in three public places in the district. The affidavit of publication by the publisher and of the clerk of the district of the posting shall be filed in the records of the district. Ten days after the posting and the last publication, the resolution shall take effect. [1984 c 229 § 2; 1947 c 254 § 21; Rem. Supp. 1947 § 5654-151j. Formerly RCW 52.28.020.]

52.12.103 Burning permits—Issuance—Contents. Burning permits may be issued upon request, by the persons authorized by the commissioners when the issuing officer deems it appropriate. The permit shall designate the premises and the exact location where the fire may be started and permitted, the nature of the material to be burned, the time limit of the permit, and may contain any special requirements and conditions pertaining to the fire and the control of the fire as the issuing officer deems appropriate. [1984 c 229 § 3; 1947 c 254 § 22; Rem. Supp. 1947 § 5654-151k. Formerly RCW 52.28.030.]

52.12.104 Burning permits—Duties of permittee. The permittee shall comply with the terms and conditions of

the permit, and shall maintain a responsible person in charge of the fire at all times who shall maintain the fire under control, not permit it to spread to other property or structures, and extinguish the fire when the authorized burning is completed or when directed by district personnel. The possession of a permit shall not relieve the permittee from liability for damages resulting from the fire for which the permittee may otherwise be liable. [1984 c 229 § 4; 1947 c 254 § 23; Rem. Supp. 1947 § 5654-1511. Formerly RCW 52.28.040.]

Crimes relating to fires: Chapter 9A.48 RCW.

Liability for fire damage: RCW 4.24.040, 4.24.050, 4.24.060, 76.04.495, 76.04.750.

52.12.105 Burning permits—Penalty. The violation of or failure to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, is a misdemeanor. [1947 c 254 § 24; Rem. Supp. 1947 § 5654-1511m. Formerly RCW 52.28.050.]

52.12.106 Burning permits—Penalty. The violation of or failure to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, is a misdemeanor. [1984 c 229 § 5.]

52.12.108 Burning permits—Liability for fire suppression costs. If a person starts a fire without a permit or if a permit holder fails to comply with any provision of this chapter pertaining to fire permits, or of any term or condition of the permit, and as a result of that failure the district is required to suppress a fire, the person or permit holder is liable to the district to reimburse it for the costs of the fire suppression services. [1984 c 229 § 6.]

52.12.111 Use of equipment and personnel beyond district boundaries—Governmental function. A fire protection district may permit, under conditions prescribed by the fire commissioners of the district, the use of its equipment and personnel beyond the boundaries of the district. Any use made of the equipment or personnel under this section shall be deemed an exercise of a governmental function of the district. [1984 c 230 § 77; 1980 c 43 § 1; 1969 c 88 § 2. Formerly RCW 52.36.025.]

52.12.121 Use of equipment and personnel outside district—Duty of firefighter deemed duty for district—Benefits not impaired. If a firefighter engages in any duty outside the boundaries of the district the duty shall be considered as part of the duty as firefighter for the district, and a firefighter who is injured while engaged in duties outside the boundaries of the district shall be entitled to the same benefits that the firefighter or the firefighter's dependents would be entitled to receive if the injury occurred within the district. [1984 c 230 § 78; 1969 c 88 § 3. Formerly RCW 52.36.027.]

52.12.125 Reimbursement for fire suppression costs on state lands—Limitations. Fire protection districts in proximity to land protected by a state agency are encouraged to enter into mutually beneficial contracts covering reciprocal response arrangements. In the absence of such a contractual agreement, a fire protection district that takes immediate

action on such land outside of its jurisdictional boundaries, if such immediate response could prevent the spread of the fire onto lands protected by the district, shall be reimbursed by the state agency for its reasonable fire suppression costs that are incurred until the responsible agency takes charge, but in no event shall the costs exceed a twenty-four hour period. A fire protection district suppressing a fire on such lands shall as soon as practicable notify the responsible agency. The state agency shall not be responsible to pay such reimbursement if it is not so notified.

Reasonable efforts shall be taken to protect evidence of the fire's origin. The state agency shall not be responsible to pay such reimbursement if reasonable efforts are not taken to protect such evidence.

Requests for reimbursement shall be submitted within thirty days of the complete suppression of the fire. Reasonable costs submitted for reimbursement include all salaries and expenses of personnel, equipment, and supplies and shall take into consideration the amount of compensation, if any, paid by the fire protection district to its firefighters. [1986 c 311 § 2.]

52.12.131 Emergency medical services—Establishment and collection of charges. Any fire protection district which provides emergency medical services, may by resolution establish and collect reasonable charges for these services in order to reimburse the district for its costs of providing emergency medical services. [1984 c 230 § 81; 1975 c 64 § 1. Formerly RCW 52.36.090.]

52.12.135 Interlocal agreements for ambulance services. (1) A rural fire protection district organized under this title may enter into a contract pursuant to chapter 39.34 RCW with a contiguous city for the furnishing by the city to the fire protection district or districts of emergency medical services in the form of ambulance services, provided that the contract may not provide for the establishment of any ambulance service that would compete with any existing, private ambulance service. The fire protection district or districts may impose a monthly utility service charge on each developed residential property located in the portion of the fire protection district or districts served pursuant to the contract in an amount equal to the amount imposed by the city on similar city developed residential property. Developed residential property includes single-family residences, apartments, manufactured homes, mobile homes, and trailers available for occupancy for a continuous period greater than thirty days. A fire protection district or districts may contract with the contiguous city or with any other governmental entity pursuant to chapter 39.34 RCW for the billing and collection services related to the monthly utility service charge for ambulance service. A city providing ambulance services to a fire protection district or districts under a contract entered into pursuant to this subsection may charge individuals actually using the ambulance services reasonable rates and charges for the ambulance services.

(2) For purposes of this section, "rural" means a population density within the fire protection district or districts as a whole of ten or fewer persons per square mile. [2003 c 209 § 1.]

52.12.140 Hazardous materials response teams. Fire protection districts may cooperate and participate with counties, cities, or towns in providing hazardous materials response teams under the county, city, or town emergency management plan provided for in RCW 38.52.070. The participation and cooperation shall be pursuant to an agreement or contract entered into under chapter 39.34 RCW. [1986 c 278 § 49.]

Severability—1986 c 278: See note following RCW 36.01.010.

52.12.150 Setting fires for firefighter instruction—When burning permit not required—Notice, inspection required. Without obtaining a permit issued under RCW 70.94.650, fire protection district firefighters may set fire to structures located outside of urban growth areas in counties that plan under the requirements of RCW 36.70A.040, and outside of any city with a population of ten thousand or more in all other counties, for instruction in methods of fire fighting, if all of the following conditions are met:

(1) In consideration of prevailing air patterns, the fire is unlikely to cause air pollution in areas of sensitivity downwind of the proposed fire location;

(2) The fire is not located in an area that is declared to be in an air pollution episode or any stage of an impaired air quality as defined in RCW 70.94.715 and 70.94.473;

(3) Nuisance laws are applicable to the fire, including nuisances related to the unreasonable interference with the enjoyment of life and property and the depositing of particulate matter or ash on other property;

(4) Notice of the fire is provided to the owners of property adjoining the property on which the fire will occur, to other persons who potentially will be impacted by the fire, and to additional persons in a broader manner as specifically requested by the local air pollution control agency or the department of ecology;

(5) Each structure that is proposed to be set on fire must be identified specifically as a structure to be set on fire. Each other structure on the same parcel of property that is not proposed to be set on fire must be identified specifically as a structure not to be set on fire; and

(6) Before setting a structure on fire, a good-faith inspection is conducted by the fire agency or fire protection district conducting the training fire to determine if materials containing asbestos are present, the inspection is documented in writing and forwarded to the appropriate local air authority or the department of ecology if there is no local air authority, and asbestos that is found is removed as required by state and federal laws. [2000 c 199 § 1; 1994 c 28 § 1.]

52.14.060	Commissioner's terms.
52.14.070	Oath of office.
52.14.080	Chairman—Secretary—Duties and oath.
52.14.090	Office—Meetings.
52.14.100	Meetings—Powers and duties of board.
52.14.110	Purchases and public works—Competitive bids required—Exceptions.
52.14.120	Purchases and public works—Competitive bidding procedures.
52.14.130	Low bidder claiming error—Prohibition on later bid for same project.

52.14.010 Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer firefighter. The affairs of the district shall be managed by a board of fire commissioners composed of three registered voters residing in the district except as provided in RCW 52.14.015 and 52.14.020. Each member shall each receive ninety dollars per day or portion thereof, not to exceed eight thousand six hundred forty dollars per year, for time spent in actual attendance at official meetings of the board or in performance of other services or duties on behalf of the district.

In addition, they shall receive necessary expenses incurred in attending meetings of the board or when otherwise engaged in district business, and shall be entitled to receive the same insurance available to all firefighters of the district: PROVIDED, That the premiums for such insurance, except liability insurance, shall be paid by the individual commissioners who elect to receive it.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The board shall fix the compensation to be paid the secretary and all other agents and employees of the district. The board may, by resolution adopted by unanimous vote, authorize any of its members to serve as volunteer firefighters without compensation. A commissioner actually serving as a volunteer firefighter may enjoy the rights and benefits of a volunteer firefighter.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem

Chapter 52.14 RCW COMMISSIONERS

Sections

52.14.010	Number—Qualifications—Insurance—Compensation and expenses—Service as volunteer firefighter.
52.14.013	Commissioner districts—Creation—Boundaries.
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52.14.017	Decrease from five to three commissioners—Election—Disposition of commissioner districts.
52.14.020	Number in district having full-time, fully-paid personnel—Terms of first appointees.
52.14.030	Polling places.
52.14.050	Vacancies.

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compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2007 c 469 § 2; 1998 c 121 § 2; 1994 c 223 § 48; 1985 c 330 § 2; 1980 c 27 § 1; 1979 ex.s. c 126 § 31; 1973 c 86 § 1; 1971 ex.s. c 242 § 2; 1969 ex.s. c 67 § 1; 1967 c 51 § 1; 1965 c 112 § 1; 1959 c 237 § 4; 1957 c 238 § 1; 1945 c 162 § 3; 1939 c 34 § 22; Rem. Supp. 1945 § 5654-122. Formerly RCW 52.12.010.]

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

Terms of commissioners: RCW 52.14.060.

52.14.013 Commissioner districts—Creation—Boundaries. The board of fire commissioners of a fire protection district may adopt a resolution by unanimous vote causing a ballot proposition to be submitted to voters of the district authorizing the creation of commissioner districts. The board of fire commissioners shall create commissioner districts if the ballot proposition authorizing the creation of commissioner districts is approved by a simple majority vote of the voters of the fire protection district voting on the proposition. Three commissioner districts shall be created for a fire protection district with three commissioners, and five commissioner districts shall be created for a fire protection district with five commissioners. No two commissioners may reside in the same commissioner district.

No change in the boundaries of any commissioner district shall be made within one hundred twenty days next before the date of a general district election, nor within twenty months after the commissioner districts have been established or altered. However, if a boundary change results in one commissioner district being represented by two or more commissioners, those commissioners having the shortest unexpired terms shall be assigned by the commission to commissioner districts where there is a vacancy, and the commissioners so assigned shall be deemed to be residents of the commissioner districts to which they are assigned for purposes of determining whether those positions are vacant.

The population of each commissioner district shall include approximately equal population. Commissioner districts shall be redrawn as provided in *chapter 29.70 RCW. Commissioner districts shall be used as follows: (1) Only a registered voter who resides in a commissioner district may be a candidate for, or serve as, a commissioner of the commissioner district; and (2) only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire fire protection district may vote at a general election to elect a person as a commissioner of the commissioner district.

When a board of fire commissioners that has commissioner districts has been increased to five members under RCW 52.14.015, the board of fire commissioners shall divide the fire protection district into five commissioner districts before it appoints the two additional fire commissioners. The two additional fire commissioners who are appointed shall reside in separate commissioner districts in which no other fire commissioner resides. [1994 c 223 § 49; 1992 c 74 § 2.]

*Reviser’s note: Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Creation of commissioner districts upon merger: RCW 52.06.085.

52.14.015 Increase from three to five commissioners—Election. In the event a three member board of commissioners of any fire protection district determines by resolution that it would be in the best interest of the district to increase the number of commissioners from three to five, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such an increase in the number of commissioners of the district, the board shall submit a resolution to the county legislative authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of county fire protection district no. . . . be increased from three members to five members?

Yes
No

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be increased to five members. The two additional members shall be appointed in the same manner as provided in RCW 52.14.020. [1994 c 223 § 50; 1990 c 259 § 14; 1989 c 63 § 20; 1984 c 230 § 85.]

52.14.017 Decrease from five to three commissioners—Election—Disposition of commissioner districts. Except as provided in RCW 52.14.020, in the event a five-member board of commissioners of any fire protection district determines by resolution that it would be in the best interest of the fire district to decrease the number of commissioners from five to three, or in the event the board is presented with a petition signed by ten percent of the registered voters resident within the district who voted in the last general municipal election calling for such a decrease in the number of commissioners of the district, the board shall submit a resolution to the county legislative authority or authorities of the county or counties in which the district is located requesting that an election be held. Upon receipt of the resolution, the legislative authority or authorities of the county or counties shall call a special election to be held within the fire protection district at which election the following proposition shall be submitted to the voters substantially as follows:

Shall the board of commissioners of county fire protection district no. . . be decreased from five members to three members?

Yes . . .
No

If the fire protection district has commissioner districts, the commissioners of the district must pass a resolution, before the submission of the proposition to the voters, to either redistrict from five commissioner districts to three commissioner districts or eliminate the commissioner districts. The resolution takes effect upon approval of the proposition by the voters.

If the fire protection district is located in more than a single county, this proposition shall indicate the name of the district.

If the proposition receives a majority approval at the election, the board of commissioners of the fire protection district shall be decreased to three members. The two members shall be decreased in accordance with RCW 52.06.085. [1997 c 43 § 1.]

52.14.020 Number in district having full-time, fully-paid personnel—Terms of first appointees. In a fire protection district maintaining a fire department consisting wholly of personnel employed on a full-time, fully-paid basis, there shall be five fire commissioners. The two positions created on boards of fire commissioners by this section shall be filled initially as for a vacancy, except that the appointees shall draw lots, one appointee to serve until the next general fire district election after the appointment, at which two commissioners shall be elected for six-year terms, and the other appointee to serve until the second general fire district election after the appointment, at which two commissioners shall be elected for six-year terms. [1984 c 230 § 29; 1971 ex.s. c 242 § 3. Formerly RCW 52.12.015.]

52.14.030 Polling places. The polling places for a fire protection district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the fire protection district is located, and the elections of the fire protection district shall not be held to be irregular or void on that account. [1994 c 223 § 51; 1984 c 230 § 31; 1939 c 34 § 24; RRS § 5654-124. Formerly RCW 52.12.030.]

52.14.050 Vacancies. Vacancies on a board of fire commissioners shall occur as provided in chapter 42.12 RCW. In addition, if a fire commissioner is absent from the district for three consecutive regularly scheduled meetings unless by permission of the board, the office shall be declared vacant by the board of commissioners. However, such an action shall not be taken unless the commissioner is notified by mail after two consecutive unexcused absences that the position will be declared vacant if the commissioner is absent without being excused from the next regularly scheduled meeting. Vacancies on a board of fire commissioners shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 52; 1989 c 63 § 21; 1984 c 238 § 2; 1977 c 64 § 1; 1974 ex.s. c 17 § 1; 1971 ex.s. c 153 § 1; 1939 c 34 § 26; RRS § 5654-126. Formerly RCW 52.12.050.]

52.14.060 Commissioner's terms. The initial three members of the board of fire commissioners shall be elected at the same election as when the ballot proposition is submitted to the voters authorizing the creation of the fire protection

district. If the district is not authorized to be created, the election of the initial fire commissioners shall be null and void. If the district is authorized to be created, the initial fire commissioners shall take office immediately when qualified. Candidates shall file for each of the three separate fire commissioner positions. Elections shall be held as provided in *chapter 29.21 RCW, with the county auditor opening up a special filing period as provided in **RCW 29.15.170 and 29.15.180, as if there were a vacancy. The person who receives the greatest number of votes for each position shall be elected to that position. The terms of office of the initial fire commissioners shall be staggered as follows: (1) The person who is elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall take office immediately when elected and qualified and their terms of office shall be calculated from the first day of January in the year following their election.

The term of office of each subsequent commissioner shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with **RCW 29.04.170. [1994 c 223 § 53; 1989 c 63 § 22; 1984 c 230 § 33; 1979 ex.s. c 126 § 33; 1939 c 34 § 27; RRS § 5654-127. Formerly RCW 52.12.060.]

Reviser's note: *(1) Chapter 29.21 RCW was recodified as chapter 29A.52 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

***(2) RCW 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.24.170 and 29A.24.180, see RCW 29A.24.171 and 29A.24.181, respectively.

Purpose—1979 ex.s. c 126: See RCW 29A.20.040(1).

52.14.070 Oath of office. Before beginning the duties of office, each fire commissioner shall take and subscribe the official oath for the faithful discharge of the duties of office as required by *RCW 29.01.135, which oath shall be filed in the office of the auditor of the county in which all, or the largest portion of, the district is located. [1989 c 63 § 23; 1986 c 167 § 22; 1984 c 230 § 34; 1939 c 34 § 29; RRS § 5654-129. Formerly RCW 52.12.070.]

***Reviser's note:** RCW 29.01.135 was recodified as RCW 29A.04.133 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Severability—1986 c 167: See note following RCW 29A.04.049.

52.14.080 Chairman—Secretary—Duties and oath. The fire commissioners shall elect a chairman from their number and shall appoint a secretary of the district, who may or may not be a member of the board, for such term as they shall by resolution determine. The secretary, if a member of the board, shall not receive additional compensation for serving as secretary.

The secretary of the district shall keep a record of the proceedings of the board, shall perform other duties as prescribed by the board or by law, and shall take and subscribe an official oath similar to that of the fire commissioners which oath shall be filed in the same office as that of the commissioners. [1984 c 230 § 35; 1965 c 112 § 2; 1939 c 34 § 30; RRS § 5654-130. Formerly RCW 52.12.080.]

52.14.090 Office—Meetings. (1) The office of the fire commissioners and principal place of business of the district shall be at some place within the county in which the district is situated, to be designated by the board of fire commissioners.

(2) The board shall hold regular monthly meetings at a place and date as it determines by resolution, and may adjourn its meetings as required for the proper transaction of business. Special meetings of the board shall be called at any time under the provisions of RCW 42.30.080. [1984 c 230 § 36; 1947 c 254 § 8; 1939 c 34 § 31; Rem. Supp. 1947 § 5654-131. Formerly RCW 52.12.090.]

52.14.100 Meetings—Powers and duties of board. All meetings of the board of fire commissioners shall be conducted in accordance with chapter 42.30 RCW and a majority constitutes a quorum for the transaction of business. All records of the board shall be open to inspection in accordance with chapter 42.56 RCW. The board has the power and duty to adopt a seal of the district, to manage and conduct the business affairs of the district, to make and execute all necessary contracts, to employ any necessary services, and to adopt reasonable rules to govern the district and to perform its functions, and generally to perform all such acts as may be necessary to carry out the objects of the creation of the district. [2005 c 274 § 326; 1984 c 230 § 37; 1939 c 34 § 32; RRS § 5654-132. Formerly RCW 52.12.100.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Open public meetings: Chapters 42.30, 42.32 RCW.

52.14.110 Purchases and public works—Competitive bids required—Exceptions. Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ten thousand dollars. However, whenever the estimated cost does not exceed fifty thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

(2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of two thousand five hundred dollars, which includes the costs of labor, material, and equipment;

(3) Contracts using the small works roster process under RCW 39.04.155; and

(4) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2001 c 79 § 1; 2000 c 138 § 209; 1998 c 278 § 5; 1993 c 198 § 11; 1984 c 238 § 3.]

Purpose—Part headings not law—2000 c 138: See notes following RCW 39.04.155.

52.14.120 Purchases and public works—Competitive bidding procedures. (1) Notice of the call for bids shall be given by publishing the notice in a newspaper of general circulation within the district at least thirteen days before the last date upon which bids will be received. If no bid is received on the first call, the commissioners may readvertise and make a second call, or may enter into a contract without a further call.

(2) A public work involving three or more specialty contractors requires that the district retain the services of a general contractor as defined in RCW 18.27.010. [1993 c 198 § 12; 1984 c 238 § 4.]

52.14.130 Low bidder claiming error—Prohibition on later bid for same project. A low bidder who claims error and fails to enter into a contract with a fire protection district for a public works project is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. [1996 c 18 § 10.]

Chapter 52.16 RCW FINANCES

Sections

52.16.010	County treasurer as financial agent.
52.16.020	Funds.
52.16.030	Budget for each fund.
52.16.040	Tax levies—Assessment roll—Collection.
52.16.050	Disbursal of funds—Issuance of warrants—Monthly reports.
52.16.061	General obligation bonds—Issuance—Limitations.
52.16.070	Obligations shall not exceed taxes, revenues, and cash balances—Exceptions.
52.16.080	Bonds may be issued for capital purposes—Excess property tax levies.
52.16.130	General levy authorized—Limit—Excess levy at special election.
52.16.140	General levy may exceed limit—When.
52.16.150	Donations and bequests to district.
52.16.160	Tax levy authorized.
52.16.170	Taxation and assessment of lands lying both within a fire protection district and forest protection assessment area.

52.16.010 County treasurer as financial agent. It is the duty of the county treasurer of the county in which all, or the largest portion of, any fire protection district created under this title is located to receive and disburse district revenues, to collect taxes and assessments authorized and levied under this title, and to credit district revenues to the proper fund. However, where a fire protection district is located in more than one county, the county treasurer of each other county in which the district is located shall collect the fire protection district's taxes and assessments that are imposed on property located within the county and transfer these funds to the county treasurer of the county in which the largest portion of the district is located. [1989 c 63 § 24; 1984 c 230 § 38; 1939 c 34 § 33; RRS § 5654-133.]

52.16.020 Funds. In each county in which a fire protection district is situated, there shall be in the county treasurer's office of each district the following funds: (1) Expense fund; (2) reserve fund; (3) local improvement district No. . . . fund; (4) general obligation bond fund; and (5) such other funds as the board of commissioners of the district may establish. Taxes levied for administrative, operative, and maintenance purposes and for the purchase of fire fighting and emergency medical equipment and apparatus and for the purchase of real property, when collected, and proceeds from the sale of general obligation bonds shall be placed by the county treasurer in the proper fund. Taxes levied for the payment of general obligation bonds and interest thereon, when collected, shall be placed by the county treasurer in the general obligation bond fund. The board of fire commissioners may include in its annual budget items of possible outlay to be provided for and held in reserve for any district purpose, and taxes shall be levied therefor. Such taxes, when collected, shall be placed by the county treasurer in the reserve fund. The reserve fund, or any part of it, may be transferred by the county treasurer to other funds of the district at any time by order of the board of fire commissioners. Special assessments levied against the lands in any improvement district within the district, when collected, shall be placed by the county treasurer in the local improvement district fund for the local improvement district. [1984 c 230 § 39; 1983 c 167 § 120; 1959 c 221 § 1; 1955 c 134 § 1; 1953 c 176 § 2; 1951 2nd ex.s. c 24 § 1; 1949 c 22 § 1; 1947 c 254 § 9; 1939 c 34 § 34; Rem. Supp. 1949 § 5654-134.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

52.16.030 Budget for each fund. Annually after the county board or boards of equalization of the county or counties in which the district is located have equalized the assessments for general tax purposes in that year, the secretary of the district shall prepare and certify a budget of the requirements of each district fund, and deliver it to the county legislative authority or authorities of the county or counties in which the district is located in ample time for the tax levies to be made for district purposes. [1989 c 63 § 25; 1984 c 230 § 40; 1939 c 34 § 35; RRS § 5654-135.]

52.16.040 Tax levies—Assessment roll—Collection. At the time of making general tax levies in each year the county legislative authority or authorities of the county or counties in which a fire protection district is located shall make the required levies for district purposes against the real and personal property in the district in accordance with the equalized valuations of the property for general tax purposes and as a part of the general taxes. The tax levies shall be a part of the general tax roll and shall be collected as a part of the general taxes against the property in the district. [1989 c 63 § 26; 1984 c 230 § 41; 1939 c 34 § 36; RRS § 5654-136.]

Levy of taxes: Chapter 84.52 RCW.

52.16.050 Disbursal of funds—Issuance of warrants—Monthly reports. (1) Except as provided in subsections (2) and (3) of this section, the county treasurer shall pay out money received for the account of the district on warrants issued by the county auditor against the proper funds of the

district. The warrants shall be issued on vouchers approved and signed by a majority of the district board and by the district secretary.

(2) The board of fire commissioners of a district that had an annual operating budget of five million or more dollars in each of the preceding three years may by resolution adopt a policy to issue its own warrants for payment of claims or other obligations of the fire district. The board of fire commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board of fire commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and the accounting funds on which the warrants shall be drawn; thereupon the district secretary may issue the warrants specified in the general certificate.

(3) The board of fire commissioners of a district that had an annual operating budget of greater than two hundred fifty thousand dollars and under five million dollars in each of the preceding three years may upon agreement between the county treasurer and the fire district commission, with approval of the fire district commission by resolution, adopt a policy to issue its own warrants for payment of claims or other obligations of the fire district. The board of fire commissioners, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board of fire commissioners, authorizing the county treasurer to pay all the warrants specified by date, number, name, and amount, and the accounting funds on which the warrants shall be drawn. The district secretary may then issue the warrants specified in the general certificate.

(4) The county treasurer may also pay general obligation bonds and the accrued interest thereon in accordance with their terms from the general obligation bond fund when interest or principal payments become due. The county treasurer shall report in writing monthly to the secretary of the district the amount of money held by the county in each fund and the amounts of receipts and disbursements for each fund during the preceding month. [2002 c 165 § 1; 1998 c 5 § 1; 1984 c 230 § 42; 1983 c 167 § 121; 1939 c 34 § 37; RRS § 5654-137.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

52.16.061 General obligation bonds—Issuance—Limitations. The board of fire commissioners of the district shall have authority to contract indebtedness and to refund same for any general district purpose, including expenses of maintenance, operation and administration, and the acquisition of firefighting facilities, and evidence the same by the issuance and sale of general obligation bonds of the district payable at such time or times not longer than twenty years from the issuing date of the bonds. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. Such bonds shall not exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to three-eighths of one percent of the value of the taxable property within the fire protection district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1993 c

231 § 1; 1984 c 186 § 39; 1983 c 167 § 122; 1970 ex.s. c 56 § 66; 1969 ex.s. c 232 § 89; 1955 c 134 § 2; 1953 c 176 § 3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

52.16.070 Obligations shall not exceed taxes, revenues, and cash balances—Exceptions. Except as authorized by the issuance and sale of general obligation bonds, the creation of local improvements districts, and the issuance of local improvement bonds and warrants of the fire protection district, the board of fire commissioners may not incur expenses or other financial obligations payable in any year in excess of the aggregate amount of taxes levied for that year, revenues derived from all other sources, and the cash balances on hand in the expense and reserve funds of the district on the first day of that year. In the event that there are any unpaid warrants drawn on any district funds for expenses and obligations incurred and outstanding at the end of any calendar year, the warrants may be paid from taxes collected in the subsequent year or years and from other income. [1984 c 230 § 43; 1983 c 167 § 123; 1975 1st ex.s. c 130 § 1; 1972 ex.s. c 16 § 1; 1959 c 221 § 2; 1955 c 134 § 3; 1951 2nd ex.s. c 24 § 10; 1947 c 254 § 11; 1943 c 106 § 1; 1941 c 70 § 5; 1939 c 34 § 39; Rem. Supp. 1947 § 5654-139.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Construction—1975 1st ex.s. c 130: "If any section, clause, or other provision of this 1975 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1975 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1975 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1975 amendatory act is intended. When this 1975 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1975 amendatory act shall govern and control." [1975 1st ex.s. c 130 § 6.]

52.16.080 Bonds may be issued for capital purposes—Excess property tax levies. Fire protection districts additionally are authorized to incur general indebtedness for capital purposes and to issue general obligation bonds not to exceed an amount, together with any outstanding general obligation indebtedness, equal to three-fourths of one percent of the value of the taxable property within such district, as the term "value of the taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess property tax levies, when the voters of the district have approved a proposition authorizing such indebtedness and levies by an affirmative vote of three-fifths of those voting on the proposition at such election, at which election the total number of persons voting shall constitute not less than forty percent of the voters in the fire protection district who voted at the last preceding general state election. The maximum term of such bonds may not exceed twenty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. Such elections shall be held as provided in RCW 39.36.050. [1984 c 186 § 40; 1973 1st ex.s. c 195 § 50; 1970 ex.s. c 42 § 30; 1953 c 176 § 4; 1951 2nd ex.s. c 24 § 3.]

[Title 52 RCW—page 20]

Purpose—1984 c 186: See note following RCW 39.46.110.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

52.16.130 General levy authorized—Limit—Excess levy at special election. To carry out the purposes for which fire protection districts are created, the board of fire commissioners of a district may levy each year, in addition to the levy or levies provided in RCW 52.16.080 for the payment of the principal and interest of any outstanding general obligation bonds, an ad valorem tax on all taxable property located in the district not to exceed fifty cents per thousand dollars of assessed value: PROVIDED, That in no case may the total general levy for all purposes, except the levy for the retirement of general obligation bonds, exceed one dollar per thousand dollars of assessed value. Levies in excess of one dollar per thousand dollars of assessed value or in excess of the aggregate dollar rate limitations or both may be made for any district purpose when so authorized at a special election under RCW 84.52.130. Any such tax when levied shall be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate district fund or funds as provided by law, and shall be paid out on warrants of the auditor of the county in which all, or the largest portion of, the district is located, upon authorization of the board of fire commissioners of the district. [2002 c 180 § 3; 1989 c 63 § 27; 1985 c 7 § 121; 1984 c 230 § 44; 1983 c 167 § 126; 1973 1st ex.s. c 195 § 52; 1971 ex.s. c 105 § 1; 1963 ex.s. c 13 § 2; 1951 2nd ex.s. c 24 § 8.]

Contingent effective date—2002 c 180: See note following RCW 84.52.052.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

52.16.140 General levy may exceed limit—When. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, the board of fire commissioners of any district may levy, in addition to any levy for the payment of the principal and interest of outstanding general obligation bonds, an ad valorem tax on all property located in the district of not to exceed fifty cents per thousand dollars of assessed value and which will not cause the combined levies to exceed the constitutional or statutory limitations, and the additional levy, or any portion of the levy, may also be made when dollar rates of other taxing units are released by agreement with the other taxing units from their authorized levies. [1984 c 230 § 45; 1983 c 167 § 127; 1973 1st ex.s. c 195 § 53; 1951 2nd ex.s. c 24 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Levy of taxes: Chapter 84.52 RCW.

Protection from levy prorationing: RCW 84.52.120.

52.16.150 Donations and bequests to district. A fire protection district may accept and receive in behalf of the district any money or property donated, devised, or bequeathed to the district, and may carry out the terms of the donation, devise, or bequest, if within the powers granted by law to fire protection districts. In the absence of such terms, a fire protection district may expend or use the money or property for district purposes as determined by the board. [1984 c 230 § 46; 1951 2nd ex.s. c 24 § 11.]

52.16.160 Tax levy authorized. Notwithstanding the limitation of dollar rates contained in RCW 52.16.130, and in addition to any levy for the payment of the principal and interest of any outstanding general obligation bonds and in addition to any levy authorized by RCW 52.16.130, 52.16.140 or any other statute, the board of fire commissioners of any fire protection district within such county, which fire protection district has at least one full-time, paid employee, or contracts with another municipal corporation for the services of at least one full-time, paid employee, is hereby authorized to levy each year an ad valorem tax on all taxable property within such district of not to exceed fifty cents per thousand dollars of assessed value, which levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional and/or statutory limitations. [2002 c 84 § 1; 1985 c 112 § 1; 1983 c 167 § 128; 1973 1st ex.s. c 195 § 54; 1969 ex.s. c 243 § 2; 1961 c 53 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1969 ex.s. c 243: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 243 § 8.]

Protection from levy prorationing: RCW 84.52.120.

52.16.170 Taxation and assessment of lands lying both within a fire protection district and forest protection assessment area. In the event that lands lie within both a fire protection district and a forest protection assessment area they shall be taxed and assessed as follows:

(1) If the lands are wholly unimproved, they shall be subject to forest protection assessments but not to fire protection district levies;

(2) If the lands are wholly improved, they shall be subject to fire protection district levies but not to forest protection assessments;

(3) If the lands are partly improved and partly unimproved they shall be subject both to fire protection district levies and to forest protection assessments: PROVIDED, That upon request, accompanied by appropriate legal descriptions, the county assessor shall segregate any unimproved portions which each consist of twenty or more acres, and thereafter the unimproved portion or portions shall be subject only to forest protection assessments. [1984 c 230 § 47; 1963 ex.s. c 13 § 3.]

Forest protection assessments: RCW 76.04.610.

(2008 Ed.)

Chapter 52.18 RCW

BENEFIT CHARGES

(Formerly: Service charges)

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52.18.010	Benefit charges authorized—Exceptions—Amounts—Limitations.
52.18.020	Personal property, improvements to real property—Defined.
52.18.030	Resolution establishing benefit charges—Contents—Listing—Collection.
52.18.040	Reimbursement of county for administration and collection expenses.
52.18.050	Voter approval of benefit charges required—Election—Ballot.
52.18.060	Public hearing—Required—Report—Benefit charge resolution to be filed—Notification to property owners.
52.18.065	Property tax limited if benefit charge imposed.
52.18.070	Review board.
52.18.080	Model resolution.
52.18.090	Exemptions.
52.18.900	Severability—1974 ex.s. c 126.
52.18.901	Severability—1990 c 294.

Assessments and charges against state lands: Chapter 79.44 RCW.

52.18.010 Benefit charges authorized—Exceptions—Amounts—Limitations. The board of fire commissioners of a fire protection district may by resolution, for fire protection district purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the fire protection district on the date specified and which have or will receive the benefits provided by the fire protection district, to be paid by the owners of the properties: PROVIDED, That a benefit charge shall not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto, but not including personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of such benefit charges in any one year shall not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected: PROVIDED, That it shall be the duty of the county legislative authority or authorities of the county or counties in which the fire protection district is located to make any necessary adjustments to assure compliance with such limitation and to immediately notify the board of fire commissioners of any changes thereof.

A benefit charge imposed shall be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the district. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly

efit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.16.160?

YES

NO

[1998 c 16 § 2; 1990 c 294 § 5; 1989 c 27 § 1; 1987 c 325 § 5; 1974 ex.s. c 126 § 5.]

52.18.060 Public hearing—Required—Report—Benefit charge resolution to be filed—Notification to property owners. (1) Not less than ten days nor more than six months before the election at which the proposition to impose the benefit charge is submitted as provided in this chapter, the board of fire commissioners of the district shall hold a public hearing specifically setting forth its proposal to impose benefit charges for the support of its legally authorized activities which will maintain or improve the services afforded in the district. A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to November 15 of each year the board of fire commissioners shall hold a public hearing to review and establish the fire district benefit charges for the subsequent year.

All resolutions imposing or changing the benefit charges shall be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before November 30 immediately preceding the year in which the benefit charges are to be collected on behalf of the district.

After the benefit charges have been established, the owners of the property subject to the charge shall be notified of the amount of the charge. [1990 c 294 § 6; 1989 c 63 § 31; 1987 c 325 § 6; 1974 ex.s. c 126 § 6.]

52.18.065 Property tax limited if benefit charge imposed. A fire protection district that imposes a benefit charge under this chapter shall not impose all or part of the property tax authorized under RCW 52.16.160. [1990 c 294 § 7; 1987 c 325 § 9.]

52.18.070 Review board. After notice has been given to the property owners of the amount of the charge, the board of fire commissioners of a fire protection district imposing a benefit charge under this chapter shall form a review board for at least a two-week period and shall, upon complaint in writing of a party aggrieved owning property in the district, reduce the charge of a person who, in their opinion, has been charged too large a sum, to a sum or amount as they believe to be the true, fair, and just amount. [1990 c 294 § 8; 1987 c 325 § 7; 1974 ex.s. c 126 § 7.]

52.18.080 Model resolution. The Washington fire commissioners association, as soon as practicable, shall draft a model resolution to impose the fire protection district benefit charge authorized by this chapter and may provide assistance to fire protection districts in the establishment of a pro-

gram to develop benefit charges. [1990 c 294 § 9; 1987 c 325 § 8; 1974 ex.s. c 126 § 8.]

52.18.090 Exemptions. A person who is receiving the exemption contained in RCW 84.36.381 through 84.36.389 shall be exempt from any legal obligation to pay a portion of the charge imposed by this chapter according to the following.

(1) A person who meets the income limitation contained in RCW 84.36.381(5)(a) and does not meet the income limitation contained in RCW 84.36.381(5)(b) (i) or (ii) shall be exempt from twenty-five percent of the charge.

(2) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(i) shall be exempt from fifty percent of the charge.

(3) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(ii) shall be exempt from seventy-five percent of the charge. [1990 c 294 § 10.]

52.18.900 Severability—1974 ex.s. c 126. If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 126 § 9.]

52.18.901 Severability—1990 c 294. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 294 § 11.]

Chapter 52.20 RCW

LOCAL IMPROVEMENT DISTRICTS

Sections

52.20.010	L.I.D.'s authorized—Petition or resolution method.
52.20.020	Dismissal, approval of petition or resolution of intention—Notice of hearing.
52.20.022	Notice must contain statement that assessments may vary from estimates.
52.20.025	Hearing and subsequent proceedings to be in accordance with laws applicable to cities and towns—Definitions.
52.20.027	Lands subject to forest fire protection assessments exempt—Separation of forest-type lands for tax and assessment purposes.
52.20.060	Coupon or registered warrants—Payment—Interest—Registration.
52.20.070	Contracts not general district obligations.

Assessments and charges against state lands: Chapter 79.44 RCW.

Local improvements, supplemental authority: Chapter 35.51 RCW.

52.20.010 L.I.D.'s authorized—Petition or resolution method. If, for fire protection or emergency medical purposes the acquisition, maintenance, and operation of real property, buildings, apparatus, and instrumentalities needed to provide such services are of special benefit to part or all of the lands in the fire protection district, the board of fire commissioners may include the lands in a local improvement district, and may levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement, on the basis of the special benefits to pay in whole or in part the damages or costs of improvements

ordered in the local improvement district. Local improvement districts may be initiated either by resolution of the board of fire commissioners or by petition signed by the owners of a majority of the acreage of lands to be included within the local improvement district.

If the petition procedure is followed, the petition shall set forth generally the necessity for the creation of a local improvement district, outline the plan of fire or emergency medical protection to be accomplished, and the means by which the cost shall be financed. Upon receipt of a petition, the board of fire commissioners of the district shall at its next regular meeting review the petition. The owners of the lands as shown on the general tax roll in the county treasurer's office, last equalized, shall be used to determine the ownership of the lands to be included in the local improvement district. If the petition is sufficient, the district board shall consider the petition and determine whether the proposed local improvement appears feasible and of special benefit to the lands concerned.

If the board of fire commissioners desire[s] to initiate the formation of a local improvement district by resolution, it shall adopt a resolution declaring its intention to order the proposed improvement, set forth the nature and territorial extent of the proposed improvement, designate the number of the proposed district, describe the boundaries, state the estimated costs and expenses of the improvement and the proportionate amount of the costs which will be borne by the property within the proposed district, and fix a date, time, and place for a public hearing on the formation of the proposed district. [1984 c 230 § 48; 1975 1st ex.s. c 130 § 2; 1961 c 161 § 1; 1939 c 34 § 40; RRS § 5654-140.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.020 Dismissal, approval of petition or resolution of intention—Notice of hearing. If the petition is found insufficient or if the district board determines that a local improvement district is not feasible or is of no special benefit to the lands concerned, it shall dismiss the petition. If the district board approves the petition or adopts a resolution of intention to order an improvement, it shall fix a date, hour, and place for hearing the matter and shall (1) mail notice of the hearing at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of each lot, tract, or parcel of land within the proposed local improvement district as shown on the tax rolls of the county treasurer at the address shown thereon, and (2) publish notice of the hearing in a newspaper of general circulation in the county, for three consecutive weeks prior to the day of the hearing. The cost of publication shall be paid by the fire protection district. The notices shall describe the boundaries of the proposed local improvement district and the plan of fire or emergency medical protection proposed, or may refer to the resolution of intention describing the nature and territorial extent of the proposed improvement. The notices shall state the means by which the cost shall be financed, shall state the date, hour, and place of the hearing on the petition and shall be signed by the secretary of the fire protection district. In addition, the notice given each owner or reputed owner by mail shall state the estimated cost and expense of the improvement to be borne by the particular lot, tract, or parcel.

[1984 c 230 § 49; 1975 1st ex.s. c 130 § 3; 1961 c 161 § 2; 1939 c 34 § 41; RRS § 5654-141.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.022 Notice must contain statement that assessments may vary from estimates. Any notice given to the public or to the owners of specific lots, tracts, or parcels of land relating to the formation of a local improvement district shall contain a statement that actual assessments may vary from assessment estimates so long as they do not exceed a figure equal to the increased true and fair value the improvement adds to the property. [1989 c 243 § 7.]

52.20.025 Hearing and subsequent proceedings to be in accordance with laws applicable to cities and towns—Definitions. The hearing and all subsequent proceedings in connection with the local improvement, including but not limited to the levying, collection, and enforcement of local improvement assessments, and the authorization, issuance, and payment of local improvement bonds and warrants shall be in accordance with the provisions of law applicable to cities and towns set forth in chapters 35.43, 35.44, 35.45, 35.49, 35.50, and 35.53 RCW. Fire protection districts may exercise the powers set forth in those chapters: PROVIDED, That no local improvement guaranty fund may be created: PROVIDED FURTHER, That for the purposes of RCW 52.16.070, 52.20.010, 52.20.020, and 52.20.025, with respect to the powers granted and the duties imposed in chapters 35.43, 35.44, 35.45, 35.50, and 35.53 RCW:

(1) The words "city or town" mean fire protection district.

(2) The secretary of a fire protection district shall perform the duties of the "clerk" or "city or town clerk."

(3) The board of fire commissioners of a fire protection district shall perform the duties of the "council" or "city or town council" or "legislative authority of a city or town."

(4) The board of fire commissioners of a fire protection district shall perform the duties of the "mayor."

(5) The word "ordinance" means a resolution of the board of fire commissioners of a fire protection district.

(6) The treasurer or treasurers of the county or counties in which a fire protection district is located shall perform the duties of the "treasurer" or "city or town treasurer." [1989 c 63 § 32; 1984 c 230 § 50; 1975 1st ex.s. c 130 § 4; 1961 c 161 § 3.]

Severability—Construction—1975 1st ex.s. c 130: See note following RCW 52.16.070.

52.20.027 Lands subject to forest fire protection assessments exempt—Separation of forest-type lands for tax and assessment purposes. RCW 52.20.010, 52.20.020, and 52.20.025 shall not apply to any tracts or parcels of wholly forest-type lands within the district which are required to pay forest fire protection assessments, as required by RCW 76.04.610; however, both the tax levy or special assessments of the district and the forest fire protection assessment shall apply to the forest land portion of any tract or parcel which is in the district containing a combination of both forest-type lands and nonforest-type lands or improvements: PROVIDED, That an owner has the right to have for-

est-type lands of more than twenty acres in extent separated from land bearing improvements and from nonforest-type lands for taxation and assessment purposes upon furnishing to the assessor a written request containing the proper legal description. [1986 c 100 § 54; 1984 c 230 § 51; 1961 c 161 § 5.]

52.20.060 Coupon or registered warrants—Payment—Interest—Registration. (1) The district board may also, if in accordance with the adopted method of financing the local improvement district, issue and sell at par and accrued interest coupon or registered warrants payable within three years from the date thereof exclusively from the local improvement fund of the district. The coupon or registered warrants shall bear semiannual interest and shall be in such form as the board determines and shall state on their face that they are payable exclusively from the local improvement fund of the district. Interest shall be payable on the first day of January and of July. Such warrants may be registered as provided in RCW 39.46.030.

(2) Notwithstanding subsection (1) of this section, such warrants may be issued and sold in accordance with chapter 39.46 RCW. [1984 c 230 § 52; 1983 c 167 § 129; 1970 ex.s. c 56 § 68; 1969 ex.s. c 232 § 90; 1939 c 34 § 45; RRS § 5654-145.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

52.20.070 Contracts not general district obligations. A fire protection district shall not be liable under any contract creating an obligation chargeable against the lands of any local improvement district therein, unless the liability and the extent thereof is specifically stated in the contract. [1984 c 230 § 53; 1939 c 34 § 21; RRS § 5654-121.]

**Chapter 52.22 RCW
SPECIAL PROCEEDINGS**

Sections

52.22.011	Legislative validation.
52.22.021	Special proceedings for judicial confirmation of organization, bonds, warrants, contracts, etc.
52.22.031	Petition.
52.22.041	Hearing date to be fixed—Notice.
52.22.051	Answer of petition.
52.22.061	Pleading and practice—Motion for new trial.
52.22.071	Jurisdiction of court.
52.22.081	Minor irregularities to be disregarded.
52.22.091	Costs.
52.22.101	Appellate review.
52.22.111	Districts governed by Title 52 RCW.

52.22.011 Legislative validation. The respective areas, organized and established or attempted to be organized and established under the authority granted in Title 52 RCW which since their organization and establishment or attempted organization and establishment have continuously maintained their organization as fire protection districts established under the authority of these statutes are declared to be properly organized fire protection districts existing

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under and by virtue of the statutes having in each case, the boundaries set forth in the respective organization proceedings of each of them as shown by the files and records in the offices of the legislative authority or authorities and auditor or auditors of the county or counties in which the particular area lies. [1989 c 63 § 33; 1984 c 230 § 66; 1947 c 230 § 1; Rem. Supp. 1947 § 5654-151o. Formerly RCW 52.32.010.]

52.22.021 Special proceedings for judicial confirmation of organization, bonds, warrants, contracts, etc. The board of fire commissioners of a fire protection district now existing or which may be organized under the laws of this state may commence a special proceeding in the superior court of the state of Washington. These proceedings for the organization of the fire district, for the formation of any local improvement district therein, or proceedings for the authorization, issuance, and sale of coupon or registered warrants or general obligation bonds issued pursuant to RCW 52.16.061, either of the fire district or for a local improvement district therein, or both, whether the bonds or coupon or registered warrants have been sold, or proceedings for any contract of the district involving the fire district or any local improvement district therein, and any other proceedings that may affect the legality of the proceedings concerned or any or all of the proceedings above outlined, may be judicially examined, approved, and confirmed. [1984 c 230 § 67; 1983 c 167 § 130; 1947 c 255 § 1; Rem. Supp. 1947 § 5654-153a. Formerly RCW 52.34.010 and 52.32.020.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—1947 c 255: "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or of any section, provision, or part thereof not adjudged to be invalid or unconstitutional." [1947 c 255 § 10.] This applies to RCW 52.22.021 through 52.22.101.

52.22.031 Petition. The board of fire commissioners of the fire protection district shall file in the superior court of the county in which the fire protection district was organized, a petition requesting in effect that the proceedings be examined, approved, and confirmed by the court. The petition shall state the facts showing any of the proceedings that the petition asks the court to examine, approve, and confirm, but need allege only generally that the fire protection district was properly organized and that the first board of fire commissioners was properly elected. [1984 c 230 § 68; 1947 c 255 § 2; Rem. Supp. 1947 § 5654-153b. Formerly RCW 52.34.020 and 52.32.030.]

52.22.041 Hearing date to be fixed—Notice. The court shall fix the time for the hearing of the petition and direct the clerk of the court to give notice of the filing of the petition and of the time and place fixed for the hearing. The notice shall state the time and place of the hearing of the petition and that any person interested in the proceedings sought by the petition to be examined, approved, and confirmed by the court, may on or before the date of the hearing of the petition, answer the petition. The petition may be referred to and described in the notice as the petition of the board of fire commissioners of county fire protection district No. (giving the county and its number or any other

name by which it is officially designated), requesting that the proceedings (naming them as set out in the request of the petition), be examined, approved, and confirmed by the court, and shall be signed by the clerk.

The notice shall be given by posting and publishing for the same length of time that the notice of the hearing on the petition before the county legislative body to form the district was required by law to be posted and published, and it may be published in any legal newspaper designated in the order of the court fixing the time and place of the hearing of the petition and directing the clerk of the court to give notice thereof. [1984 c 230 § 69; 1947 c 255 § 3; Rem. Supp. 1947 § 5654-153c. Formerly RCW 52.34.030 and 52.32.040.]

Public hearing—Notice—Publication and posting: RCW 52.02.050.

52.22.051 Answer of petition. A person interested in the fire protection district, or in a local improvement district therein, involved in the petition or in any proceedings sought by the petition to be examined, approved, and confirmed by the court, may answer the petition. The statutes of this state respecting answers to verified complaints are applicable to answers to the petition. The person so answering the petition shall be the defendant in the special proceeding, and the board of fire commissioners shall be the plaintiff. Every material statement of the petition not specifically controverted by the answer must, for purposes of the special proceedings, be taken as true, and each person failing to answer the petition is deemed to admit as true all the material statements of the petition. [1984 c 230 § 70; 1947 c 255 § 4; Rem. Supp. 1947 § 5654-153d. Formerly RCW 52.34.040 and 52.32.050.]

Pleadings: Chapters 4.32, 4.36 RCW.

52.22.061 Pleading and practice—Motion for new trial. The rules of pleading and practice governing civil actions are applicable to the special proceedings provided for except where inconsistent with this chapter. A motion for a new trial must be made upon the minutes of the court and in case of an order granting a new trial, the order must specify the issue to be reexamined at the new trial. The findings of the court on the other issues shall not be affected by the order granting a new trial. [1984 c 230 § 71; 1947 c 255 § 5; Rem. Supp. 1947 § 5654-153e. Formerly RCW 52.34.050 and 52.32.060.]

New trials: Chapter 4.76 RCW.

52.22.071 Jurisdiction of court. At the hearing of the special proceedings, the court has power and jurisdiction to examine and determine the legality and validity of, and to approve and confirm, each and all of the proceedings for the organization of the fire protection district and for the formation of any local improvement district therein under the law relating to such districts from and including the petition for the organization of the fire district and for the formation of any local improvement district therein and all other proceedings which affect the legality of the districts, or the validity and legality of any coupon or registered warrants or bonds either of the fire district or for a local improvement district therein and all proceedings conducted by the fire district for a contract of the district involving the fire district or a local

improvement district therein, and any other proceeding which may affect the legality of the proceedings concerned. [1984 c 230 § 72; 1983 c 167 § 131; 1947 c 255 § 6; Rem. Supp. 1947 § 5654-153f. Formerly RCW 52.34.060 and 52.32.070.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

52.22.081 Minor irregularities to be disregarded.

The court has full authority and jurisdiction to consider any question of laches, estoppel, and other infirmities in the position and claims of the defendants, to question the legality of the proceedings sought by the plaintiff to be confirmed by the court, and to pass upon and determine them. The court, in inquiring into the regularity, legality, and correctness of the proceedings sought by the board of fire commissioners in its petition to be examined, approved, and confirmed by the court, must disregard any error, irregularity, or omission which does not affect the substantial rights of the parties to the special proceedings. The court may approve and confirm the proceedings in part, and disapprove and declare illegal or invalid other or subsequent parts of the proceedings, or it may approve and confirm all of the proceedings, and make and enter its decree accordingly. [1984 c 230 § 73; 1947 c 255 § 7; Rem. Supp. 1947 § 5654-153g. Formerly RCW 52.34.070 and 52.32.080.]

52.22.091 Costs. The court shall find and determine, in these special proceedings, whether the notice of the filing of the petition and of the time and place of hearing on the petition has been properly posted and published for the time and in the manner prescribed in this chapter. The costs of the special proceedings may be allowed and apportioned between all the parties, in the court's discretion. [1984 c 230 § 74; 1947 c 255 § 8; Rem. Supp. 1947 § 5654-153h. Formerly RCW 52.34.080 and 52.32.090.]

52.22.101 Appellate review. Appellate review of an order granting or refusing a new trial, or from the judgment, in the special proceedings must be taken by the party aggrieved within thirty days after the entry of the order or the judgment. [1988 c 202 § 50; 1984 c 230 § 75; 1947 c 255 § 9; Rem. Supp. 1947 § 5654-153i. Formerly RCW 52.34.090 and 52.32.100.]

Rules of court: *Cf. RAP 2.2, 18.22.*

Severability—1988 c 202: See note following RCW 2.24.050.

52.22.111 Districts governed by Title 52 RCW. All fire protection districts are governed by Title 52 RCW. [1984 c 230 § 86.]

Chapter 52.26 RCW

REGIONAL FIRE PROTECTION SERVICE AUTHORITIES

Sections

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52.26.010 Findings. The legislature finds that:

- (1) The ability to respond to emergency situations by many of Washington state's fire protection jurisdictions has not kept up with the state's needs, particularly in urban regions;
- (2) Providing a fire protection service system requires a shared partnership and responsibility among the federal, state, local, and regional governments and the private sector;
- (3) There are efficiencies to be gained by regional fire protection service delivery while retaining local control; and
- (4) Timely development of significant projects can best be achieved through enhanced funding options for regional fire protection service agencies, using already existing taxing authority to address fire protection emergency service needs and new authority to address critical fire protection projects and emergency services. [2004 c 129 § 1.]

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

- (1) "Board" means the governing body of a regional fire protection service authority.
- (2) "Regional fire protection service authority" or "authority" means a municipal corporation, an independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, whose boundaries are coextensive with two or more adjacent fire protection jurisdictions and that has been created by a vote of the people under this chapter to implement a regional fire protection service authority plan.
- (3) "Regional fire protection service authority planning committee" or "planning committee" means the advisory committee created under RCW 52.26.030 to create and pro-

pose to fire protection jurisdictions a regional fire protection service authority plan to design, finance, and develop fire protection and emergency service projects.

(4) "Regional fire protection service authority plan" or "plan" means a plan to develop and finance a fire protection service authority project or projects, including, but not limited to, specific capital projects, fire operations and emergency service operations pursuant to RCW 52.26.040(3)(b), and preservation and maintenance of existing or future facilities.

(5) "Fire protection jurisdiction" means a fire district, city, town, port district, or Indian tribe.

(6) "Regular property taxes" has the same meaning as in RCW 84.04.140. [2006 c 200 § 1; 2004 c 129 § 2.]

52.26.030 Planning committee—Formation—Powers. Regional fire protection service authority planning committees are advisory entities that are created, convened, and empowered as follows:

(1) Any two or more adjacent fire protection jurisdictions may create a regional fire protection service authority and convene a regional fire protection service authority planning committee. No fire protection jurisdiction may participate in more than one authority.

(2) Each governing body of the fire protection jurisdictions participating in planning under this chapter shall appoint three elected officials to the authority planning committee. Members of the planning committee may receive compensation of seventy dollars per day, or portion thereof, not to exceed seven hundred dollars per year, for attendance at planning committee meetings and for performance of other services in behalf of the authority, and may be reimbursed for travel and incidental expenses at the discretion of their respective governing body.

(3) A regional fire protection service authority planning committee may receive state funding, as appropriated by the legislature, or county funding provided by the affected counties for start-up funding to pay for salaries, expenses, overhead, supplies, and similar expenses ordinarily and necessarily incurred. Upon creation of a regional fire protection service authority, the authority shall within one year reimburse the state or county for any sums advanced for these start-up costs from the state or county.

(4) The planning committee shall conduct its affairs and formulate a regional fire protection service authority plan as provided under RCW 52.26.040.

(5) At its first meeting, a regional fire protection service authority planning committee may elect officers and provide for the adoption of rules and other operating procedures.

(6) The planning committee may dissolve itself at any time by a majority vote of the total membership of the planning committee. Any participating fire protection jurisdiction may withdraw upon thirty calendar days' written notice to the other jurisdictions. [2004 c 129 § 3.]

52.26.040 Planning committee—Formulation of service plan—Competition with private ambulance service. (1) A regional fire protection service authority planning committee shall adopt a regional fire protection service authority plan providing for the design, financing, and development of

fire protection and emergency services. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria; and
 (b) The input of cities and counties located within, or partially within, a participating fire protection jurisdiction.

(2) The planning committee may coordinate its activities with neighboring cities, towns, and other local governments that engage in fire protection planning.

(3) The planning committee shall:

(a) Create opportunities for public input in the development of the plan;

(b) Adopt a plan proposing the creation of a regional fire protection service authority and recommending design, financing, and development of fire protection and emergency service facilities and operations, including maintenance and preservation of facilities or systems. The plan may authorize the authority to establish a system of ambulance service to be operated by the authority or operated by contract after a call for bids. However, the authority shall not provide for the establishment of an ambulance service that would compete with any existing private ambulance service, unless the authority determines that the region served by the authority, or a substantial portion of the region served by the authority, is not adequately served by an existing private ambulance service. In determining the adequacy of an existing private ambulance service, the authority shall take into consideration objective generally accepted medical standards and reasonable levels of service which must be published by the authority. Following the preliminary conclusion by the authority that the existing private ambulance service is inadequate, and before establishing an ambulance service or issuing a call for bids, the authority shall allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and accepted levels of service. In the event of a second preliminary conclusion of inadequacy within a twenty-four-month period, the authority may immediately issue a call for bids or establish its own ambulance service and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted medical standards and reasonable levels of service. A private ambulance service that is not licensed by the department of health or whose license is denied, suspended, or revoked is not entitled to a sixty-day period within which to demonstrate adequacy and the authority may immediately issue a call for bids or establish an ambulance service; and

(c) In the plan, recommend sources of revenue authorized by RCW 52.26.050, identify the portions of the plan that may be amended by the board of the authority without voter approval, consistent with RCW 52.26.050, and recommend a financing plan to fund selected fire protection and emergency services and projects.

(4) Once adopted, the plan must be forwarded to the participating fire protection jurisdictions' governing bodies to initiate the election process under RCW 52.26.060.

(5) If the ballot measure is not approved, the planning committee may redefine the selected regional fire protection service authority projects, financing plan, and the ballot measure. The fire protection jurisdictions' governing bodies may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at a subsequent elec-

tion or a special election. If a ballot measure is not approved by the voters by the third vote, the planning committee is dissolved. [2006 c 200 § 2; 2004 c 129 § 4.]

52.26.050 Service plan—Taxes and benefit charges.

(1) A regional fire protection service authority planning committee may, as part of a regional fire protection service authority plan, recommend the imposition of some or all of the following revenue sources, which a regional fire protection service authority may impose upon approval of the voters as provided in this chapter:

(a) Benefit charges under RCW 52.26.180 through 52.26.270;

(b) Property taxes under RCW 52.26.140 through 52.26.170 and 84.52.044 and RCW 84.09.030, 84.52.010, 84.52.052, and 84.52.069; or

(c) Both (a) and (b) of this subsection.

(2) The authority may impose taxes and benefit charges as set forth in the regional fire protection service authority plan upon creation of the authority, or as provided for in this chapter after creation of the authority. If the plan authorizes the authority to impose benefit charges or sixty percent voter approved taxes, the plan and creation of the authority must be approved by an affirmative vote of sixty percent of the voters within the boundaries of the authority voting on a ballot proposition as set forth in RCW 52.26.060. However, if the plan provides for alternative sources of revenue that become effective if the plan and creation of the authority is approved only by a majority vote, then the plan with alternative sources of revenue and creation of the authority may be approved by an affirmative vote of the majority of those voters. If the plan does not authorize the authority to impose benefit charges or sixty percent voter approved taxes, the plan and creation of the authority must be approved by an affirmative vote of the majority of the voters within the boundaries of the authority voting on a ballot proposition as set forth in RCW 52.26.060. Except as provided in this section, all other voter approval requirements under law for the levying of property taxes or the imposition of benefit charges apply. Revenues from these taxes and benefit charges may be used only to implement the plan as set forth in this chapter. [2006 c 200 § 3; 2004 c 129 § 5.]

52.26.060 Service plan—Submission to voters. The governing bodies of two or more adjacent fire protection jurisdictions, upon receipt of the regional fire protection service authority plan under RCW 52.26.040, may certify the plan to the ballot, including identification of the revenue options specified to fund the plan. The governing bodies of the fire protection jurisdictions may draft a ballot title, give notice as required by law for ballot measures, and perform other duties as required to put the plan before the voters of the proposed authority for their approval or rejection as a single ballot measure that both approves formation of the authority and approves the plan. Authorities may negotiate interlocal agreements necessary to implement the plan. The electorate is the voters voting within the boundaries of the proposed regional fire protection service authority. A simple majority of the total persons voting on the single ballot measure to approve the plan and establish the authority is required for

approval. However, if the plan authorizes the authority to impose benefit charges or sixty percent voter approved taxes, then the percentage of total persons voting on the single ballot measure to approve the plan and establish the authority is the same as in RCW 52.26.050. The authority must act in accordance with the general election laws of the state. The authority is liable for its proportionate share of the costs when the elections are held under RCW 29A.04.321 and 29A.04.330. [2006 c 200 § 4; 2004 c 129 § 6.]

52.26.070 Service authority—Formation—Challenges. If the voters approve the plan, including creation of a regional fire protection service authority and imposition of taxes and benefit charges, if any, the authority is formed on the next January 1st or July 1st, whichever occurs first. The appropriate county election officials shall, within fifteen days of the final certification of the election results, publish a notice in a newspaper or newspapers of general circulation in the authority declaring the authority formed. A party challenging the procedure or the formation of a voter-approved authority must file the challenge in writing by serving the prosecuting attorney of each county within, or partially within, the regional fire protection service authority and the attorney general within thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the authority's valid formation. [2006 c 200 § 5; 2004 c 129 § 7.]

52.26.080 Organization and composition of governing board. (1) The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern authority affairs, which may include:

- (a) The time and place of regular meetings;
 - (b) Rules for calling special meetings;
 - (c) The method of keeping records of proceedings and official acts;
 - (d) Procedures for the safekeeping and disbursement of funds; and
 - (e) Any other provisions the board finds necessary to include.
- (2) The governing board shall be determined by the plan and consist solely of elected officials. [2004 c 129 § 8.]

52.26.090 Powers of governing board. (1) The governing board of the authority is responsible for the execution of the voter-approved plan. Participating jurisdictions shall review the plan every ten years. The board may:

- (a) Levy taxes and impose benefit charges as authorized in the plan and approved by authority voters;
- (b) Enter into agreements with federal, state, local, and regional entities and departments as necessary to accomplish authority purposes and protect the authority's investments;
- (c) Accept gifts, grants, or other contributions of funds that will support the purposes and programs of the authority;
- (d) Monitor and audit the progress and execution of fire protection and emergency service projects to protect the investment of the public and annually make public its findings;
- (e) Pay for services and enter into leases and contracts, including professional service contracts;

(f) Hire, manage, and terminate employees; and

(g) Exercise powers and perform duties as the board determines necessary to carry out the purposes, functions, and projects of the authority in accordance with Title 52 RCW if one of the fire protection jurisdictions is a fire district, unless provided otherwise in the regional fire protection service authority plan, or in accordance with the statutes identified in the plan if none of the fire protection jurisdictions is a fire district.

(2) An authority may enforce fire codes as provided under chapter 19.27 RCW. [2006 c 200 § 6; 2004 c 129 § 9.]

52.26.100 Transfer of responsibilities and employees to authority—Civil service system. (1) Except as otherwise provided in the regional fire protection service authority plan, all powers, duties, and functions of a participating fire protection jurisdiction pertaining to fire protection and emergency services shall be transferred to the regional fire protection service authority on its creation date.

(2)(a) Except as otherwise provided in the regional fire protection service authority plan, and on the creation date of the regional fire protection service authority, all reports, documents, surveys, books, records, files, papers, or written material in the possession of the participating fire protection jurisdiction pertaining to fire protection and emergency services powers, functions, and duties shall be delivered to the regional fire protection service authority; all real property and personal property including cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the participating fire protection jurisdiction in carrying out the fire protection and emergency services powers, functions, and duties shall be transferred to the regional fire protection service authority; and all funds, credits, or other assets held by the participating fire protection jurisdiction in connection with the fire protection and emergency services powers, functions, and duties shall be transferred and credited to the regional fire protection service authority.

(b) Except as otherwise provided in the regional fire protection service authority plan, any appropriations made to the participating fire protection jurisdiction for carrying out the fire protection and emergency services powers, functions, and duties shall be transferred and credited to the regional fire protection service authority.

(c) Except as otherwise provided in the regional fire protection service authority plan, whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the governing body of the participating fire protection jurisdiction shall make a determination as to the proper allocation.

(3) Except as otherwise provided in the regional fire protection service authority plan, all rules and all pending business before the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the regional fire protection service authority, and all existing contracts and obligations shall remain in full force and shall be performed by the regional fire protection service authority.

(4) The transfer of the powers, duties, functions, and personnel of the participating fire protection jurisdiction shall

not affect the validity of any act performed before creation of the regional fire protection service authority.

(5) If apportionments of budgeted funds are required because of the transfers, the treasurer for the authority shall certify the apportionments.

(6)(a) Subject to (c) of this subsection, all employees of the participating fire protection jurisdictions are transferred to the jurisdiction of the regional fire protection service authority on its creation date. Upon transfer, unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of a participating fire protection jurisdiction, including rights to:

- (i) Compensation at least equal to the level at the time of transfer;
- (ii) Retirement, vacation, sick leave, and any other accrued benefit;
- (iii) Promotion and service time accrual; and
- (iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) If any or all of the participating fire protection jurisdictions provide for civil service in their fire departments, the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions must negotiate regarding the establishment of a civil service system within the authority. This subsection does not apply if none of the participating fire protection districts provide for civil service.

(c) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law. [2006 c 200 § 7; 2004 c 129 § 10.]

52.26.110 Withdrawal, reannexation of territory. (1)

As provided in this section, a regional fire protection service authority may withdraw areas from its boundaries or reannex into the authority areas that previously had been withdrawn from the authority under this section.

(2)(a) The withdrawal of an area is authorized upon: (i) Adoption of a resolution by the board approving the withdrawal and finding that, in the opinion of the board, inclusion of this area within the regional fire protection service authority will result in a reduction of the authority's tax levy rate under the provisions of RCW 84.52.010; or (ii) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the governing body of the fire protection district within which the area is located approving the withdrawal, if the area is located outside of a city or town, but within a fire protection district.

(b) A withdrawal under this section is effective at the end of the day on the thirty-first day of December in the year in which the resolution under (a)(i) or (ii) of this subsection is adopted, but for purposes of establishing boundaries for prop-

erty tax purposes, the boundaries shall be established immediately upon the adoption of the resolution.

(c) The withdrawal of an area from the boundaries of an authority does not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the authority existing at the time of withdrawal.

(3)(a) An area that has been withdrawn from the boundaries of a regional fire protection service authority under this section may be reannexed into the authority upon: (i) Adoption of a resolution by the board proposing the reannexation; and (ii) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the governing body of the fire protection district within which the area is located approving the reannexation, if the area is located outside of a city or town but within a fire protection district.

(b) A reannexation under this section shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the resolution under (a)(ii) of this subsection occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the resolution.

(c)(i) Referendum action on the proposed reannexation under this section may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or governing body of the fire protection district, within a thirty-day period after the adoption of the resolution under (a)(ii) of this subsection, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

(ii) If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in RCW 29A.04.330 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [2004 c 129 § 11.]

52.26.120 Dissolution of fire protection district—Election—Transfer of responsibilities. Any fire protection district within the authority may be dissolved by a majority vote of the registered electors of the district at an election conducted by the election officials of the county or counties in which the district is located in accordance with the general election laws of the state. The proceedings for dissolution may be initiated by the adoption of a resolution by the board. The dissolution of the district shall not cancel outstanding obligations of the district or of a local improvement district within the district, and the county legislative authority or authorities of the county or counties in which the district was located may make annual levies against the lands within the district until the obligations of the districts are paid. All powers, duties, and functions of a dissolved fire protection jurisdiction within the authority boundaries, pertaining to providing fire protection services may be transferred, by resolution, to the regional fire protection service authority. [2004 c 129 § 12.]

52.26.130 Debt—Interlocal contracts—General obligation bonds. (1) An authority may incur general indebtedness for authority purposes, issue bonds, notes, or other evidences of indebtedness not to exceed an amount, together with any outstanding nonvoter approved general obligation debt, equal to three-fourths of one percent of the value of the taxable property within the authority. The maximum term of the obligations may not exceed twenty years. The obligations may pledge benefit charges and may pledge payments to an authority from the state, the federal government, or any fire protection jurisdiction under an interlocal contract. The interlocal contracts pledging revenues and taxes are binding for a term not to exceed twenty-five years, and taxes or other revenue pledged by an interlocal contract may not be eliminated or modified if it would impair the pledge of the contract.

(2) An authority may also issue general obligation bonds for capital purposes not to exceed an amount, together with any outstanding general obligation debt, equal to one and one-half percent of the value of the taxable property within the authority. The authority may provide for the retirement of the bonds by excess property tax levies. The voters of the authority must approve a proposition authorizing the bonds and levies by an affirmative vote of three-fifths of those voting on the proposition at an election. At the election, the total number of persons voting must constitute not less than forty percent of the voters in the authority who voted at the last preceding general state election. The maximum term of the bonds may not exceed twenty-five years. Elections shall be held as provided in RCW 39.36.050.

(3) Obligations of an authority shall be issued and sold in accordance with chapters 39.46 and 39.50 RCW, as applicable. [2006 c 200 § 10; 2004 c 129 § 14.]

52.26.140 Levy of taxes—Levies authorized by special election—Indebtedness—Definition. (1) To carry out the purposes for which a regional fire protection service authority is created, as authorized in the plan and approved by the voters, the governing board of an authority may annually levy the following taxes:

(a) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value;

(b) An ad valorem tax on all property located within the authority not to exceed fifty cents per thousand dollars of assessed value and which will not cause the combined levies to exceed the constitutional or statutory limitations. This levy, or any portion of this levy, may also be made when dollar rates of other taxing units are released by agreement with the other taxing units from their authorized levies; and

(c) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value if the authority has at least one full-time, paid employee, or contracts with another municipal corporation for the services of at least one full-time, paid employee. This levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional or statutory limitations or both.

(2) Levies in excess of the amounts provided in subsection (1) of this section or in excess of the aggregate dollar rate

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limitations or both may be made for any authority purpose when so authorized at a special election under RCW 84.52.052. Any such tax when levied must be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate authority fund or funds as provided by law, and must be paid out on warrants of the auditor of the county in which all, or the largest portion of, the authority is located, upon authorization of the governing board of the authority.

(3) Authorities may provide for the retirement of general indebtedness by excess property tax levies as set forth in RCW 52.26.130.

(4) For purposes of this chapter, the term "value of the taxable property" has the same meaning as in RCW 39.36.015. [2006 c 200 § 11; 2004 c 129 § 15.]

52.26.150 Levy of taxes—To be made by county or counties where authority is located. At the time of making general tax levies in each year, the county legislative authority or authorities of the county or counties in which a regional fire protection service authority is located shall make the required levies for authority purposes against the real and personal property in the authority in accordance with the equalized valuations of the property for general tax purposes and as a part of the general taxes. The tax levies are part of the general tax roll and must be collected as a part of the general taxes against the property in the authority. [2004 c 129 § 16.]

52.26.160 Taxation of lands lying within authority and forest protection assessment area. In the event that lands lie within both a regional fire protection service authority and a forest protection assessment area they shall be taxed and assessed as follows:

(1) If the lands are wholly unimproved, they are subject to forest protection assessments but not to authority levies;

(2) If the lands are wholly improved, they are subject to authority levies but not to forest protection assessments; and

(3) If the lands are partly improved and partly unimproved, they are subject both to authority levies and to forest protection assessments. However, upon request, accompanied by appropriate legal descriptions, the county assessor shall segregate any unimproved portions which each consist of twenty or more acres, and thereafter the unimproved portion or portions are subject only to forest protection assessments. [2004 c 129 § 17.]

52.26.170 Collection of taxes. It is the duty of the county treasurer of the county in which the regional fire protection service authority created under this chapter is located to collect taxes authorized and levied under this chapter. However, when a regional fire protection service authority is located in more than one county, the county treasurer of each county in which the authority is located shall collect the regional fire protection service authority's taxes that are imposed on property located within the county and transfer these funds to the treasurer of the county in which the majority of the authority lies. [2004 c 129 § 18.]

52.26.180 Benefit charges. (1) The governing board of a regional fire protection service authority may by resolution, as authorized in the plan and approved by the voters, for authority purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the authority on the date specified and which have received or will receive the benefits provided by the authority, to be paid by the owners of the properties. A benefit charge does not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto. However, a benefit charge does apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of these benefit charges in any one year may not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected. It is the duty of the county legislative authority or authorities of the county or counties in which the regional fire protection service authority is located to make any necessary adjustments to assure compliance with this limitation and to immediately notify the governing board of an authority of any changes thereof.

(2) A benefit charge imposed must be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the authority. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and is subject to contest on the grounds of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the authority. The governing board of an authority may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter is not applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but the property may be protected by the authority under a contractual agreement.

(3) For administrative purposes, the benefit charge imposed on any individual property may be compiled into a single charge, provided that the authority, upon request of the property owner, provide an itemized list of charges for each measurable benefit included in the charge.

(4) For the purposes of this section and RCW 52.26.190 through 52.26.270, the following definitions apply:

(a)(i) "Personal property" includes every form of tangible personal property including, but not limited to, all goods, chattels, stock in trade, estates, or crops.

(ii) "Personal property" does not include any personal property used for farming, field crops, farm equipment, or livestock.

(b) "Improvements to real property" does not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire. [2004 c 129 § 24.]

52.26.190 Benefit charges—Exemptions. All personal property not assessed and subjected to ad valorem taxation under Title 84 RCW, all property under contract or for which the regional fire protection service authority is receiving payment for as authorized by law, all property subject to chapter 54.28 RCW, and all property that is subject to a contract for services with an authority, is exempt from the benefit charge imposed under this chapter. [2004 c 129 § 25.]

52.26.200 Benefit charges—Resolution—County assessor's duties. (1) The resolution establishing benefit charges as specified in RCW 52.26.180 must specify, by legal geographical areas or other specific designations, the charge to apply to each property by location, type, or other designation, or other information that is necessary to the proper computation of the benefit charge to be charged to each property owner subject to the resolution.

(2) The county assessor of each county in which the regional fire protection service authority is located shall determine and identify the personal properties and improvements to real property that are subject to a benefit charge in each authority and shall furnish and deliver to the county treasurer of that county a listing of the properties with information describing the location, legal description, and address of the person to whom the statement of benefit charges is to be mailed, the name of the owner, and the value of the property and improvements, together with the benefit charge to apply to each. These benefit charges must be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources under RCW 76.04.610 and the same penalties and provisions for collection apply. [2004 c 129 § 26.]

52.26.210 Benefit charges—Administration and collection by county treasurer. Each regional fire protection service authority shall contract, prior to the imposition of a benefit charge, for the administration and collection of the benefit charge by each county treasurer, who shall deduct a percentage, as provided by contract to reimburse the county for expenses incurred by the county assessor and county trea-

surer in the administration of the resolution and this chapter. The county treasurer shall make distributions each year, as the charges are collected, in the amount of the benefit charges imposed on behalf of each authority, less the deduction provided for in the contract. [2004 c 129 § 27.]

52.26.220 Benefit charges—Submission to voters—

Renewal. (1) Notwithstanding any other provision in this chapter to the contrary, any benefit charge authorized by this chapter is not effective unless a proposition to impose the benefit charge is approved by a sixty percent majority of the voters of the regional fire protection service authority voting at a general election or at a special election called by the authority for that purpose, held within the authority. A ballot measure that contains an authorization to impose benefit charges and that is approved by the voters pursuant to RCW 52.26.060 meets the proposition approval requirement of this section. An election held under this section must be held not more than twelve months prior to the date on which the first charge is to be assessed. A benefit charge approved at an election expires in six years or fewer as authorized by the voters, unless subsequently reapproved by the voters.

(2) The ballot must be submitted so as to enable the voters favoring the authorization of a regional fire protection service authority benefit charge to vote "Yes" and those opposed to vote "No." The ballot question is as follows:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to impose benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?

YES NO

(3) Authorities renewing the benefit charge may elect to use the following alternative ballot:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to continue voter-authorized benefit charges each year for (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?

YES NO

[2006 c 200 § 12; 2004 c 129 § 28.]

52.26.230 Benefit charges—Establishment—Public hearings—Notice to property owners. (1) Not fewer than ten days nor more than six months before the election at which the proposition to impose the benefit charge is submitted as provided in this chapter, the governing board of the

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regional fire protection service authority shall hold a public hearing specifically setting forth its proposal to impose benefit charges for the support of its legally authorized activities that will maintain or improve the services afforded in the authority. A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to November 15th of each year the governing board of the authority shall hold a public hearing to review and establish the regional fire protection service authority benefit charges for the subsequent year.

(3) All resolutions imposing or changing the benefit charges must be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before November 30th immediately preceding the year in which the benefit charges are to be collected on behalf of the authority.

(4) After the benefit charges have been established, the owners of the property subject to the charge must be notified of the amount of the charge. [2004 c 129 § 29.]

52.26.240 Benefit charges—Limitation on imposition of property tax.

A regional fire protection service authority that imposes a benefit charge under this chapter shall not impose all or part of the property tax authorized under RCW 52.26.140(1)(c). [2004 c 129 § 30.]

52.26.250 Benefit charges—Complaints—Review board.

After notice has been given to the property owners of the amount of the charge, the governing board of a regional fire protection service authority imposing a benefit charge under this chapter shall form a review board for at least a two-week period and shall, upon complaint in writing of an aggrieved party owning property in the authority, reduce the charge of a person who, in their opinion, has been charged too large a sum, to a sum or amount as they believe to be the true, fair, and just amount. [2004 c 129 § 31.]

52.26.260 Benefit charges—Model resolution—Assistance by Washington fire commissioners association.

The Washington fire commissioners association, as soon as practicable, shall draft a model resolution to impose the regional fire protection service authority benefit charge authorized by this chapter and may provide assistance to authorities in the establishment of a program to develop benefit charges. [2004 c 129 § 32.]

52.26.270 Benefit charges—Additional exemption.

A person who is receiving the exemption contained in RCW 84.36.381 through 84.36.389 is exempt from any legal obligation to pay a portion of the benefit charge imposed under this chapter as follows:

(1) A person who meets the income limitation contained in RCW 84.36.381(5)(a) and does not meet the income limitation contained in RCW 84.36.381(5)(b) (i) or (ii) is exempt from twenty-five percent of the charge;

(2) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(i) is exempt from fifty percent of the charge; and

(3) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(ii) shall be exempt from seventy-five percent of the charge. [2004 c 129 § 33.]

52.26.280 Civil service—When authorized or required. (1) Subject to subsection (2) of this section, a regional fire protection service authority may, by resolution of its board, provide for civil service for its employees in the same manner, with the same powers, and with the same force and effect as provided by chapter 41.08 RCW for cities, towns, and municipalities, including restrictions against the discharge of an employee because of residence outside the limits of the regional fire protection service authority.

(2) If an agreement is reached to provide for civil service under RCW 52.26.100(6), the regional fire protection service authority shall establish such a system as is required by the agreement. [2006 c 200 § 8.]

52.26.290 Annexation of territory. Territory that is annexed to a participating jurisdiction is annexed to the authority as of the effective date of the annexation. The statutes regarding transfer of assets and employees do not apply to the participating jurisdictions in the annexation. [2006 c 200 § 9.]

52.26.900 Captions not law—2004 c 129. Captions used in this act are not any part of the law. [2004 c 129 § 35.]

52.26.901 Severability—2004 c 129. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 129 § 37.]

Chapter 52.30 RCW

MISCELLANEOUS PROVISIONS

Sections

52.30.020	Property of public agency included within district—Contracts for services.
52.30.040	Civil service for employees.
52.30.050	Residency not grounds for discharge of civil service employees.
52.30.060	Change of district name—Resolution.
52.30.070	District volunteer members—Holding public office—Definitions.

52.30.020 Property of public agency included within district—Contracts for services. Wherever a fire protection district has been organized which includes within its area or is adjacent to, buildings and equipment, except those leased to a nontax exempt person or organization, owned by the legislative or administrative authority of a state agency or institution or a municipal corporation, the agency or institution or municipal corporation involved shall contract with such district for fire protection services necessary for the protection and safety of personnel and property pursuant to the provisions of chapter 39.34 RCW: PROVIDED, That nothing in this section shall be construed to require that any state agency, institution, or municipal corporation contract for services which are performed by the staff and equipment of such state agency, institution, or municipal corporation: PRO-

VIDED FURTHER, That nothing in this section shall apply to state agencies or institutions or municipal corporations which are receiving fire protection services by contract from another municipality, city, town, or other entities: AND PROVIDED FURTHER, That school districts shall receive fire protection services from the fire protection districts in which they are located without the necessity of executing a contract for such fire protection services: PROVIDED FURTHER, That prior to September 1, 1974, the superintendent of public instruction, the chief of the Washington state patrol through the director of fire protection, the director of financial management, and the executive director of the Washington fire commissioners association, or their designees, shall develop criteria to be used by the chief of the Washington state patrol through the director of fire protection in establishing uniform rates governing payments to fire districts by school districts for fire protection services. On or before September 1, 1974, the chief of the Washington state patrol through the director of fire protection shall establish such rates to be payable by school districts on or before January 1st of each year commencing January 1, 1975, payable July 1, 1975: AND PROVIDED FURTHER, That beginning with the 1975-77 biennium and in each biennium thereafter the superintendent of public instruction shall present in the budget submittal to the governor an amount sufficient to reimburse affected school districts for the moneys necessary to pay the costs of the uniform rates established by the chief of the Washington state patrol through the director of fire protection. [2006 c 25 § 12; 1979 c 151 § 164; 1974 ex.s. c 88 § 1; 1973 1st ex.s. c 64 § 1; 1941 c 139 § 1; Rem. Supp. 1941 § 5654-143a. Formerly RCW 52.36.020.]

Effective date—1974 ex.s. c 88: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 88 § 2.]

Effective date—1973 1st ex.s. c 64: "This 1973 amendatory act shall take effect on July 1, 1974." [1973 1st ex.s. c 64 § 2.]

Fire, medical, or other emergency services provided to county by political subdivision—Financial assistance authorized: RCW 36.32.470.

Fire protection services for state-owned facilities: RCW 35.21.775.

52.30.040 Civil service for employees. A fire protection district with a fully-paid fire department may, by resolution of its board of fire commissioners, provide for civil service in its fire department in the same manner, with the same powers, and with the same force and effect as provided by chapter 41.08 RCW for cities, towns, and municipalities, including restrictions against the discharge of an employee because of residence outside the limits of the fire protection district. [1984 c 230 § 79; 1971 ex.s. c 256 § 2; 1949 c 72 § 1; Rem. Supp. 1949 § 5654-120a. Formerly RCW 52.36.060.]

52.30.050 Residency not grounds for discharge of civil service employees. Residence of an employee outside the limits of a fire protection district is not grounds for discharge of any regularly-appointed civil service employee otherwise qualified. [1984 c 230 § 80; 1971 ex.s. c 256 § 1. Formerly RCW 52.36.065.]

52.30.060 Change of district name—Resolution. The name of a fire protection district shall be changed, as proposed by resolution of the board of fire commissioners of the

district, upon the adoption of a resolution approving the change by the county legislative authority of the county in which all, or the largest portion, of a fire protection district is located. [1989 c 63 § 34.]

52.30.070 District volunteer members—Holding public office—Definitions. (1) Except as otherwise prohibited by law, a volunteer member of any fire protection district who does not serve as fire chief for the district may be:

(a) A candidate for elective public office and serve in that public office if elected; or

(b) Appointed to any public office and serve in that public office if appointed.

(2) For purposes of this section, "volunteer" means a member of any fire protection district who performs voluntarily any assigned or authorized duties on behalf of or at the direction of the fire protection district without receiving compensation or consideration for performing such duties.

(3) For purposes of this section, "compensation" and "consideration" do not include any benefits the volunteer may have accrued or is accruing under chapter 41.24 RCW. [2006 c 211 § 2.]

Chapter 52.33 RCW

FIRE DEPARTMENTS— PERFORMANCE MEASURES

Sections

52.33.010	Intent.
52.33.020	Definitions.
52.33.030	Policy statement—Service delivery objectives.
52.33.040	Annual evaluations—Annual report.
52.33.900	Part headings not law—2005 c 376.

52.33.010 Intent. The legislature intends for fire protection districts and regional fire [protection] service authorities to set standards for addressing the reporting and accountability of substantially career fire departments, and to specify performance measures applicable to response time objectives for certain major services. The legislature acknowledges the efforts of the international city/county management association, the international association of fire chiefs, and the national fire protection association for the organization and deployment of resources for fire departments. The arrival of first responders with automatic external defibrillator capability before the onset of brain death, and the arrival of adequate fire suppression resources before flash-over is a critical event during the mitigation of an emergency, and is in the public's best interest. For these reasons, this chapter contains performance measures, comparable to that research, relating to the organization and deployment of fire suppression operations, emergency medical operations, and special operations by substantially career fire departments. This chapter does not, and is not intended to, in any way modify or limit the authority of fire protection districts and regional fire protection service authorities to set levels of service. [2005 c 376 § 301.]

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

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(1) "Advanced life support" means functional provision of advanced airway management, including intubation, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

(2) "Aircraft rescue and fire fighting" means the fire fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

(3) "Brain death" as defined by the American heart association means the irreversible death of brain cells that begins four to six minutes after cardiac arrest.

(4) "Fire department" means a fire protection district or a regional fire protection service authority responsible for fire fighting actions, emergency medical services, and other special operations in a specified geographic area. The department must be a substantially career fire department, and not a substantially volunteer fire department.

(5) "Fire suppression" means the activities involved in controlling and extinguishing fires.

(6) "First responder" means provision of initial assessment and basic first-aid intervention, including cardiac pulmonary resuscitation and automatic external defibrillator capability.

(7) "Flash-over" as defined by national institute of standards and technology means when all combustibles in a room burst into flame and the fire spreads rapidly.

(8) "Marine rescue and fire fighting" means the fire fighting actions taken to prevent, control, or extinguish fire involved in or adjacent to a marine vessel and the rescue actions for occupants using normal and emergency routes for egress.

(9) "Response time" means the time immediately following the turnout time that begins when units are en route to the emergency incident and ends when units arrive at the scene.

(10) "Special operations" means those emergency incidents to which the fire department responds that require specific and advanced training and specialized tools and equipment.

(11) "Turnout time" means the time beginning when units receive notification of the emergency to the beginning point of response time. [2005 c 376 § 302.]

52.33.030 Policy statement—Service delivery objectives. (1) Every fire protection district and regional fire protection service authority shall maintain a written statement or policy that establishes the following:

- (a) The existence of a fire department;
- (b) Services that the fire department is required to provide;
- (c) The basic organizational structure of the fire department;
- (d) The expected number of fire department employees; and
- (e) Functions that fire department employees are expected to perform.

(2) Every fire protection district and regional fire protection service authority shall include service delivery objectives in the written statement or policy required under subsection (1) of this section. These objectives shall include specific response time objectives for the following major service components, if appropriate:

- (a) Fire suppression;
- (b) Emergency medical services;
- (c) Special operations;
- (d) Aircraft rescue and fire fighting;
- (e) Marine rescue and fire fighting; and
- (f) Wild land fire fighting.

(3) Every fire protection district and regional fire protection service authority, in order to measure the ability to arrive and begin mitigation operations before the critical events of brain death or flash-over, shall establish time objectives for the following measurements:

(a) Turnout time;

(b) Response time for the arrival of the first arriving engine company at a fire suppression incident and response time for the deployment of a full first alarm assignment at a fire suppression incident;

(c) Response time for the arrival of a unit with first responder or higher level capability at an emergency medical incident; and

(d) Response time for the arrival of an advanced life support unit at an emergency medical incident, where this service is provided by the fire department.

(4) Every fire protection district and regional fire protection service authority shall also establish a performance objective of not less than ninety percent for the achievement of each response time objective established under subsection (3) of this section. [2005 c 376 § 303.]

52.33.040 Annual evaluations—Annual report. (1)

Every fire protection district and regional fire protection service authority shall evaluate its level of service and deployment delivery and response time objectives on an annual basis. The evaluations shall be based on data relating to level of service, deployment, and the achievement of each response time objective in each geographic area within the jurisdiction of the fire protection district and regional fire protection service authority.

(2) Beginning in 2007, every fire protection district and regional fire protection service authority shall issue an annual written report which shall be based on the annual evaluations required by subsection (1) of this section.

(a) The annual report shall define the geographic areas and circumstances in which the requirements of this standard are not being met.

(b) The annual report shall explain the predictable consequences of any deficiencies and address the steps that are necessary to achieve compliance. [2005 c 376 § 304.]

52.33.900 Part headings not law—2005 c 376. See RCW 35.103.900.